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Legislative History of the National Labor Relations Act, 1935

Volume I

National Labor Relations Board

A COMMEMORATIVE PUBLICATION

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WILFORD W. JOHANSEN
PATRICIA DIAZ DENNIS
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	Edwin S. Smith	July	1935 - Aug.	1941
*	J. Warren Madden	Aug.	1935 - Aug.	1940
	John M. Carmody	Sept.	1935 - Aug.	1936
	Donald Wakefield Smith	Sept.	1936 - May	1939
	William M. Leiserson	June	1939 - Feb.	1943
*	Harry A. Millis	Nov.	1940 - July	1945
	Gerard D. Reilly	Oct.	1941 - Aug.	1946
	John M. Houston	Mar.	1943 - Aug.	1953
*	Paul M. Herzog	July	1945 - June	1953
	James J. Reynolds, Jr.	Aug.	1946 - Dec.	1951
	Abe Murdock	Aug.	1947 - Dec.	1957
	J. Copeland Gray	Aug.	1947 - Dec.	1949
	Paul L. Styles	Feb.	1950 - Aug.	1953
	Ivar H. Peterson	Mar.	1952 - Aug.	1956
*	Guy Farmer	July	1953 - Aug.	1955
	Philip Ray Rodgers	Aug.	1953 - Aug.	1963
	Albert C. Beeson	Mar.	1954 - Dec.	1954
*	Boyd S. Leedom	April	1955 - Dec.	1964
	Stephen S. Bean	Dec.	1955 - Aug.	1960
	Joseph Alton Jenkins	Mar.	1957 - Mar.	1961
*	John H. Fanning	Dec.	1957 - Dec.	1982
	Arthur A. Kimball	Sept.	1960 - Mar.	1961
*	Frank W. McCulloch	Mar.	1961 - Aug.	1970
	Gerald A. Brown	April	1961 - Aug.	1971
	Howard Jenkins, Jr.	Aug.	1963 - Aug.	1983
	Sam Zagoria	April	1965 - Dec.	1969
*	Edward B. Miller	June	1970 - Dec.	1974
	Ralph E. Kennedy	Dec.	1970 - July	1975
	John A. Penello	Feb.	1972 - Jan.	1981
*	Betty Southard Murphy	Feb.	1975 - Dec.	1979
	Peter D. Walther	Nov.	1975 - Aug.	1977
	John C. Truesdale	Oct.	1977 - Jan.	1981
	Don A. Zimmerman	Aug.	1980 - Dec.	1984
	Robert P. Hunter	Aug.	1981 -	
*	John R. Van de Water	Aug.	1981 - Dec.	1982
*	John C. Miller	Dec.	1982 - Mar.	1983
*	Donald L. Dotson	Mar.	1983 -	
	Patricia Diaz Dennis	May	1983 -	
	Wilford W. Johansen	May	1985 -	
	Marshall B. Babson	May	1985 -	

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Robert B. Watts	Dec. 1940	Jan. 1944
Alvin J. Rockwell	Jan. 1944	Sept. 1945
David A. Morse	Sept. 1945	June 1946
Gerhard P. Van Arkel	June 1946	July 1947
Robert N. Denham	Aug. 1947	Sept. 1950
George J. Bott	Sept. 1950	Dec. 1954
Theophil C. Kammholz	Mar. 1955	Jan. 1957
* Kenneth McGuiness	Jan. 1957	Mar. 1957
Jerome D. Fenton	Mar. 1957	June 1959
Stuart Rothman	June 1959	May 1963
Arnold Ordman	May 1963	June 1971
* Eugene G. Goslee	June 1971	Aug. 1971
Peter G. Nash	Aug. 1971	Aug. 1975
* John C. Miller	Aug. 1975	Nov. 1975
John S. Irving	Dec. 1975	Oct. 1979
* Norton J. Come	Oct. 1979	Dec. 1979
William A. Lubbers	Dec. 1979	April 1984
* Wilford W. Johansen	April 1984	Oct. 1984
Rosemary M. Collyer	Oct. 1984	

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FOREWORD

This two-volume Legislative History of the National Labor Relations Act of 1935 is part of a collection of publications reprinted in 1985 on the 50th anniversary of the Act. The other publications in this reprint series are: the two-volume Legislative History of the Labor Management Relations Act of 1947, the two-volume Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, and the four-volume set of the Annual Reports of the National Labor Relations Board from 1936 through 1960.

The republication of these documents will assure their ready availability for legal and historical research into the National Labor Relations Act.

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LEGISLATIVE HISTORY OF THE NATIONAL LABOR RELATIONS ACT

All Pertinent Documents Reprinted and Indexed

TABLE OF CONTENTS

VOLUME I

INTRODUCTORY MATERIAL

	Page
Statement of method followed in preparing this legislative history	IX
Chronological statement of legislative history, with reference to pages where material is printed in full	XI
Sectional index to legislative history	XVII
Topical index to legislative history	LXXXI
Index of names and cases	CIX

DOCUMENTS REPRINTED

S. 2926, original Senate print: S. 2926 (73d Cong., 2d sess.), introduced in Senate on February 28 (calendar day, March 1), 1934. Referred to Committee on Education and Labor (78 Congressional Record 3444)	1
Senator Wagner on S. 2926:	
Explanatory statement by Senator Wagner upon introducing S. 2926 (78 Congressional Record 3443–3444)	15
Speech by Senator Wagner at conference of NRA code authorities in which he discusses S. 2926, placed in Congressional Record on March 5, 1934, by Senator Barkley (78 Congressional Record 3687–3679)	18
Article by Senator Wagner on company unions in which he discusses S. 2926, placed in Congressional Record on March 12, 1934, by Senator Copeland (78 Congressional Record 4229–4231)	22
Hearings on S. 2926: Hearings before Senate Committee on Education and Labor, Seventy-third Congress, second session, on S. 2926:	
Part I (March 14–22, 1934)	27
Part II (March 26–Apr. 3, 1934)	367
Part III (April 4–9, 1934)	683
President Roosevelt on Auto-Labor Settlement: Text of President Roosevelt's statement announcing the terms of the auto-labor settlement placed in Congressional Record on March 26, 1934, by Senator Vandenberg (78 Congressional Record 5384–5385)	1067
S. 2926, as reported, second Senate print: S. 2926, reported by Mr. Walsh, with amendments, May 10 (calendar day, May 26), 1934, Calendar No. 1260 (78 Congressional Record 9607)	1070
Senate Report No. 1184 on S. 2926: Senate Report 1184 (73d Cong., 2d sess.), report to accompany S. 2926, filed May 10 (calendar day, May 26), 1934 (78 Congressional Record 9607)	1099
Proposed amendments to S. 2926:	
Amendment intended to be proposed by Senator Robinson, May 28 (calendar day, May 30), 1934. Ordered to lie on the table and to be printed (78 Congressional Record 9924)	1113
Ten amendments intended to be proposed by Senator Wagner, May 28 (calendar day, May 31), 1934. Ordered to lie on the table and to be printed (78 Congressional Record 10070)	1114
Senator Walsh on S. 2926:	
Article by Senator Walsh on strikes in which he discusses S. 2926 as reported, placed in Congressional Record on June 4, 1934, by Senator Murphy (78 Congressional Record 10351–10353)	1117
Address by Senator Walsh introduced in Congressional Record on June 6, 1934, by Senator Wagner, in which Senator Walsh explains changes made in bill by Senate committee (78 Congressional Record 10559–10661)	1122

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Page

H. R. 8423, original House print. H. R. 8423 (73d Cong., 2d sess.), introduced in House March 1, 1934. Referred to Committee on Labor (78 Congressional Record 3576) ---- 1128

Congressmen on H. R. 8423:

Radio address by Congressman Lesinski on labor introduced by him in Congressional Record on April 23, 1934 (78 Congressional Record 7164) ---- 1141

Statement by Congressman Peavey respecting H. R. 8423 on May 15, 1934 (78 Congressional Record 8884) ---- 1144

Statement by Congressman Carpenter on labor on May 17, 1934 (78 Congressional Record 9060–9061) ---- 1144

Statement by Congressman Beiter on labor on May 23, 1934 (78 Congressional Record 9422–9423) ---- 1148

Statement by Congressman Connery respecting H. R. 8423 on May 29, 1934 (78 Congressional Record 9888–9889) ---- 1150

Senator Robinson on S. J. Res. 143: Explanatory statement by Senator Robinson on introducing Senate Joint Resolution 143, Seventy-third Congress, Second session, on June 6 (calendar day, June 15), 1934, (78 Congressional Record 11635–11636) ---- 1156

Senate Joint Resolution 143, as reported: Senate Joint Resolution 143, reported by Mr. Walsh, with amendments, June 6 (calendar day, June 15), 1934, Calendar No. 1546 (78 Congressional Record 11647) ---- 1160

Senate Report No. 1447 on Senate Joint Resolution 143: Senate Report 1447 (73d Cong., 2d sess.) to accompany Senate Joint Resolution 143, filed June 6 (calendar day, June 15), 1934 (78 Congressional Record 11647 -- 1162

Proposed amendments to Senate Joint Resolution 143: Amendments intended to be proposed by Senator La Follette, June 6, (calendar day, June 15), 1934 (78 Congressional Record 12024–12027) ---- 1163

Debates in Senate on Senate Joint Resolution 143: Debates in Senate on June 16, 1934, on adoption of Senate Joint Resolution 143 as a temporary substitute for S. 2926 (78 Congressional Record 12016–12022; 12024–12034) ---- 1177

House Joint Resolution 375: House Joint Resolution 375 (73d Cong., 2d sess.), introduced in House June 15, 1934. Referred to Committee on Labor (78 Congressional Record 11938) ---- 1224

Passage of House Joint Resolution 375 by House: Proceedings in House on June 16, 1934, on passage of House Joint Resolution 375 (78 Congressional Record 12120–12122) ---- 1226

Debates in Senate on House Joint Resolution 375: Debates in Senate on June 16, 1934, on adoption of House Joint Resolution 375 as a temporary substitute for S. 2926 (78 Congressional Record 12041–12047; 12051–12052) ---- 1232

Passage of House Joint Resolution 375 by Senate: Proceedings in Senate on June 16, 1934, upon passage of House Joint Resolution 375, with amendments (78 Congressional Record 12052) ---- 1254

Agreement of House to Senate amendments to House Joint Resolution 375: Proceedings in House on June 16, 1934, in agreeing to Senate amendments to House Joint Resolution 375 (78 Congressional Record 12209; 12236–12237) ---- 1254

Message from House to Senate on H. J. Res. 375: The Senate on June 18, 1934, received a message from the House announcing that the House had agreed to the amendment of the Senate to H. J. Res. 375 (78 Cong. Rec. 12361) ---- 1255

House Joint Resolution 375 examined and signed by Speaker. The House Committee on Enrolled Bills reported that that committee had examined and found H. J. Res. 375 truly enrolled. H. J. Res. 375 was thereupon signed by the Speaker. (78 Cong. Rec. 12575–12576) ---- 1255

House Joint Resolution signed by Vice President. The Senate on June 18, 1934, received a message from the House announcing that the Speaker of the House had signed H. J. Res. 375. H. J. Res. 375 was thereupon signed by the Vice President. (78 Cong. Rec. 12367–12368) ---- 1255A

House Joint Resolution 375 presented to the President: The committee on Enrolled Bills reported that H. J. Res. 375 was presented to the President for approval of June 18, 1934 (78 Cong. Rec. 12577–12578) ---- 1255A

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House Joint Resolution 375 [Public Resolution No. 44] signed by President. The President of the United States on June 19, 1934, subsequent to the sine die adjournment of the second session of the Seventy-third Congress, approved and signed House Joint Resolution 375. (78 Cong. Rec. 12453, 12660) ---- 1255A
Public Resolution No. 44 ---- 1255B
Petitions supporting or opposing S. 2926 and H. R. 8423 ---- 1256
Richberg on revision of National Recovery Act, section 7 (a): Speech by Donald Richberg relative to recovery measures placed in Congressional Record on January 10, 1935, by Senator Lewis with statement it touched bills pending before Senate (79 Congressional Record 265–268) ---- 1284
S. 1958, original Senate print: S. 1958 (74th Cong., 1st sess.), introduced in Senate February 15 (calendar day, Feb. 21), 1935. Referred to Committee on Education and Labor (79 Congressional Record 2368) ---- 1295
Senator Wagner on S. 1958:
Explanatory statement by Senator Wagner on February 21, 1935, in Senate upon introducing S. 1958 (79 Congressional Record 2368, 2371, 2372) ---- 1311
Address by Francis Biddle, Chairman of the National Labor Relations Board, on the theory of collective bargaining, in which he discusses S. 1958, placed in Congressional Record on March 8, 1935, by Senator Wagner (79 Congressional Record 3183–3185) ---- 1314
Comparison of S. 2926 and S. 1958: Memorandum of March 11, 1935, prepared for Senate Committee on Education and Labor comparing S. 1958 (74th Cong., 1st sess.), with S. 2926 (73d Cong., 2d sess.), as reported with amendments ---- 1319
Hearings on S. 1958: Hearings before Senate Committee on Education and Labor, Seventy-fourth Congress, first session, on S. 1958:
Part I (March 11–14) ---- 1373
Part II (March 15–19) ---- 1501

VOLUME II

Hearings on S. 1958: Hearings before Senate Committee on Education and Labor, Seventy-fourth Congress, first session, on S. 1958:
Part III (March 21–April 2) ---- 1617
McGuire on Federal power over labor disputes: Article by O. R. McGuire on Labor Disputes and the Federal Government in which he discusses S. 1958 placed in Congressional Record on April 15, 1935, by Senator Logan (79 Congressional Record 5626–5628) ---- 2277
Senator Wagner on S. 1958: Address by Senator Wagner on the National Labor Relations bill, placed in Congressional Record on April 23, 1935, by Senator Costigan (79 Congressional Record 6183–6184) ---- 2282
S. 1958, as reported, second Senate print: S. 1958 (74th Cong., 1st sess.), reported by Mr. Walsh, with amendments, May 1 (calendar day, May 2), 1935, Calendar No. 595 (79 Congressional Record 6749) ---- 2285
Senate Report No. 573 on S. 1958: Senate Report 573 (74th Cong., 1st sess.), report to accompany S. 1958, filed May 1 (calendar day, May 2), 1935 (79 Congressional Record 6749) ---- 2300
Proposed amendment to S. 1958: Amendments intended to be proposed by Senator Robinson May 7, 1935. Ordered to lie on the table and to be printed (79 Congressional Record 7042–7043) ---- 2320
Debates on S. 1958 in Senate: Debates in Senate on May 14, 15, and 16, 1935, on S. 1958 (79 Congressional Record 7483, 7565–7574, 7576–7577, 7596, 7648–7661, 7666–7681) ---- 2321
Passage of S. 1958 by Senate: Proceedings in Senate on May 16, 1935, on passage of S. 1958, with amendments (79 Congressional Record 7681) ---- 2414
S. 1958, as passed Senate, third Senate print: S. 1958 (74th Cong., 1st sess.), passed without further amendment May 13 (calendar day May 16), 1935 ---- 2416
Congressmen on labor disputes bill:
Speech by Congressman Maverick respecting the labor disputes bill inserted in Congressional Record by him on January 31, 1935 (79 Congressional Record 1334–1335) ---- 2427
Statement of Congressman Boland on February 20, 1935, on the need for revision of section 7 (a) of the NRA including insertion in Congressional Record of a speech by Father Haas (79 Congressional Record 2332–2338) ---- 2430

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Page

H. R. 6187, original House print: H. R. 6187 (74th Cong., 1st sess.), introduced in the House on February 26, 1935, by Mr. Kennedy of New York. Referred to Committee on Labor (79 Congressional Record 2642) 2445

H. R. 6288, original House print: H. R. 6288 (74th Cong., 1st sess.), introduced in the House on February 28, 1935, by Mr. Connery. Referred to Committee on Labor (79 Congressional Record 2783) 2459

Hearings on H. R. 6288: Hearings before House Committee on Labor, Seventy-fourth Congress, first session, on H. R. 6288, March 13–April 4, 1935 2473

Mr. Connery on H. R. 6288: Statement by Congressman Connery on the need for H. R. 6288 made in House on March 29, 1935 (79 Congressional Record 4707–4708) 2842

H. R. 7937, original House print: H. R. 7937 (74th Cong., 1st sess.), introduced in the House on May 7, 1935, by Mr. Connery. Referred to Committee on Labor (79 Congressional Record 7106) 2845

H. R. 7978, original House print: H. R. 7978 (74th Cong., 1st sess.), introduced in the House on May 9, 1935, by Mr. Connery, as a companion bill to S. 1958, as reported by the Senate committee. Referred to the Committee on Labor (79 Congressional Record 7276) 2857

Mr. Connery on H. R. 6288: Statement by Congressman Connery on the relation of H. R. 6288 to section 7 (a) of the NRA, made in House on May 14, 1935 (79 Congressional Record 7518–7519) 2869

Message from Senate to House on S. 1958: The House on May 16, 1935, received a message from the Senate announcing that the Senate had passed S. 1958, in which the concurrence of the House is requested (79 Congressional Record 7741) 2871

Mr. Truax on S. 1958: Statement by Congressman Truax in reply to opponents of S. 1958 made in House on May 17, 1935 (79 Congressional Record 7771–7776) 2871

Mr. Eagle on S. 1958: Statement by Congressman Eagle in support of S. 1958 made in House on May 17, 1935 (79 Congressional Record 7779–7780) 2884

S. 1958, as passed Senate, first House print: S. 1958 (74th Cong., 1st sess.), as passed Senate. Referred to Committee on Labor of House on May 17, 1935 (79 Congressional Record 7780) 2886

H. R. 7978, as reported, second House print: H. R. 7978 (74th Cong., 1st sess.), reported May 20, 1935 (H. Rept. No. 969). Committed to the Committee of the Whole House on the State of the Union and ordered to be printed. Union Calendar No. 325 (79 Congressional Record 7889) 2898

House Report No. 969 on H. R. 7978: House Report No. 969 (74th Cong., 1st sess.), report to accompany H. R. 7978, filed May 20, 1935 (79 Congressional Record 7889) 2910

S. 1958, as reported, second House print: S. 1958 (74th Cong., 1st sess.) [Rept. No. 972], Union Calendar No. 328, in the House of Representatives. Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed, May 21, 1935 (79 Congressional Record 7961) 2944

House Report No. 972 on S. 1958: House Report No. 972 (74th Cong., 1st sess.), report to accompany S. 1958, filed May 21, 1935 (79 Congressional Record 7961) 2956

House Resolution 227, original House print: House Resolution 227 (74th Cong., 1st sess.), providing for the consideration of S. 1958. Introduced by Mr. Connery on May 22, 1935. Referred to the Committee on Rules (79 Congressional Record 8033) 2990

Mr. Blanton on S. 1958: Statement by Congressman Blanton made in the House on May 24, 1935, in opposition to S. 1958 (79 Congressional Record 8186–8191) 2991

Mr. Connery on S. 1958: Statement by Congressman Connery made in the House on June 3, 1935, urging enactment of S. 1958 (79 Congressional Record 8536–8540) 3003

S. 1958, as reported, third House print: S. 1958 (74th Cong., 1st sess.) [Rept. No. 972], Union Calendar No. 328, in the House of Representatives. Recommitted to the Committee on Labor on June 5, 1935, and ordered to be printed (79 Congressional Record 8727) 3013

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Page

Mr. Wood on S. 1958: Statement by Congressman Wood made in the House on June 6, 1935, in support of S. 1958 (79 Congressional Record 8815–8818) ---- 3025

S. 1958, as reported, fourth House print: S. 1958 (74th Cong., 1st sess.) [Rept. No. 1147], Union Calendar No. 400, in the House of Representatives. Reported with additional amendments, on June 10, 1935. Committed to the Committee on the Whole House on the State of the Union, and ordered to be printed (79 Congressional Record 9029) ---- 3032

House Report No. 1147 on S. 1958: House Report No. 1147 (74th Cong., 1st sess.). Report to accompany S. 1958, filed June 10, 1935 (79th Congressional Record 9029) ---- 3046

House Resolution 250, original House print: House Resolution 250 (74th Cong., 1st sess.), providing for the consideration of S. 1958. Introduced by Mr. Connery, June 12, 1935. Referred to the Committee on Rules (79 Congressional Record 9220) ---- 3089

Mr. Schneider on S. 1958: Statement by Congressman Schneider in the House on June 14, 1935, in support of S. 1958 (79 Congressional Record 9329–9330) ---- 3090

House denied privileged status to S. 1958: Congressman Connery asked the House to give privileged status to S. 1958 and to limit debate. There being objection his request was not granted (79 Congressional Record 9454) ---- 3091

House Resolution 263, original House print: House Resolution 263 (74th Cong., 1st sess.), providing for the consideration of S. 1958, reported on June 18, 1935 (House Report No. 1259) by Mr. O'Connor, from the Committee on Rules (79 Congressional Record 9612) ---- 3092

House Report No. 1259 on House Resolution 263: House Report No. 1259 (74th Cong., 1st sess.). Report to accompany House Resolution 263 (79 Congressional Record 9612) ---- 3093

Debates in House on House Resolution 263: Debates in House on June 19, 1935, on agreeing to House Resolution 263, providing for consideration of S. 1958 (79 Congressional Record 9668–9669, 9676–9683) ---- 3093

Agreement to House Resolution 263 by House: Proceedings in House on June 19, 1935, on agreeing to House Resolution 263 (79 Congressional Record 9683) ---- 3112

Debates in House on S. 1958: Debates in House on June 19, 1935, on S. 1958 (79 Congressional Record 9683–9711, 9713–9730) ---- 3112

Passage of S. 1958 by House: Proceedings in House on June 19, 1935, on passage of S. 1958 (79 Congressional Record 9731) ---- 3227

Congressmen on S. 1958: Extension of remarks by Congressmen in Congressional Record on day S. 1958 was passed by House, June 19, 1935 (79 Congressional Record 9731–9733, 9736) ---- 3228

Message from House to Senate on S. 1958: The Senate on June 20, 1935, received a message from the House announcing that the House had passed S. 1958, with amendments, in which it requested the concurrence of the Senate (79 Congressional Record 9742) ---- 3236

Senate disagrees to House amendments to S. 1958: The Senate on June 20, 1935, disagreed to the amendment of the House, requested a conference on the disagreeing votes of the two Houses thereon, and authorized the Chair to appoint conferees on the part of the Senate (79 Congressional Record 9778) ---- 3237

S. 1958, as passed House, fourth Senate print: S. 1958 (74th Cong., 1st sess.), in the Senate of the United States, May 13 (calendar day, June 21), 1935. Ordered to be printed with the amendments of the House of Representatives numbered (79 Congressional Record 9818) ---- 3238

House insists on its amendments to S. 1958: The House on June 21, 1935, insisted on its amendments to S. 1958, agreed to the conference asked by the Senate and the Chair appointed conferees (79 Congressional Record 9864) ---- 3251

House Report No. 1371 on S. 1958: House Report No. 1371 (74th Cong., 1st sess.). Conference report to accompany S. 1958. Presented to the Senate on June 26, 1935, by Mr. Walsh (79 Congressional Record 10130). Presented to the House on June 26, 1935, by Mr. Connery, and ordered to be printed (79 Congressional Record 10226) ---- 3252

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Page

Senate agrees to conference report on S. 1958: Proceedings in the Senate on June 27, 1935, on agreeing to the conference report on S. 1958. The conference report was agreed to (79 Congressional Record 10258–10259) 3258

House agrees to conference report on S. 1958: Proceedings in the House on June 27, 1935, on agreeing to the conference report on S. 1958. The conference report was agreed to (79 Congressional Record 10297–10300) 3260

President's statement upon signing S. 1958: S. 1958, examined and signed (79 Congressional Record 10585, 10587). Presented to the President (79 Congressional Record 10688). Approved [Public, No. 198] (79 Congressional Record 10719). Text of President's statement upon signing S. 1958, inserted in the Congressional Record by Senator Guffey (79 Congressional Record 10720) 3268

S. 1958, final print: S. 1958 (74th Cong., 1st sess.), as approved by the President on July 5, 1935, Public Act No. 198 (49 Stat. 449–457) 3270

Petitions supporting or opposing S. 1958, H. R. 6187, H. R. 6288, H. R. 7937 and H. R. 7978 3279

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STATEMENT OF METHOD FOLLOWED IN PREPARING THIS LEGISLATIVE HISTORY

The documents constituting the legislative history of the National Labor Relations Act of 1935 have never before been collected in one place and as the years go by many of them have gone out of print and become increasingly difficult to obtain. It was therefore deemed advisable to reprint all the documents in one collection in a form duplicating the originals as closely as necessary for research. Although many legislative histories are composed in the form of sections of the law followed by the printing of pertinent portions of the legislative material, this form would here be most difficult to execute because of the manner in which the National Labor Relations Act enunciates broad principles rather than technical rules. Moreover, there would have been so much duplication as to render such a scheme quite wasteful. Therefore, this history is composed of a reprint of all the documents accompanied by three exhaustive indexes, the first by sections of the Act, the second by subject matter, and the third by names of persons, cases and organizations which appear in the documents.

The documents are here arranged by the houses in which the document originated, in chronological order. That is, all the Senate documents and proceedings relating to a given bill or resolution until it has been passed by that body, are printed chronologically before printing any of the House documents or proceedings relating thereto. Thus, we start with S. 2926 which was introduced in the Senate in 1934 and follow it with all of the proceedings both on the floor of the Senate and in Senate committees arranged chronologically through the end of 1934. Then we print the first House version of this bill, H. R. 8423, although chronologically it precedes some of the Senate proceedings, and follow it with all proceedings thereon in the House in 1934. These two bills did not come to a vote in 1934 but instead Congress adopted Public Resolution No. 44. The proceedings culminating in the adoption of this resolution began with the introduction of Senate Joint Resolution 143. This resolution is printed followed by all the proceedings thereon in the Senate. Then, House Joint Resolution 375 is printed followed by the subsequent proceedings thereon in the House and the Senate arranged chronologically. This completes the proceedings in the 1934 session of Congress.

For the 1935 session, a similar arrangement is used. All of the documents and proceedings in the Senate, both on the floor of the Senate and in committee, until the bill was passed by the Senate, are printed chronologically before printing any of the House documents, or proceedings, although the House proceedings were taking place virtually concurrently in point of time with the Senate proceedings. After the adoption of the bill by the Senate there is printed in chronological order all of the House documents and proceedings down through the adoption of the Senate bill by the House with amendments. Then in chronological order are the subsequent proceedings skipping back and forth from Senate to House and vice versa.

All documents have been printed so that the pagination of the original document is indicated. Hearings have been reproduced by

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photo offset so that the reproduction is identical with the original print. Bills have been reset line for line and page for page, including typographical errors. While the Congressional Record and committee reports have not been reset line for line, the original pagination is noted by figures in brackets printed in bold face. For use in indexing and the table of contents we have numbered the pages of this legislative history independently of the page numbers of the original documents. In all instances, the page numbers of this legislative history appear unincumbered by parentheses or brackets while the numbers of the pages of the original documents appear in parentheses or brackets except in the reprinting of the bills, where the reproduction of the original pagination appears in such a position on the page that no confusion can result.

A complete chronological statement of the legislative history of the National Labor Relations Act of 1935, with each step arranged without regard to which side of Congress the action occurred, is set forth at pages XI–XV, immediately following this statement.

This legislative history includes only the proceedings which took place in 1934 and 1935 and pertained to the original National Labor Relations Act of 1935. The legislative history of the Labor Management Relations Act, 1947 is contained in two separate volumes.

The plan of this compilation was worked out and its execution supervised by Ruth Weyand, Assistant General Counsel, National Labor Relations Board. The actual preparation and indexing were done by Louis Schwartz, of the Board's Industrial analysis Branch with the assistance of John Barriere of the University of Chicago.

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CHRONOLOGICAL STATEMENT OF LEGISLATIVE HISTORY OF NATIONAL LABOR RELATIONS ACT

73d Congress, Second Session

		Page
March 1, 1934	S. 2926 (73d Cong., 2d sess.). Introduced in Senate February 28 (calendar day, March 1), 1934. Explanatory statement by Senator Wagner (78 Congressional Record 3443–3444). Referred to Committee on Education and Labor (78 Congressional Record 3444)	15
	H. R. 8423 (73d Cong., 2d sess.). Introduced in House by Mr. Connery. Referred to Committee on Labor (78 Congressional Record 3576)	1128
March 5, 1934	Senator Barkley inserts in the Congressional Record a speech made by Senator Wagner at a conference of NRA Code authorities in which he discusses S. 2926 (78 Congressional Record 3678–3679)	18
March 12, 1934	Senator Copeland inserts in the Congressional Record an article by Senator Wagner on company unions in which he discusses S. 2926 (78 Congressional Record 4229–4231)	22
March 14 to April 9, 1934.	Hearings before Senate Committee on Education and Labor on S. 2926	27
March 26, 1934	Senator Vandenberg inserts in the Congressional Record text of President Roosevelt's statement announcing the terms of the automobile-labor-settlement (78 Congressional Record 5384–5385)	1067
April 23, 1934	Congressman Lesinski inserts in the Congressional Record a radio address by himself on labor (78 Congressional Record 7164)	1141
May 15, 1934	Statement by Congressman Peavey respecting H. R. 8423 (78 Congressional Record 8884)	1144
May 17, 1934	Statement by Congressman Carpenter respecting labor (78 Congressional Record 9060–9061)	1144
May 23, 1934	Statement by Congressman Beiter respecting labor (78 Congressional Record 9422–9423)	1148
May 26, 1934	S. 2926 reported with amendments by Mr. Walsh, chairman of Committee on Education and Labor, Calendar 1260 (78 Congressional Record 9607). Senate Report 1184 (73d Cong., 2d sess.), filed May 10 (calendar day, May 26), 1934 (78 Congressional Record 9607)	1070
May 29, 1934	Statement of Congressman Connery respecting H. R. 8423 (78 Congressional Record 9888–9889)	1150
May 30, 1934	Amendment to S. 2926 intended to be proposed by Senator Robinson May 28 (calendar day, May 30), 1934. Ordered to lie on the table and to be printed (78 Congressional Record 9924)	1113
May 31, 1934	Ten amendments to S. 2926 intended to be proposed by Senator Wagner, May 28 (calendar day, May 31), 1934. Ordered to lie on the table and to be printed (78 Congressional Record 10070)	1114
June 4, 1934	Senator Murphy inserts in the Congressional Record an article by Senator Walsh in which he discusses S. 2926 as reported (78 Congressional Record 10351–10353)	1117
June 6, 1934	Senator Wagner inserts in the Congressional Record an address by Senator Walsh explaining the changes made by the Senate committee in reporting S. 2926 (78 Congressional Record 10559–10561)	1122

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		Page
June 13, 1934	S. 2926 was announced as the next in order. Senator Walsh stated that this bill is a controversial issue and should go over. The presiding officer announced it would be passed over (78 Congressional Record 11267)	1155A
June 15, 1934	Senate Joint Resolution 143 (73d Cong., 2d sess.). Introduced in Senate June 6 (calendar day, June 15), 1934. Explanatory statement by Senator Robinson (78 Congressional Record 11635–11636). Referred to Committee on Education and Labor (78 Congressional Record 11635)	1156
	Senate Joint Resolution 143 reported with amendments by Mr. Walsh, Chairman of Committee on Education and Labor, Calendar No. 1546 (78 Congressional Record 11647). Senate Report 1447 (73d Cong., 2d sess.), filed June 6 (calendar day, June 15), 1934 (78 Congressional Record 11647)	1160
	House Joint Resolution 375 (73d Cong., 2d sess.), Introduced in House by Mr. Byrns. Referred to Committee on Labor (78 Congressional Record 11938)	1224
June 16, 1934	Amendments to Senate Joint Resolution 143 intended to be proposed by Senator La Follette (78 Congressional Record 12024–12027)	1163
	Debate in Senate respecting substitution of Senate Joint Resolution 143 for S. 2926 (78 Congressional Record 12016–12022; 12024–12034)	1177
	Debate in Senate on substitution of House Joint Resolution 375 for S. 2926 (78 Congressional Record 12041–12047; 12051–12052)	1232
	House Joint Resolution 375 passed by Senate with amendments (78 Congressional Record 12052)	1254
	House Joint Resolution 375 passed by House (78 Congressional Record 12120–12122)	1226
	House receives message from the Senate that the Senate had passed with amendments in which the concurrence of the House was requested House Joint Resolution 375 (78 Congressional Record 12209)	1254
	House agrees to Senate amendments (78 Congressional Record 12236–12237)	1254
June 18, 1934	Senate receives message that House has agreed to its amendments (78 Congressional Record 12361)	1255
	House Joint Resolution 375 examined and signed (78 Congressional Record 12368, 12576)	1255
	Presented to President (78 Congressional Record 12578)	1255A
June 19, 1934	House Joint Resolution 375 [Public Resolution No. 44] signed by President (78 Congressional Record 12453, 12660)	1255A

74th Congress, First Session

January 10, 1935	Senator Lewis inserts in the Congressional Record a speech by Donald Richberg on labor touching bills pending in Senate (79 Congressional Record 265–268)	1284
January 31, 1935	Congressman Maverick inserts in the Congressional Record a speech by him respecting the Wagner labor disputes bill (79 Congressional Record 1334–1335)	2427
February 20, 1935	Statement of Congressman Boland on need for revision of section 7 (a) of the NRA, including insertion in the Congressional Record of a speech by Father Haas entitled "Six Questions and Answers About Section 7 (a)" (79 Congressional Record 2332–2338)	2430

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		Page
February 21, 1935	S. 1958 (74th Cong., 1st sess.). Introduced in Senate February 15 (calendar day, February 21), 1935. Explanatory statement by Senator Wagner (79 Congressional Record 2368–2372). Referred to Committee on Education and Labor (79 Congressional Record 2368)	1311
February 26, 1935	H. R. 6187 (74th Cong., 1st sess.). Introduced in the House by Mr. Kennedy of New York. Referred to Committee on Labor (79 Congressional Record 2642)	2445
February 28, 1935	H. R. 6288 (78th Cong., 1st sess.). Introduced in House by Mr. Connery. Referred to Committee on Labor (79 Congressional Record 2783)	2459
March 8, 1935	Senator Wagner inserts in the Congressional Record an address by Francis Biddle in which he discusses S. 1958 (79 Congressional Record 3183–3185)	1314
March 11 to April 2, 1935.	Hearings before Senate Committee on Education and Labor on S. 1958	1373
March 13 to April 4, 1935.	Hearings before House Committee on Labor on H. R. 6288	2473
March 29, 1935	Mr. Connery speaks on the need for H. R. 6288 (79 Congressional Record 4707–4708)	2842
April 15, 1935	Senator Logan inserts in the Congressional Record an article by O. R. McGuire on Labor Disputes and the Federal Government in which he discusses S. 1958 (79 Congressional Record 5626–5628)	2277
April 23, 1935	Senator Costigan inserts in the Congressional Record an address by Senator Wagner on the National Labor Relations bill (79 Congressional Record 6183–6184)	2282
May 2, 1935	S. 1958 reported with amendments by Mr. Walsh, chairman of Committee on Education and Labor, Calendar No. 595, and report thereon, Senate Report 573 submitted (79 Congressional Record 6749)	2285
May 7, 1935	Amendments to S. 1958 intended to be proposed by Senator Robinson. Ordered to lie on the table and to be printed (79 Congressional Record 7042–7043)	2319
	H. R. 7937 (74th Cong., 1st sess.). Introduced in House by Mr. Connery (79 Congressional Record 7106)	2845
May 9, 1935	H. R. 7978 (74th Cong., 1st sess.). Introduced in House by Mr. Connery as companion bill to S. 1958 as reported by the Senate Committee. Referred to Committee on Labor (79 Congressional Record 7276). (Differs only in "Department of Labor" provision)	2857
May 14, 1935	Upon motion of Senator Wagner that the Senate proceed to the consideration of Calendar 595, being the bill (S. 1958), the motion was agreed to and the Senate proceeded to consider S. 1958 which had been reported from the Committee on Education and Labor with amendments (79 Congressional Record 7483)	2321
	Statement by Mr. Connery in the House on the relation of H. R. 6288 to section 7 (a) of the NRA (79 Congressional Record 7518–7519)	2869
May 15, 1935	Senate debate on S. 1958 (79 Congressional Record 7565–7574; 7576–7577; 7596)	2321
May 16, 1935	Senate debate on S. 1958 continued (79 Congressional Record 7648–7661; 7666–7681). Amended and passed Senate (79 Congressional Record 7681)	2345
	Senate print of S. 1958. As passed by the Senate without further amendment May 13 (calendar day, May 16), 1935	2416

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		Page
May 16, 1935	House receives message that Senate had passed S. 1958, in which the concurrence of the House is requested (79 Congressional Record 7741)	2871
May 17, 1935	First House print of S. 1958, as passed by Senate. Referred to the Committee on Labor (79 Congressional Record 7780)	2886
	Statement of Congressman Truax in support of S. 1958 (79 Congressional Record 7771–7776)	2871
	Statement of Congressman Eagle in support of S. 1958 (79 Congressional Record 7779–7780)	2884
May 20, 1935	H. R. 7978 reported without amendments by House Committee on Labor (79 Congressional Record 7889)	2898
	House Report No. 969, report to accompany H. R. 7978, submitted (79 Congressional Record 7889). Referred to the Committee of the Whole House on the State of the Union (79 Congressional Record 7889)	2910
May 21, 1935	Second House print of S. 1958. Reported by the House Committee on Labor with amendments (79 Congressional Record 7961). House Report No. 972, report to accompany S. 1958 submitted (79 Congressional Record 7961). Referred to the Committee of the Whole House on the State of the Union (79 Congressional Record 7961)	2944
May 22, 1935	House Resolution 227 (74th Cong., 1st sess.), providing for the consideration of S. 1958. Introduced in the House by Mr. Connery and referred to the Committee on Rules (79 Congressional Record 8033)	2990
May 24, 1935	Statement by Mr. Blanton in the House in opposition to S. 1958 (79 Congressional Record 8186–8191)	2991
June 3, 1935	Statement by Mr. Connery in the House in support of S. 1958 (79 Congressional Record 8536–8540)	3003
June 5, 1935	Third House print of S. 1958. Recommitted to the House Committee on Labor (79 Congressional Record 8727)	3013
June 6, 1935	Statement by Mr. Wood in the House in support of S. 1958 (79 Congressional Record 8815–8818)	3025
June 10, 1935	S. 1958, reported by the House Committee on Labor with additional amendments (79 Congressional Record 9029). House Report No. 1147, report to accompany S. 1958 submitted (79 Congressional Record 9029). Referred to the Committee of the Whole House on the State of the Union (79 Congressional Record 9029)	3032
June 12, 1935	House Resolution 250 (74th Cong., 1st sess.), providing for the consideration of S. 1958. Introduced in the House by Mr. Connery and referred to the Committee on Rules (79 Congressional Record 9220)	3089
June 14, 1935	Statement by Mr. Schneider in the House in support of S. 1958 (79 Congressional Record 9329–9330)	3090
June 17, 1935	Mr. Connery asked the House to give privileged status to S. 1958 and limit debate. There being objection, his request was not granted (79 Congressional Record 9454)	3091
June 18, 1935	House Resolution 263 (74th Cong., 1st sess.), providing for the consideration of S. 1958, reported (79 Congressional Record 9612) by Mr. O'Connor, from the Committee on Rules (H. Rept. No. 1259)	3092
June 19, 1935	Debates in House on agreeing to House Resolution 263, providing for consideration of S. 1958 (79 Congressional Record 9668–9669, 9676–9683)	3093
	House agrees to House Resolution 263 (79 Congressional Record 9683)	3112

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		Page
June 19, 1935	Debates in House on S. 1958 (79 Congressional Record 9683–9711, 9713–9730)	3112
	Passed House (79 Congressional Record 9731)	3227
	Extension of remarks in support of S. 1958 in House (79 Congressional Record 9731–9733, 9736)	3228
June 20, 1935	Senate received message that House had passed S. 1958, with amendments, in which the concurrence of the Senate was requested (79 Congressional Record 9742)	3236
	Upon motion of Senator Walsh the Senate disagreed to the amendments of the House, requested a conference on the disagreeing votes of the two Houses thereon, and authorized the Chair to appoint conferees on the part of the Senate. The Presiding Officer appointed conferees (79 Congressional Record 9778)	3237
June 21, 1935	Upon motion of Congressman Connery the House insisted on its amendments to S. 1958, agreed to the conference asked by the Senate, and the Chair appointed conferees (79 Congressional Record 9864)	3251
	Senate print of S. 1958, May 13 (calendar day, June 21), 1935. Ordered to be printed with the amendments of the House of Representatives numbered (79 Congressional Record 9818)	3238
June 21, 1935	Third Senate print of S. 1958. Ordered to be printed with the amendments of the House of Representatives numbered (79 Congressional Record 9818)	2416
	The House insisted on its amendments to S. 1958, agreed to the conference asked by the Senate and the Chair appointed conferees (79 Congressional Record 9864)	3251
June 26, 1935	Mr. Walsh presented House Report No. 1371, the conference report to accompany S. 1958, to the Senate (79 Congressional Record 10130), and Mr. Connery presented the same to the House, which ordered it to be printed (79 Congressional Record 10226)	3252
June 27, 1935	Senate agrees to conference report on S. 1958 (79 Congressional Record 10258–10259)	3258
	House agrees to conference report on S. 1958 (79 Congressional Record 10297–10300)	3260
July 1, 1935	The Speaker announced his signature to S. 1958 (79 Congressional Record 10585)	3268
	The Senate received a message from the House that the Vice President had affixed his signature to S. 1958 (79 Congressional Record 10587)	3268
July 3, 1935	Mrs. Caraway from the Committee on Enrolled Bills reported that on the 2d instant that committee presented to the President of the United States the enrolled bill, S. 1958 (79 Congressional Record 10688)	3268
July 8, 1935	The Senate received a message from the President that on July 5, 1935, he had approved and signed S. 1958 (79 Congressional Record 10719)	3268
	The text of the statement of the President upon signing S. 1958, is inserted in the Congressional Record by Senator Guffey (79 Congressional Record 10720)	3269

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SECTIONAL INDEX TO THE LEGISLATIVE HISTORY OF THE NATIONAL LABOR RELATIONS ACT

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SECTIONAL INDEX TO THE LEGISLATIVE HISTORY OF THE NATIONAL LABOR RELATIONS ACT*

Section		Index page
Preamble		1, *471*, **1070, 1128, 1295,** 1338, **2285, 2416, 2445, 2459, 2845, 2857, 2886, 2898, 2944, 3013, 3032,** 3046, **3238,** 3258, 3260, 3267, 3268, **3270.**
1	Findings and Policy	1, *140*, *459*, *515*, *532*, *546–7*, *563–4*, *566*, *572*, *601*, *651*, *676*, *687*, *689*, *768*, *860*, *1053*, **1070,** 1102, **1128, 1163, 1295,** 1319, 1338, 2283, 2284, **2285-6,** 2300, 2305, 2321, 2328, 2339–40, 2343, 2345–6, **2416, 2445, 2459,** *2497*, **2845, 2857, 2886, 2898,** 2915, **2944,** 2962, **3013, 3032, 3033,** 3046, 3054–6, 3149, 3194–7, **3238–9,** 3252–3, **3270.**
2	DEFINITIONS:	
2 (1)	Person:	
	[In General]	**2, 1071, 1085, 1113, 1129, 1163, 1296,** 1342, **2886,** 2346, **2416, 2445, 2459, 2846, 2858, 2887, 2899,** 2917, **2945,** 2963, **3014, 3034,** 3056, 3199, **3240, 3271.**
	The term "person" includes one or more individuals, . . .	**2, 1071, 1085, 1129, 1163, 1296, 2286,** 2346, **2416, 2445, 2459, 2846, 2858, 2887, 2899,** 2917, **2945,** 2963, **3014, 3034,** 3199, **3240, 3271.**
	partnerships, . . .	**2, 1071, 1085, 1129, 1163, 1296, 2286,** 2346, **2416, 2445, 2459, 2846, 2858, 2887, 2899, 2945, 3014, 3034,** 3199, **3240, 3271.**
	associations, . . .	**2, 1071, 1085, 1129, 1163, 1296, 2286,** 2346, **2416, 2445, 2459, 2846, 2858, 2887, 2899, 2945, 3014, 3034,** 3199, **3240, 3271.**
	corporations, . . .	**2, 1071, 1085, 1129, 1163, 1296, 2286,** 2346, **2416, 2445, 2459, 2846, 2858, 2887, 2899, 2945, 3014, 3034,** 3199, **3240, 3271.**
	legal representatives . . .	**2, 1071, 1085, 1129, 1163, 1296, 2286,** 2346, **2416, 2445, 2459, 2846, 2858, 2887, 2899, 2945, 3014, 3034,** 3199, **3240, 3271.**

*Drafts of bills appear in **bold face type**; hearings in *italics*; and Congressional reports and proceedings in roman.

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Section		Index page
	DEFINITIONS—Continued	
	Person—Continued	
	trustee . . .	**2, 1071, 1129, 1296, 1342, 2286,** 2346, **2416, 2445, 2459, 2846, 2858, 2887, 2899, 2945, 3014, 3034,** 3199, **3240, 3271.**
	trustees in bankruptcy . . .	**2, 1071, 1085, 1129, 1163, 1296, 2286,** 2346, **2416, 2445, 2459, 2846, 2858, 2887, 2899, 2945, 3014, 3034,** 3199, **3240, 3271.**
	or receivers	**2, 1071, 1085, 1129, 1163, 1296, 2286,** 2346, **2416, 2445, 2459, 2846, 2858, 2887, 2899, 2945, 3014, 3034,** 3199, **3240, 3271.**
2 (2)	Employer:	
	[In General]	**2, 3,** *256–7, 269, 325, 395, 494, 507–8, 689–90, 720, 790, 940, 989, 1005, 1055,* **1071, 1085,** 1099, 1102, **1129, 1163, 1296,** 1320, 1342, *1887, 1990,* **2286,** 2305, 2346, **2417, 2446, 2460,** *2653,* **2846, 2858, 2887, 2899, 2945, 3014, 3034,** 3199, 3240, **3271.**
	The term "employer" includes any person acting in the interest of an employer, directly or indirectly, . . .	*256–7, 269, 395, 689, 940, 1005,* **1085, 1129, 1163, 1269,** 1320, **2286,** 2346, **2417, 2446, 2460,** *2653,* **2846, 2858, 2887, 2899, 2945, 3014, 3034,** 3199, **3240, 3271.**
	but shall not include the United States, . . .	**2,** *325, 690, 940, 1055,* **1071, 1085, 1129, 1163, 1296, 2286,** 2346, **2417, 2446, 2460,** *2653,* **2846, 2858, 2887, 2899, 2945, 3014, 3034,** 3199, **3240, 3271.**
	or any State . . .	**2,** *325, 690, 940,* **1071, 1085, 1129, 1163, 1296, 2286,** 2346, **2417, 2446, 2460,** *2653,* **2846, 2858, 2887, 2899, 2945, 3014, 3034,** 3199, **3240, 3271.**
	or political subdivision thereof, . . .	**2,** *325, 690,* **1071, 1085, 1129, 1163, 1296, 2286,** 2346, **2417, 2446, 2460,** *2653,* **2846, 2858, 2887, 2899, 2945, 3014, 3034,** 3199, **3240, 3271.**
	or any person subject to the Railway Labor Act, as amended from time to time, . . .	**2,** *690,* **1071, 1085,** 1102, **1129, 1163, 1296, 2286,** 2346, **2417, 2446, 2460, 2846, 2858, 2887, 2899. 3014, 3034,** 3199, **3240, 3271.**

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Section		Index page
	DEFINITIONS—Continued	
	Employer—Continued	
	or any labor organization . . .	**2,** *494, 508, 690, 720, 790, 940, 989,* **1071, 1085,** 1102, **1129, 1163, 1296,** *1990,* **2286,** 2305, 2346, **2417, 2446, 2460, 2846, 2858, 2887, 2899, 2945, 3014, 3034,** 3200, **3240, 3271.**
	(other than when acting as an employer).	**1163, 2286,** 2346, **2416, 2846. 2858, 2887, 2899, 3014, 3034,** 3200, **3240, 3271.**
	or anyone acting in the capacity of officer or agent of such labor organization.	**2,** *690,* **1071, 1085, 1129, 1163, 1296,** *1990,* **2286,** 2305, 2346, **2417, 2446, 2460, 2846, 2858, 2887, 2899, 3014, 3034,** 3200, **3240, 3271.**
2 (3)------	Employee:	
	[In general]-----------	**2,** *269, 377, 395, 406, 459, 463, 535, 690, 721, 940, 1005, 1042,* **1071, 1085,** 1099, 1102, **1129, 1164, 1296,** 1342–46, *1683, 1688, 1748, 1883, 1884, 1989,* **2286,** 2305–6, 2400, **2417, 2446, 2460,** *2508,* **2846, 2858, 2887, 2899, 2917,** 2936, **2945,** 2963, 2983, **3014, 3034,** 3056, 3081, 3119, 3157, 3200, 3201–4, **3240, 3271.**
	The term "employee" shall include any employee . . .	**2,** *269, 377, 395, 463, 535,* **1071, 1085,** 1102, **1129, 1164, 1296,** *1688, 1884,* **2286,** 2305, 2400, **2417, 2446, 2460, 2846, 2858, 2887, 2899,** 2917, 2963, **3014, 3034,** 3119–21, 3157, 3200, **3240, 3271.**
	and shall not be limited to the employees of a particular employer . . .	**2, 1071, 1085, 1129, 1164, 1296,** *1989,* **2286,** 2305, 2400, **2417, 2446, 2460, 2846, 2858, 2887, 2899, 3014, 3034,** 3119–21, 3157. 3200, **3240, 3271.**
	unless the Act explicitly states otherwise, . . .	**2, 1071, 1085, 1129, 1164, 1296,** *1989,* **2286,** 2400, **2417, 2446, 2460, 2846, 2858, 2887, 2899, 3014, 3034,** 3200, **3240, 3271.**
	and shall include any individual whose work has ceased as a consequence of, . . .	**2,** *395, 535, 721, 1042,* **1071, 1085,** 1102, **1129, 1164, 1296,** 1343, *1748, 1883, 1989,* **2286,** 2400, **2417, 2446, 2460, 2846, 2858, 2887, 2899, 3014, 3034,** 3200, **3240, 3271.**

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Section		Index page
	DEFINITIONS—Continued	
	Employee—Continued	
	or in connection with . . .	**2,** *395*, *721*, *1042*, **1071, 1085** 1102, **1129, 1164, 1296,** 1343, *1748*, *1883*, *1989*, **2286,** 2400, **2417, 2446, 2460, 2846, 2858, 2887, 2899, 3014, 3034,** 3200, **3240, 3271.**
	any current labor dispute--	**2,** *395*, *463*, *535*, *721*, *1042*, **1071, 1085, 1129, 1164, 1296,** 1343, *1748*, *1883*, *1989*, **2286,** 2400, **2417, 2446, 2460, 2846, 2858, 2887, 2899, 3014, 3034,** 3200, **3240, 3271.**
	or because of any unfair labor practice . . .	**2,** *721*, *1042*, **1071, 1085,** 1102, **1129, 1164, 1296,** 1343, *1883–4*, *1989*, **2286, 2417, 2446, 2460, 2846, 2858, 2887, 2899, 3014, 3034,** 3200, **3240, 3271.**
	and who has not obtained any other regular . . .	**1085–6,** 1102, **1164, 1296,** *1748*, *1883*, **2286, 2471, 2446, 2460, 2846, 2858, 2887, 2899, 3014, 3034,** 3200, **3240, 3271.**
	and substantially equivalent employment . . .	**1085–6,** 1102, **1296, 1342,** *1748*, *1883*, **2286, 2417, 2446, 2460, 2846, 2858, 2887, 2899, 3014, 3034,** 3200, **3240, 3271.**
	but shall not include any individual employed as an agricultural laborer . . .	*269*, **1085–6,** 1099, 1102, **1164, 1296, 2286, 2417, 2446, 2460,** *2508*, **2846, 2858, 2887, 2899,** 2936, 2983, **3014, 3034,** 3081, 3200, 3201–4, **3240, 3271.**
	or in the domestic service of any family or person at his home, . . .	**1085–6,** 1102, **1164, 1296, 2286, 2417, 2446, 2460,** *2508*, **2846, 2858, 2887, 2899, 3014, 3034,** 3200, **3240, 3271.**
	or any individual employed by his parent or spouse.	**1085–6,** 1099, 1102, **1164, 1296, 2286, 2417, 2446, 2460,** *2508*, **2846, 2858, 2887, 2899, 3014, 3034,** 3200, **3240, 3271.**
2 (4)-------	Representatives:	
	[In general]----------	**2,** *68*, *1060*, **1072, 1086,** 1102, **1129, 1164, 1296,** 1346–7, *1989*, *1990*, **2287, 2417, 2446, 2460, 2846, 2858, 2887, 2899, 2945, 3014, 3034,** 3200, **3240, 3271.**
	The term "representatives" includes any individual...	**2, 1072, 1086,** 1102, **1129, 1164, 1296,** 1346–7, *1989*, **2287, 2417, 2446, 2460, 2846, 2858, 2887, 2899, 3014, 3034,** 3200, **3240, 3271.**

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Section		Index page
	DEFINITIONS—Continued	
	Representatives—Continued	
	or labor organization	**2,** *68,* **1072, 1086,** 1102, **1129, 1164, 1296,** *1989, 1990,* **2287, 2417, 2446, 2460, 2846, 2858, 2887, 2899, 3014, 3034,** 3200, **3240, 3271.**
2 (5)	Labor Organization:	
	[In General]	**2,** *271–2, 690, 1005,* **1072, 1086,** 1103, **1129,** 1164, **1296,** 1320, 1331, 1332, 1347, **2287,** 2306, 2346, **2417, 2446, 2460, 2846, 2858, 2887, 2899, 2945, 3015, 3035,** 3200, 3204, **3240, 3271.**
	The term "labor organization" means any organization of any kind, . . .	**2,** *271–2, 690, 1005,* **1072, 1086,** 1103, **1129, 1164, 1296,** 1320, 1332, 1347, **2287,** 2306, 2346, **2417, 2446, 2460, 2846, 2858, 2887, 2899, 2945, 3015, 3035,** 3200, 3204, **3240, 3271.**
	or any agency, . . .	**2,** *690,* **1072, 1086, 1164, 1296, 2287,** 2346, **2417, 2446, 2460, 2846, 2858, 2887, 2899, 2945, 3015, 3035,** 3200, **3240, 3271.**
	or employee representation committee or plan, . . .	**2,** *271–2,* **1086, 1164, 1296,** 1347, **2287,** 2306, 2346, **2417, 2446, 2460, 2846, 2858, 2887, 2899, 2945, 3015, 3035,** 3200, **3240, 3271.**
	in which employees participate, . . .	**2,** *690, 1005,* **1072, 1086, 1129, 1164, 1296,** 1332, **2287,** 2306, 2346, **2417, 2446, 2460, 2846, 2858, 2887, 2899, 2945, 3015, 3035,** 3200, **3240, 3271.**
	and which exists for the puprose, in whole or in part, . . .	**2,** *271–2, 690,* **1072, 1086, 1129, 1164, 1296,** 1320, 1331, 1347, **2287,** 2306, 2346, **2417, 2446, 2460, 2846, 2858, 2887, 2899, 2945, 3015, 3035,** 3200, **3240, 3271.**
	of dealing with employers concerning grievances, . . .	**2,** *271–2, 690,* **1072, 1086, 1129, 1164, 1296,** 1320, 1331, 1332, 1347, **2287,** 2306, 2346, **2417, 2446, 2460, 2846, 2858, 2887, 2899, 2945, 3015, 3035,** 3200, **3240, 3271.**
	labor disputes, . . .	**2,** *271–2, 690,* **1072, 1129, 1296,** 1332, 1347, **2287,** 2306, 2346, **2417, 2446, 2460, 2846, 2858, 2887, 2899–2900, 3015, 3035,** 3200, **3240, 3271.**

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Section		Index page
	DEFINITIONS—Continued	
	Labor Organization—Continued	
	wages, . . .	**2,** *271–2, 690,* **1072, 1086, 1129, 1164, 1296,** 1320, 1332, 1347, **2287,** 2306, 2346, **2417, 2446, 2460, 2846, 2858, 2887, 2899–2900, 2945, 3015, 3035,** 3200, **3240, 3271.**
	rates of pay . . .	**2, 1296,** 1332, **2287,** 2306, 2346, **2417, 2446, 2460, 2846, 2858, 2887, 2899–2900, 2945, 3015, 3035,** 3200, **3240, 3271.**
	hours of employment, . . .	**2,** *271–2, 690,* **1072, 1086, 1129, 1164, 1296,** 1320, 1332, 1347, **2287,** 2306, 2346, **2417, 2446, 2460, 2846, 2858, 2887, 2899–2900, 2945, 3015, 3035,** 3200, **3240, 3271.**
	or conditions of work	**1086, 1164,** 1320, 1331, 1347, **2287,** 2306, 2346, **2417, 2846, 2858, 2887, 2899–2900, 2945, 3015, 3035,** 3200, **3240, 3271.**
2 (6)	Commerce:	
	[In General]	**2,** *427,* **1072, 1086, 1130, 1164, 1296,** 1331, 1347, *2163,* **2287,** 2346, 2378, **2417, 2446, 2460, 2846, 2858, 2887, 2900,** 2918, **2946,** 2964, **3015, 3035,** 3047, 3057, 3123, 3150, 3200, **3240,** 3252, **3254, 3271.**
	The term "commerce" means trade, . . .	**2,** *427,* **1072, 1086, 1130, 1164, 1296,** 1347, *2163,* **2287,** 2347, 2378, **2417, 2446, 2460, 2846, 2858, 2887, 2900,** 2918, **2946,** 2964, **3015, 3035,** 3047, 3057, 3123, 3150, 3200, **3240,** 3252, 3254, **3271.**
	traffic . . .	1331, **2287,** 2347, **2417, 2846, 2858, 2887, 2900, 2946, 3015, 3035,** 3150, 3200, **3240, 3271,**
	commerce . . .	**2, 1072, 1086, 1130, 1164, 1296, 2287,** 2346, **2417, 2446, 2460, 2846, 2858, 2887, 2900,** 2918, **2946,** 2964, **3015, 3035,** 3047, 3057, 3123, 3150, 3200, **3240, 3271.**
	transportation . . .	**2, 1072, 1086, 1130, 1164, 1296, 2287,** 2346, **2417, 2446, 2460, 2846, 2858, 2887, 2900, 2946, 3015, 3035,** 3047, 3150, 3200, **3240,** 3255, **3271.**

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Section		Index page
	DEFINITIONS—Continued	
	Commerce—Continued	
	or communication . . . . ---	**2, 1072, 1086, 1130, 1164, 1296, 2287,** 2346, **2417, 2446, 2460, 2846, 2858, 2887, 2900, 2946, 3015, 3035,** 3047, 3150, 3200, **3240,** 3255, **3271.**
	among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, . . .	**2–3, 1072, 1086, 1130, 1164, 1296, 2287,** 2346, **2417, 2446, 2460, 2846–7, 2858, 2887, 2900,** 2918, **2946,** 2964, **3015, 3035,** 3057, 3123, 3150, 3200, **3240,** 3254, **3271.**
	or within the District of Columbia . . .	**3, 1072, 1086, 1130, 1164, 1296, 2287,** 2346, **2417, 2446, 2460, 2846–7, 2858, 2887, 2900,** 2918, **2946, 3015, 3035,** 3150, 3200, **3240, 3271.**
	or any Territory, ...	**3, 1072, 1086, 1130, 1164, 1296, 2287,** 2346, **2417, 2446, 2460, 2846–7, 2858, 2887, 2900,** 2918, **2946, 3015, 3035,** 3150, 3200, **3240, 3271.**
	or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.	**3, 1072, 1086, 1130, 1164, 1296, 2287,** 2346, **2417, 2446, 2460, 2846–7, 2858, 2887–8, 2900,** 2918, **2946, 3015, 3035,** 3150, 3200, **3240, 3271.**
2 (7)-------	Affecting Commerce:	
	[In General]----------	*427*, **1297,** 1320, 1347, 1357–8, 1719, *1835*, *2020*, **2287,** 2306, 2378–80, **2417, 2446, 2460, 2847, 2859, 2888, 2900,** 2918, 2946, 2964, 2977, **3015, 3035,** 3047, 3057, 3058, 3074, 3123, 3126, 3136, 3150, 3200, 3205, **3241,** 3252, 3255, **3271.**
	The term "affecting commerce" means in commerce, . . .	*427*, **1297,** 1320, 1347, 1357–8, 1719, *1835*, *2020*, *2163*, **2287,** 2306, 2378–80, **2417, 2446, 2460, 2847, 2858, 2887, 2900,** 2918, **2946,** 2964, 2977, **3015, 3035,** 3047, 3057, 3058, 3123, 3126, 3136, 3150, 3200, 3205, **3241,** 3252, 3255, **3271.**

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Section		Index page
	DEFINITIONS—Continued	
	Affecting Commerce—Con.	
	or burdening or obstructing commerce or the free flow of commerce . . .	*427*, **1297**, *1835*, *2020*, **2287**, 2306, **2417**, **2446**, **2460**, **2847**, **2858**, **2888**, **2900**, **2946**, **3015**, **3035**, 3047, 3057, 3058, 3126, 3136, 3150, 3200, 3205, **3241**, 3252, **3271**.
	or having led . . .	*427*, **1297**, 1357–8, *1835*, *2020*, **2287**, 2306, **2417**, **2446**, **2460**, **2847**, **2858**, **2888**, **2900**, **2946**, **3015**, **3035**, 3047, 3057, 3126, 3136, 3150, 3200, 3205, **3241**, 3252, 3255, **3271**.
	or tending to lead . . .	*427*, **1297**, 1357–8, *1835*, *2020*, **2287**, 2306, **2417**, **2446**, **2460**, **2847**, **2859**, **2888**, **2900**, **2946**, **3015**, **3035**, 3047, 3057, 3126, 3136, 3150, 3200, 3205, **3241**, 3252, 3255, **3271**.
	to a labor dispute burdening or obstructing commerce . . .	*427*, **1297**, 1357–8, *1835*, *2020*, **2287**, 2306, **2417**, **2446**, **2460**, **2847**, **2859**, **2888**, **2900**, **2946**, **3015**, **3035**, 3047, 3057, 3123, 3126, 3136, 3150, 3200, 3205, **3241**, 3252, 3255, **3271**.
	or the free flow of commerce	*427*, **1297**, *1835*, *2020*, **2287**, 2306, **2417**, **2446**, **2460**, **2847**, **2859**, **2888**, **2900**, **2946**, **3015**, **3035**, 3047, 3057, 3126, 3136, 3150, 3200, 3205, **3241**, 3252, 3255, **3271**,
2 (8)	Unfair Labor Practice:	
	In General	**3**, **1072**, **1086**, **1130**, **1164**, **1297**, 1348, *2163*, **2287**, 2308, **2417**, **2446**, **2460**, **2847**, **2859**, **2888**, **2900**, **2946**, **3015**, **3035**, 3200, **3241**, **3271**.
	The term "unfair labor practice" means any unfair labor practice listed in section 8.	**3**, **1072**, **1086**, **1130**, **1164**, **1297**, 1348, 1357, **2287**, 2308, **2417**, **2446**, **2460**, **2847**, **2859**, **2888**, **2900**, **2946**, **3015**, **3035**, 3200, **3241**, **3271**.
2 (9)	Labor Dispute:	
	[In General]	**1297**, 1348, *1688*, *1825*, *1826*, *1884*, *1887*, *1989*, *2021*, **2287**, 2307, **2417**, **2446**, **2460**, **2847**, **2859**, **2888**, **2900**, **2917**, **2946**, 2963, **3015**, **3035**, 3056, 3200, **3241**, **3271**.

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Section	Index page
DEFINITIONS—Continued	
Labor Disputes—Continued	
The term "labor dispute" includes any controversy . . .	**1297,** 1688, *1825*, *1884*, *1989*, *2021*, **2287,** *2307*, **2417, 2446, 2460, 2847, 2859, 2888, 2900, 2946, 3015, 3035,** 3200, **3241, 3271.**
concerning terms . . .	**1297,** *1989*, *2021*, **2287, 2417, 2446, 2460, 2847, 2859, 2888, 2900, 2946, 3015, 3035,** 3200, **3241, 3271.**
tenure . . .	**1297,** *1989*, *2021*, **2287, 2417, 2446, 2460, 2847, 2859, 2888, 2900, 2946, 3015, 3035,** 3200, **3241, 3271.**
or conditions of employment . . .	**1297,** *1989*, *2021*, **2287, 2417, 2446, 2460, 2847, 2859, 2888, 2900, 2946, 3015, 3035,** 3200, **3241, 3271.**
or concerning the association . . .	**1297,** *2021*, **2287, 2417, 2446, 2460, 2847, 2859, 2888, 2900, 2946, 3015, 3035,** 3200, **3241, 3271.**
or representation of persons . . .	**1297,** *2021*, **2287, 2417, 2446, 2460, 2847, 2859, 2888, 2900, 2946, 3015, 3035,** 3200, **3241, 3271.**
in negotiating	**1297,** *2021*, **2287, 2417, 2446, 2460, 2847, 2859, 2888, 2900, 2946, 3015, 3035,** 3200, **3241, 3271.**
fixing . . .	**1297,** *2021*, **2287, 2417, 2446, 2460, 2847, 2859, 2888, 2900, 2946, 3015, 3035,** 3200, **3241, 3271.**
maintaining . . .	**1297,** *2021*, **2287, 2417, 2446, 2460, 2847, 2859, 2888, 2900, 2946, 3015, 3035,** 3200, **3241, 3271.**
changing . . .	**1297,** *2021*, **2287, 2417, 2446, 2460, 2847, 2859, 2888, 2900, 2946, 3015, 3035,** 3200, **3241, 3271.**
or seeking to arrange . . .	**1297,** *2021*, **2287, 2417–8, 2446, 2460, 2847, 2859, 2888, 2900, 2946, 3015, 3035,** 3200, **3241, 3271.**
terms . . .	**1297,** *2021*, **2287, 2418, 2446, 2460, 2847, 2859, 2888, 2900, 2946, 3015, 3035,** 3200, **3241, 3271.**

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Section		Index page
	DEFINITIONS—Continued	
	Labor Dispute—Continued	
	or conditions of employment . . .	**1297**, *2021*, **2287**, **24,16** **24,48** **2460**, **2847**, **2859**, **2888**, **2900**, **2946**, **3015**, **3035**, 3200, **3241**, **3271**.
	regardless of whether the disputants . . .	**1297**, 1688, *1826*, *1884*, *1887*, *1989*, *2021*, **2287**, 2307, **2418**, **2446**, **2460–1**, **2847**, **2859**, **2888**, **2900**, **2946**, **3015**, **3035**, 3200, **3241**, **3271**.
	stand in the proximate relation of employer and employee.	**1297**, 1688, *1826*, *1884*, *1887*, *1989*, *2021*, **2287**, 2307, **2418**, **2446**, **2460–1**, **2847**, **2859**, **2888**, **2900**, 2917, **2946**, 2963, **3015**, **3035**, 3200, **3241**, **3271**.
2 (10)_____	National Labor Relations Board:	
	[In General]_____	**3**, **1072**, **1086**, **1130**, **1164**, **1297**, 1348, **2287**, **2418**, **2447**, **2461**, **2847**, **2859**, **2888**, **2900**, **2946**, **3015**, **3035**, 3200, **3241**, **3271**.
	The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.	**3**, **1072**, **1130**, **1297**, 1348, **2287**, 2307, **2418**, **2447**, **2461**, **2847**, **2888**, **2900**, **2946**, **3015**, **3035**, 3200, **3241**, **3271**.
2 (11)_____	Old Board:	
	[In General]_____	**1086**, **1165**, **1297**, 1331, 1348, **2287**, 2346, **2418**, **2447**, **2461**, **2847**, **2859**, **2888**, **2900**, **2946**, **3015**, **3035**, 3200, **3241**, 3255, **3271**.
	The term "Old Board" means the National Labor Relations Board established by Executive Order No. 6763 of the President on June 29, 1934, pursuant to Public Resolution No. 44, approved June 19, 1934 (48 Stat. 1183), and established and continued by Executive Order No. 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133 approved June 14, 1935.	**1086**, **1165**, **1297**, 1331, 1348, **2287**, 2346, **2418**, **2447**, **2461**, **2847**, **2888**, **2900**, **2946**, **3015**, **3035**, 3200, **3241**, 3255, **3272**.

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Section		Index page
3	NATIONAL LABOR RELATION BOARD:	
3 (a)	Board Members:	
	[In General]	**4,** *186*, *471*, *1051*, **1074, 1087, 1131–2, 1166,** 1205, **1297,** 1320, 1336, 1348, *2149*, 2281–2, 2284, **2288,** 2307, **2418, 2447, 2461, 2847, 2859, 2888, 2900,** 2918, **2946,** 2956, 2964, **3015, 3035,** 3047, 3058, 3150, 3205, 3214, **3241,** 3252, 3255, 3265, **3272**
	There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate.	*186*, **1088,** 1205, **1297,** 1320, 1336, 1348, 2281, 2284, **2288,** 2307, **2418, 2447, 2461, 2847, 2859 2888, 2900,** 2918, **2946,** 2964, **3015, 3035–6,** 3058, 3150, **3241,** 3255, **3272.**
	One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed.	**1088, 1297, 2288, 2418, 2447, 2461, 2847, 2859, 2888, 2900, 2946, 3015, 3036, 3241, 3272.**
	The President shall designate any member to serve as the chairman of the Board.	**1297, 2288, 2418, 2447, 2461, 2847, 2859, 2888, 2900, 2947, 3016, 3036, 3242, 3272.**
	Any member of the Board may be removed by the President, upon notice and hearings, for neglect of duty or malfeasance in office, but for no other cause.	**3036,** *3047*, 3150, **3242, 3272.**
3 (b)	Vacancies, Seal, Quorum	**4, 1074, 1088, 1132, 1167, 1297,** 1348, **2288, 2418, 2447, 2461, 2847, 2859, 2888, 2901, 2947, 3016, 3036,** 3205, **3242, 3272.**

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Section		Index page
	NATIONAL LABOR RELA- BOARD—Continued	
	Board members—Continued	
3 (b)------	A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, . . .	**4, 1074, 1088, 1132, 1167, 1297, 2288, 2447, 2461, 2847, 2859, 2888, 2901, 2947, 3016, 3036,** 3205, **3242, 3272.**
	and two members of the Board shall, at all times, constitute a quorum.	**1074, 1088, 1167, 1297, 2288, 2447, 2461, 2847, 2859, 2888, 2901, 2947, 3016, 3036,** 3205, **3242, 3272.**
	The Board shall have an official seal which shall be judicially noticed.	**4, 1074, 1088, 1132, 1167, 1297, 2288, 2418, 2447, 2461, 2847, 2859, 2888, 2901, 2947, 3016, 3036,** 3205, **3242, 3272.**
3 (c)------	Annual Report:	
	[In General]----------	**1097,** 1108, **1175,** 1207, 1326, 1350, **2288,** 2347, **2418, 2848, 2860, 2889, 2901, 2947, 3016, 3036,** 3205, **3242, 3272.**
	The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.	**1097, 1175,** 1326, **2288,** 2347, **2418, 2848, 2860, 2889, 2901, 2947, 3016, 3036,** 3205, **3242, 3272.**
4---------	BOARD:	
4 (a)------	Personnel:	
	[In General]----------	**4–5,** *51*, *54*, **1074, 1088,** 1106, **1114, 1132, 1166, 1298,** 1321, 1331, 1348–9, *2002*, **2288,** 2307, **2320,** 2347, **2418, 2447, 2461,** *2702*, *2757*, *2763*, **2848, 2860, 2889, 2901,** 2922, **2947,** 2968–9, **3016, 3036,** 3062–3, 3155–6, 3215, **3242, 3272.**
	Each member of the Board shall receive a salary of $10,000 a year, . . .	**5, 1132, 1298, 2288,** 2307, 2347, **2418, 2447, 2461, 2848, 2860, 2889, 2901, 2947, 3016, 3036,** 3156, 3215, **3242, 3272.**
	shall be eligible for reappointment, . . .	**1088, 1166, 2198, 2288,** 2347, **2418, 2447, 2461, 2848, 2860, 2889, 2901, 2947, 3016, 3017,** 3215, **3242, 3272.**

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Section	Index page
BOARD—Continued	
Personnel—Continued	
and shall not engage in any other business, vocation, or employment.	**4, 1088, 1166, 1298, 2288,** 2347, **2418, 2447, 2461, 2848, 2860, 2889, 2901, 2947, 3016, 3036,** 3215, **3242, 3272.**
The Board shall appoint, without regard for the provisions of the civil-service laws . . .	**5, 1074, 1089, 1132, 1167, 1298, 2288,** 2347, **2418, 2447, 2461, 2860, 2889, 2901, 2947, 3016, 3036,** 3156, 3215, **3242, 3272.**
but subject to the Classification Act of 1923, as amended, . . .	**2288,** 2347, **2418, 2848, 2860, 2889, 2901, 2947, 3016, 3036,** 3156, 3215, **3242, 3272.**
an executive secretary, and such attorneys, examiners, and regional directors . . .	**1074, 1298, 2288,** 2347, **2418, 2447, 2461, 2848, 2860, 2889, 2901, 2947, 3016, 3036,** 3156, 3215, **3242, 3272.**
and shall appoint such other employees . . .	**1074, 1132, 2288,** 2347, **2418, 2848, 2860, 2889, 2901, 2947, 3016, 3036,** 3156, 3215, **3242, 3272.**
with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties . . .	**2288,** 2347, **2418–9, 2848, 2860, 2889, 2901, 2947, 3016, 3036,** 3156, 3215, **3242, 3272.**
and as may be from time to time appropriated for by Congress.	**1074, 1089, 1132, 1167, 2288,** 2347, **2418, 2447, 2461, 2848, 2860, 2889, 2901, 2947, 3016, 3036,** 3215, **3242, 3272.**
The Board may establish or utilize such regional . . .	**1089, 1298,** 1331, **2288,** 2347, **2419, 2447, 2461, 2848, 2860, 2889, 2901, 2947, 3016, 3036,** 3215, **3242, 3272.**
local . . .	**1089, 1298,** 1331, **2288,** 2347, **2419, 2447, 2461, 2848, 2860, 2889, 2901, 2947, 3016, 3036,** 3215, **3242, 3272.**
or other agencies, . . .	**1298,** 1331, **2288,** 2347, **2419, 2447, 2461, 2848, 2860, 2889, 2901, 2947, 3016, 3036,** 3215, **3242, 3272.**
and utilize such voluntary . . .	**1089, 1167, 1298,** 1331, **2288,** 2347, **2419, 2447, 2461, 2848, 2860, 2889, 2901, 2947, 3016, 3036,** 3215, **3242, 3272.**

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Section		Index page
	BOARD—Continued	
	Personnel—Continued	
	and uncompensated services, . . .	**1089, 1167, 1298,** 1331, **2288,** 2347, **2419, 2447, 2461, 2848, 2860, 2889, 2901, 2947, 3016, 3036,** 3215, **3242, 3272.**
	As may from time to time be needed.	**1089, 1167, 1298,** 1331, **2288,** 2347, **2419, 2447, 2461, 2848, 2860, 2889, 2901, 2947, 3016, 3036,** 3215, **3242, 3272.**
	Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court.	1331, **2288,** 2347, **2419, 2848, 2860, 2889, 2910, 2947, 3016, 3036,** 3215, **3242, 3272.**
	Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.	**2288–9,** 2347, **2419, 2848, 2860, 2889, 2901,** 2922, **2947,** 2968, **3016, 3036,** 3063, 3215, **3242, 3272.**
4 (b)-----	Transfer of old Board:	
	[In general]----------	*765*, **1089, 1114, 1167, 1298,** 1321, 1349, **2289,** 2347, **2419, 2447, 2461, 2848, 2860, 2889, 2901,** 2922, **2948,** 2968, **3017, 3036,** 3047, 3215, **3242,** 3252, 3255–6, **3273.**
	Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist.	**1089, 1167, 1298, 2288,** 2347, **2419, 2447, 2461–2, 2848, 2860, 2889, 2901, 2947, 3016, 3036–7,** 3215, **3242, 3272.**
	All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civil-service status.	**5, 1075, 1167, 1298, 2289,** 2347, **2419, 2448, 2462, 2848, 2860, 2889, 2901–2, 2947, 3016–7, 3037,** 3215, **3243, 3273.**

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Section		Index page
	BOARD—Continued	
	Transfer of old Board—Con.	
	All records, papers, and property of the old Board shall become records, papers, and property of the Board and all unexpended funds and appropriations for the use and maintainance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.	**1089, 1167, 1298, 2289, 2347, 2419, 2448, 2462, 2848, 2860, 2889, 2902, 2948, 3017, 3037,** 3215, **3243, 3273.**
4 (c)------	Board expenses:	
	[In general]----------	**5,** *692,* **1075, 1089, 1132, 1167, 1298,** 1349, **2289, 2419, 2448, 2462, 2849, 2861, 2890, 2902, 2948,** 2996, **3017, 3037,** 3156, 3215, **3243, 3273.**
	All expenses of the Board	**5,** *692,* **1075, 1089, 1132, 1167, 1298, 2289, 2419, 2448, 2461, 2849, 2861, 2890, 2902, 2948, 3017, 3037,** 3215, **3243, 3273.**
	including all necessary traveling . . .	**5,** *692,* **1075, 1089, 1132, 1167, 1298, 2289, 2419, 2448, 2461, 2849, 2861, 2890, 2902, 2948, 3017, 3037,** 3215, **3243, 3273.**
	and subsistence expenses . . .	**1089, 1167, 1298, 2289, 2419, 2448, 2461, 2849, 2861,** 2890, **2902, 2948, 3017, 3037,** 3215, **3243, 3273.**
	outside the District of Columbia . . .	**5,** *692,* **1075, 1089, 1132, 1167, 1298, 2289, 2419, 2448, 2461, 2849, 2861, 2890, 2902, 2948, 3017, 3037,** 3215, **3243, 3273.**
	incurred by the members of the Board under its orders . . .	**5,** *692,* **1075, 1089, 1132, 1167, 1298, 2289, 2419, 2448, 2462, 2849, 2861, 2890, 2902, 2948, 3017, 3037,** 3215, **3243, 3273.**
	shall be allowed and paid on the presentation of itemized vouchers therefore approved by the Board . . .	**5,** *692,* **1075, 1089, 1132, 1167, 2289, 2419, 2448, 2461, 2849, 2861, 2890, 2902, 2948, 3017, 3037,** 3215, **3243, 3273.**
	or by an individual it designates for that purpose.	**5,** *692,* **1075, 1089, 1132, 1167, 1298, 2289, 2419, 2448, 2461, 2849, 2861, 2890, 2902, 2948, 3017, 3037,** 3215, **3243, 3273.**

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Section		Index page
5	PLACE OF BUSINESS, INQUIRIES:	
	[In general]	**5, 1075, 1089, 1106, 1132, 1168, 1299,** 1321, 1349, *1688*, **2289,** 2307, **2419, 2448, 2462, 2849, 2861, 2890, 2902, 2923, 2948,** 2969, **3017, 3037,** 3064, 3156, **3243, 3273.**
	The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place.	**5, 1075, 1089, 1132, 1168, 1299, 2289, 2307, 2419, 2448, 2462, 2849, 2861, 2890, 2902, 2948, 3017, 3037, 3243, 3273.**
	The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States.	**5, 1075, 1089–90, 1132–3, 1168, 1299, 2289, 2419, 2448, 2462, 2849, 2861, 2890, 2902, 2948, 3017, 3037, 3243, 3273.**
	A member who participates in such an inquiry . . .	**5, 1075, 1090, 1133, 1168, 1299, 2289, 2419, 2448, 2462, 2849, 2861, 2890, 2902, 2948, 3017, 3037, 3243, 3273.**
	shall not be disqualified from subsequently participating in a decision of the Board in the same case.	**5, 1075, 1090, 1133, 1168, 1299, 2289, 2419, 2448, 2462, 2849, 2861, 2890, 2902, 2948, 3017, 3037, 3243, 3273.**
6 (a)	RULES AND REGULATIONS:	
	[In General]	**13,** *473*, *539*, *1028*, **1083, 1090,** 1107, **1139, 1161, 1168, 1225,** 1230–31, **1255, 1299,** 1321, 1349–50, *1887*, *2002*, **2289,** 2307, 2348, **2420, 2448, 2462,** *2783*, **2849, 2861, 2890, 2902,** 2923, 2930, **2948,** 2969, **3017, 3037,** 3064, **3243, 3273.**
	The Board shall have authority from time to time to make, . . .	**13, 473, 1083, 1090, 1139, 1168, 1299,** *2002*, **2420, 2448, 2462, 2849, 2861, 2890, 2902, 2948, 3017, 3037, 3243, 3273.**
	amend, . . .	**13, 473, 1083, 1090, 1139, 1168, 1299,** *2002*, **2420, 2448, 2462, 2849, 2861, 2890, 2902, 2948, 3017, 3037, 3243, 3273.**
	and rescind . . .	**13, 473, 1083, 1090, 1139, 1168, 1299,** *2002*, **2420, 2448, 2462, 2849, 2861, 2890, 2902, 2948, 3017, 3037, 3243, 3273.**
	such rules and regulations as may be necessary to carry out the provisions of this Act.	**13, 473, 1083, 1090, 1139, 1168, 1299,** *2002*, **2420, 2448, 2462, 2849, 2861, 2890, 2902. 2948, 3017, 3037, 3243, 3273.**

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Section		Index page
	RULES AND REGULATIONS—Continued	
	Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.	**13, 473, 1083, 1090, 1139, 1168, 1299, *2002*, 2420, 2448, 2462, 2849, 2861, 2890, 2902, 2948, 3017, 3037, 3243, 3273.**
7	RIGHTS OF EMPLOYEES:	
	[In General]	**3, *272*, *531–2*, *690*, 1072, 1130, 1299,** 1322, 1336, 1350–1, *2098*, **2290,** 2302–4, 2308, 2369, 2381–2, **2420,** 2430–3, 2438–9, **2448–9, 2463,** *2477*, **2849, 2861, 2890, 2902,** 2923, **2948,** 2969, **3017, 3037,** 3064, 3151, 3157, 3216, **3243,** 3253, **3273.**
	Employees shall have the right to self-organization, . . .	**3,** *531*, *690*, **1072, 1130, 1299,** 1336, 1350–1, *2098*, **2290,** 2302–3, 2308, 2369, 2381–2, **2420,** 2430–2, 2438, **2448, 2463,** *2477*, **2849, 2861, 2890, 2902, 2948, 3017, 3037,** 3151, 3157, 3216, **3243,** 3253, **3273.**
	to form . . .	**1130, 1299, 2290,** 2308, 2381–2, **2420, 2448, 2463,** *2477*, **2849, 2861, 2890, 2902, 2948, 3017, 3037,** 3151, 3157, 3216, **3243, 3273.**
	join . . .	**3, 1072, 1130, 1299,** 1351, **2290,** 2308, 2381–2, **2420,** 2430, **2448, 2463,** *2477*, **2849, 2861, 2890, 2902, 2948, 3017, 3037,** 3151, 3157, 3216, **3243, 3273.**
	or assist labor organizations, . . .	**1072, 1130, 1299,** 1350–1, **2290,** 2308, 2381–2, **2420, 2448, 2463,** *2477*, **2849, 2861, 2890, 2902, 2948, 3017, 3037,** 3151, 3157, 3216, **3243, 3273.**
	to bargain collectively . . .	*531*, *690*, **1130, 1299,** 1350–1, **2290,** 2308, 2381–2, **2420,** 2430–2, **2448, 2463,** *2477*, **2849, 2861, 2890, 2902, 2948, 3017, 3037,** 3151, 3157, 3216, **3243,** 3253, **3273.**
	through representatives of their own choosing . . .	**3,** *531*, *690*, **1130, 1299,** 1336, 1351, *2098*, **2290,** 2308, 2369, 2381–2, **2420,** 2430–2, 2438, **2448–9, 2463,** *2477*, **2849, 2861, 2890, 2902, 2948, 3017, 3037,** 3151, 3157, 3216, **3243,** 3253, **3273.**

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Section		Index page
	RIGHTS OF EMPLOYEES—Continued	
	and to engage in concerted activities, . . .	**3,** *690*, **1072, 1130, 1299,** 1350–1, **2290,** 2308, 2381–2, **2420,** 2430–2, 2439, **2449, 2463,** *2477*, **2849, 2861, 2890, 2902, 2948, 3017, 3037,** 3151, 3157, 3216, **3243, 3273.**
	for the purpose of collective bargaining . . .	**3,** *690*, **1072, 1130, 1299,** 1336, 1350–1, *2098*, **2290,** 2302, 2308, 2369, 2381–2, **2420,** 2430, 2432, 2439, **2449, 2463,** *2477*, **2849, 2861, 2890, 2902, 2948, 3017, 3037,** 3151, 3157, 3216, **3243,** 3253, **3273.**
	or other mutual aid or protection.	**3,** *690*, **1072, 1130, 1299,** 1350–1, **2290,** 2308, 2381, **2420,** 2430, 2432, **2449, 2463,** *2477*, **2849, 2861, 2890, 2902, 2948, 3017, 3037,** 3151, 3157, 3216, **3243,** 3253, **3273.**
8	UNFAIR LABOR PRACTICES:	
8 (1)	Interference, Restraint, Coercion:	
	[In General]	**3,** *84*, *256*, *387–8*, *390*, *533*, *719*, *1056*, **1072, 1087,** 1103, *1121*, 1124–5, **1130,** 1165, 1204, 1299, 1322, 1327, 1335, 1336, 1351–2, *2098*, *2099*, *2101*, **2290,** 2308, 2315–6, 2332–3, 2376, 2381–2, 2384–5, **2420,** 2433, 2443, **2449, 2463,** *2487*, **2849, 2861, 2890, 2902,** 2923–4, **2948,** 2969, **3017, 3038,** 3064, 3151, 3158, 3216, **3243, 3273.**
	It shall be an unfair labor practice for an employer to interfere with . . .	**3,** *84*, *387*, *533*, *719*, *1056*, **1072, 1087,** 1103, *1121*, 1124, **1130, 1165,** 1204, **1299,** 1322, 1327, 1335–6, 1351, *2098*, *2099*, *2101*, **2290,** 2308, 2315, 2332, 2376, **2420, 2449, 2463,** *2487*, **2849, 2861, 2890, 2902,** 2923, **2948,** 2969, **3017, 3038,** 3064, 3151, 3158, 3216, **3243, 3273.**
	restrain . . .	**3,** *84*, *387–8*, *533*, *719*, *1056*, **1072, 1130, 1165, 1299,** 1322, 1335, 1351, *2101*, **2290,** 2308, 2315, 2332, **2420, 2449, 2463,** *2487*, **2849, 2861, 2890, 2902,** 2923, **2948,** 2969, **3017, 3038,** 3064, 3151, 3158, 3216, **3243, 3273.**

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Section		Index page
	UNFAIR LABOR PRACTICES—Continued	
	Interference, Restraint, Coercion—Continued	
	or coerce employees . . . . --	3, *84*, *387–8*, *533*, *719*, *1056*, **1072**, **1087**, 1103, *1121*, 1124–5, **1130**, **1165**, **1299**, 1322, 1327, 1335, 1352, *2101*, **2290**, 2308, 2315–16, 2332, 2376, 2381–2, 2384–5, **2420**, **2449**, **2463**, *2487*, **2849**, **2861**, **2890**, **2902**, 2923–4, **2948**, 2969, **3017**, **3038**, 3064, 3151, 3158, 3216, **3243**, **3273**.
	in the exercise of the rights guaranteed in section 7.	3, *84*, *387*, *719*, *1056*, **1072**, **1087**, **1130**, **1165**, **1299**, 1335, *2101*, **2290**, 2308, 2315–16, 2332, **2420**, **2449**, **2463**, *2487*, **2849**, **2861**, **2890**, **2902**, 2923–4, **2948**, 2969, **3017**, **3038**, 3064, 3151, 3158, 3216, **3243**, **3273**.
8 (2)-------	Domination:	
	[In General]----------	3, 15–16, 22–6, *39–40*, *68*, *90–1*, *103–4*, *131*, *144*, *149*, *213*, *257* *265–6*, *388–9*, *391–2*, *423*, *435*, *438*, *459*, *463*, *533–4*, *564–5*, *691*, *700*, *710*, *711*, *715*, *719*, *763*, *926*, *1041*, *1056*, **1073**, **1087**, 1104, 1125, **1130**, **1165**, **1299**, 1322, 1331, 1333–5, 1336, 1352–3, *1688*, *1691*, *1711–3*, *1749*, *1797–9*, *1829–31*, *1876–7*, *1879–81*, *1896*, *1935–6*, *1991*, *2057*, *2099*, *2119–24*, *2141*, *2148–9*, *2159*, *2200*, **2290**, 2309–10, 2333–4, 2348–50, 2374–5, 2402, **2420**, **2432**, 2436–9, 2443, **2449**, **2463**, **2488–9**, *2536*, **2849**, **2861**, **2890**, **2902**, 2924, 2925–6, **2948**, 2971–3, 3017–8, **3038**, 3066–8, 3151–2, 3192, 3216–7, **3243–4**, **3273**.
	To dominate . . . ----------	3, *463*, **1073**, **1087**, 1125, **1130**, **1165**, **1299**, 1322, 1335, 1336, 1352, *1691*, *1711*, 1749, *1829*, *1876*, *2122–4*, *2200*, **2290**, 2309, 2333, 2348, 2350, **2420**, **2449**, **2463**, *2488*, *2536*, **2849**, **2861**, **2890**, **2902**, 2925–6, **2948**, 2971, 2973, **3017**, **3038**, 3066, 3068, 3151–2, 3216, **3243**, **3273**.

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Section	Index page
UNFAIR LABOR PRACTICES—Continued	
Domination—Continued	
or interfere with . . . -----	**3, 1073,** 1125, **1130, 1165, 1299,** 1333, 1335–6, 1352, *1688, 1691, 1711–3, 1829, 1876, 1896, 2099, 2122–4, 2200,* **2290,** 2309, 2333, 2348, **2420,** 2443, **2449, 2463,** *2488,* **2849, 2861, 2890, 2902,** 2925–6, **2948,** 2971–2, **3017, 3038,** 3066–8, 3151, 3216, **3243, 3273.**
the formation . . . -------	**3,** *39,* **1073,** 1125, **1130, 1165, 1299,** 1322, 1333, 1335–6, 1352, *1711, 1749, 1829, 1876, 1896, 2099, 2122–4, 2200,* **2290,** 2309, 2333, 2348, **2420, 2449, 2463,** *2488,* **2849, 2861, 2890, 2902,** 2925–6, **2948,** 2971, 2973, **3017, 3038,** 3066–8, 3151, 3216, **3243, 3273.**
or administration . . . ----	*39,* **1087,** 1125, **1130, 1165, 1299,** 1322, 1333, 1335, 1352, *1688, 1711, 1829, 1876, 1896, 2122–4, 2200,* **2290,** 2309, 2333, 2348, **2420, 2449, 2463,** *2488,* **2849, 2861, 2890, 2902,** 2925–6, **2948,** 2971, 2973, **3017, 3038,** 3066–8, 3151, 3216, **3243, 3273.**
of any labor organization . . .	**3,** *39,* **1073, 1087,** 1125, **1130, 1165, 1299,** 1333, 1335, 1352, *1688, 1711–2, 1829, 1876, 1896, 2099, 2122–4 2200,* **2290,** 2309, 2333, 2348, **2420, 2449, 2463,** *2488,* **2849, 2861, 2890, 2902,** 2925–6, **2948,** 2971, 2973, **3017, 3038,** 3066–8, 3151, 3216, **3243, 3273.**
or contribute financial . . .	**3,** *39, 131, 388, 534, 715, 1056,* **1073, 1087,** 1125, **1130, 1165, 1299,** 1322, 1333, 1335–6, 1352, *1688, 1712, 1749, 1829–30, 1876, 1896, 1935, 1991, 2099, 2119–24, 2141, 2159, 2200,* **2290,** 2309, 2348, **2420, 2449, 2463,** *2488,* **2849, 2861, 2890, 2902,** 2925–6, **2948,** 2971–2, **3017, 3038,** 3066–8, 3151–2, 3216–7, **3243, 3273.**

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Section	Index page
UNFAIR LABOR PRACTICES—Continued	
Domination—Continued	
or other support to it . . .	**3**, *39*, *388*, *715*, *1056*, **1073**, 1125 **1130**, **1165**, **1299**, 1322, 1333, 1335, 1352, *1688*, *1712*, *1749*, *1829*, *1876*, *1896*, *1935*, *1991*, *2099*, *2119–24*, *2141*, *2159*, *2200*, **2290**, 2309, 2348, **2420**, **2449**, **2463**, *2488*, **2849**, **2861**, **2890**, **2902**, 2925, **2948**, 2971, **3017**, **3038**, 3066–8, 3151, 3216–7, **3243**, **3273**.
Proviso re conferring with employees:	
[In General]	*436*, *534*, *798*, *814*, *821*, *837*, *839*, *875*, *952*, **1087**, 1104, **1115**, 1125, **1165**, 1238, **1299**, 1322, 1331, 1334, 1336, 1352, 1353, *1691*, *1780–1*, *1830–1*, *1879*, *1987*, *1988*, *2041* *2100–1*, **2290**, 2310, 2348, 2375, 2420, **2449**, **2463**, *2782*, *2787*, **2849**, **2861**, **2890**, **2902**, 2925–6, **2948**, 2971, **3017–18**, **3038**, 3066, 3127–8, 3151–2, 3216, **3243**, **3273**.
Provided, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), . . .	*534*, *798*, *821*, *837*, *839*, *875*, *952*, **1087**, 1104, **1115**, 1125, **1165**, **1299**, 1322, 1331, 1336, 1352, *1691*, *1780*, *1830–1*, *2041*, *2100*, *2122–3*, **2290**, 2310, 2348, 2375, **2420**, **2449**, **2463**, *2488*, *2787*, **2849**, **2861**, **2890**, **2902**, 2925, **2948**, 2971, **3017**, **3038**, 3066, 3127, 3151, 3216, **3243–4**, **3273**.
an employer shall not be prohibited from permitting employees to confer with him . . .	*534*, *798*, *821*, *837*, *839*, *875*, *952*, **1087**, 1104, 1125, **1165**, **1299**, 1336, 1352, *1691*, *1780*, *1830–1*, *1877*, *1879*, *2041*, *2100*, *2122–3*, **2290**, 2310, 2348, 2375, **2420**, **2449**, **2463**, *2488*, *2787*, **2849**, **2861**, **2890**, **2902**, 2925, **2948**, 2971, **3017–18**, **3038**, 3066, 3127, 3151, 3216, **3244**, **3273**.

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Section		Index page
	UNFAIR LABOR PRACTICES—Continued	
	Proviso re- conferring with employees—Continued	
	during working hours . . .	*534*, *798*, *821*, *837*, *839*, *875*, *952*, **1087**, 1104, 1125, **1165**, 1238, **1299**, 1322, 1336, 1352, *1691*, *1780*, *1830*, *1831*, *1877*, *1879*, *2041*, *2100*, *2122–3*, **2290**, 2310, 2348, 2375, **2420**, **2449**, **2463**, *2488*, *2787*, **2849**, **2861**, **2890**, **2902**, 2925, **2948**, 2971, **3018**, **3038**, 3066, 3127, 3151, 3216, **3244**, **3273**.
	without loss of time or pay.	*534*, *798*, *821*, *837*, *839*, *875*, *952*, *1041*, **1087**, 1104, **1115**, 1125, **1165**, 1238, **1299**, 1322, 1336, 1352, *1691*, *1780*, *1830–1*, *1877*, *1879*, *2041*, *2100*, *2122–3*, **2290**, 2310, 2348, 2375, **2420**, **2449**, **2463**, *2488*, *2787*, **2849**, **2861**, **2890**, **2902**, 2925, **2948**, 2971, **3018**, **3038**, 3066, 3127, 3151, 3216, **3244**, **3273**.
8 (3).....	Discrimination:	
	[In General].....	**3**, *149*, *214*, *1036*, *1041–2*, **1073**, **1087**, 1105, 1121, 1126, **1130**, **1165**, **1299**, 1322, 1335, 1336–7, 1353, *1668*, *1688*, *1691*, *1697*, *1733*, *1816–7*, 1889, *2101*, *2149* **2290**, 2309–10, 2335, 2348, 2370, 2394–5, 2402, **2420**, 2433, 2442, 2449, 2463, *2488*, *2558–9*, *2781*, **2849**, **2861–2**, **2890–1**, **2903**, 2924, 2927, **2949**, 2971, 2973, 2975, **3018**, **3038**, 3066, 3068, 3071, 3216, 3234, **3244**, **3273**.
	By discrimination in regard to hire . . .	**3**, *149*, *214*, *1041*, **1073**, **1087**, 1121, **1130**, **1165**, **1299**, 1335, 1353, *1688*, *1697*, *2101*, **2290**, 2310, 2335, 2348, 2394–5, **2420**, **2449**, **2463**, **2849**, **2861**, **2890**, **2903**, 2927, **2949**, 2973, **3018**, **3038**, 3068, 3071, 3216, **3244**, **3273**.

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Section	Index page
UNFAIR LABOR PRACTICES—Continued	
Discrimination—Continued	
or tenure of employment . . .	**3**, *149*, *214*, **1073**, **1087**, 1121, **1130**, **1165**, **1299**, 1335, 1353, *1697*, *2101*, **2290**, 2310, 2335, 2348, 2394–5, **2420**, **2449**, **2463**, **2849**, **2861**, **2890**, **2903**, 2927, **2949**, 2973, **3018**, **3038**, 3068, 3216, **3244**, **3273**,
or any term . . .	*149*, *214*, **1087**, 1121, **1130**, **1165**, **1299**, 1335, *1697*, *2101*, **2290**, 2310, 2335, 2348, 2394–5, **2420**, **2449**, **2463**, **2849**, **2861**, **2890**, **2903**, 2927, **2949**, 2973, **3018**, **3038**, 3068, 3216, **3244**, **3273**.
or condition of employment . . .	**3**, *149*, *1041*, **1073**, **1087**, 1105, 1121, **1130**, **1165**, **1299**, 1335, 1353, *1697*, *2101*, **2290**, 2310, 2335, 2348, 2394–5, **2420**, 2442, **2449**, **2463**, **2849**, **2861**, **2890**, **2903**, 2927, **2949**, 2973, **3018**, **3038**, 3216, **3244**, **3273**.
to encourage . . .	**3**, *1041*, **1073**, **1087**, 1121, **1131**, **1165**, **1299**, 1335, *1697*, *1889*, *2101*, **2290**, 2310, 2335, 2348, 2394–5, **2420**, **2449**, **2463**, **2849**, **2861**, **2890**, **2903**, 2927, **2949**, 2973, 2975, **3018**, **3038**, 3068, 3071, 3216, **3244**, **3273**.
or discourage membership . . .	**3**, *214*, **1073**, **1087**, 1121, **1131**, **1165**, **1299**, 1335, *1697*, *2101*, **2290**, 2310, 2335, 2348, 2394–5, **2420**, **2449**, **2463**, **2849**, **2861**, **2890**, **2903**, 2927, **2949**, 2973, 2975, **3018**, **3038**, 3068, 3071, 3216, **3244**, **3273**.
in any labor organization . . .	**3**. **1073**, **1087**, 1121, **1131**, **1165**, **1299**, 1335, *1697*, 1697, *2101*, **2290**, 2335, 2348, 2394–5, **2420**, **2449**, **2463**, **2849**, **2861**, **2890**, **2903**, 2927, **2949**, 2973, 2975, **3018**, **3038**, 3068, 3071, 3216, **3244**, **3273**.

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Section		Index page
	UNFAIR LABOR PRACTICES—Continued	
8 (3)------	Closed-shop proviso:	
	[In General]----------	4, 16, 25, *39*, *84–6*, *246*, *258*, *325*, *459*, *463*, *480*, *535*, *566*, *568*, *678*, *691*, *696*, *946*, *1005*, *1036* *1053*, **1073, 1087,** 1105–6, 1121, 1126, **1131, 1165–6, 1300, 1322,** 1331, 1333, 1353, *1688*, *1691*, *1697*, *1733*, *1760*, *1771*, 1816–7, *1889*, *1988–9*, *2101*, *2141*, *2241*, 2284, **2290,** 2311, 2335, 2348, 2369, 2392–3, 2394–5, **2420,** 2442, **2449, 2463,** *2489*, *2535*, *2560*, *2652*, *2746–7*, *2781*, **2849–50, 2861–2, 2890–1, 2903,** 2927, 2949, 2956, 2971, 2973, 2975, **3018, 3038,** 3047, 3068–9, 3121, 3167, 3179, 3193, 3216, 3217, 3229, 3234, **3244,** 3252, 3266–7, **3273–4.**
8 (3)------	. . . *Provided*, That nothing in this Act, . . .	**4, 1073, 1087, 1131, 1165–6, 1300,** 1322, *1691*, *1988*, *2101*, **2290,** 2311, 2348, 2394, **2420, 2449, 2463,** *2535*, **2849, 2861, 2890, 2903,** 2949, **3018, 3038,** 3216, **3244, 3273.**
	or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, . . .	**1087, 1165–6, 1300,** 1353, *2101*, **2290,** 2311, 2348, 2394, **2420, 2449, 2463, 2849, 2861, 2890, 2903, 2949, 3018, 3038,** 3216, **3244, 3273.**
	or in any code or agreement approved or prescribed thereunder . . .	**1087, 1131, 1165–6, 1300,** 1353, *2101*, **2290,** 2311, 2348, 2394, **2420, 2449, 2463, 2849–50, 2861–2, 2890–1, 2903, 2949, 3018, 3038,** 3216, **3244, 3273.**
	or in any other statute of the United States . . .	**1087, 1131, 1165–6, 1300,** 1353, *2101*, **2290,** 2311, 2348, 2394, **2420, 2449, 2463, 2850, 2862, 2891, 2903, 2949, 3018, 3038,** 3216, **3244, 3273–4.**
	shall preclude an employer from making . . .	**4,** *691*, **1073, 1087, 1131, 1165–6, 1300,** 1353, *1691*, *1988*, *2101*, **2290,** 2311, 2348, 2394, **2420, 2449, 2463,** *2535*, **2850, 2862, 2891, 2903, 2949, 3018, 3038,** 3216, **3244, 3274.**

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Section	Index page
UNFAIR LABOR PRACTICES—Continued	
Closed-shop proviso—Continued	
an agreement with a labor organization . . .	**4,** *691*, **1073, 1087, 1131, 1165–6, 1300,** 1353, *1691*, *1988*, *2101*, **2290,** 2311, 2348, 2394, **2420, 2449, 2463,** *2535*, **2850, 2862, 2891, 2903, 2949, 3018, 3038,** 3216, **3244, 3274.**
(not established, . . .	**4, 1073, 1087, 1131, 1165–6, 1300,** 1331, 1353, *2101*, **2290,** 2348, 2394, **2420, 2449, 2463, 2850, 2862, 2891, 2903, 2949, 3018, 3038,** 3216, **3244, 3274.**
maintained, . . .	**1087, 1131, 1165–6, 1300,** 1331, 1353, *2101*, **2290,** 2348, 2394, **2420, 2449, 2463, 2850, 2862, 2891, 2903, 2949, 3018, 3038,** 3216, **3244, 3274.**
or assisted . . .	**1131, 1165–6, 1300,** 1331, 1353, *2101*, **2290,** 2348, 2394, **2420, 2449, 2463, 2850, 2862, 2891, 2903, 2949, 3018, 3038,** 3216, **3244, 3274.**
by an action defined in this Act as an unfair labor practice) . . .	**4, 1073, 1087, 1131, 1165–6, 1300,** 1331, 1353, *2101*, **2290,** 2348, 2394, **2420, 2449, 2463, 2850, 2862, 2891, 2903, 2949, 3018, 3038,** 3216, **3244, 3274.**
to require as a condition of employment membership therein . . .	**4,** *691*, **1073, 1087, 1131, 1165–6, 1300,** 1322, 1353, *2101*, **2290,** 2348, 2394, **2420, 2449, 2463,** *2535*, **2850, 2862, 2891, 2903, 2949, 3018, 3038,** 3216, **3244, 3274.**
if such labor organization is the representative of the employees as provided in section 9 (a) . . .	*691*, **1073, 1087, 1131, 1165–6, 1300,** 1333, *1989*, **2290,** 2311, 2348, 2394, **2420, 2449, 2463, 2850, 2862, 2891, 2903, 2949, 3018, 3038,** 3216, **3244, 3274.**
in the appropriate collective bargaining unit covered by such agreement . . .	**1087, 1165–6, 1300,** *2101*, **2290,** 2348, 2394, **2420, 2449, 2463,** *2535*, **2850, 2862, 2891, 2903, 2949, 3018, 3038,** 3216, **3244, 3274.**
when made	**1087, 1165–6, 1300,** *2101*, **2290,** 2348, 2394, **2420, 2449, 2463,** *2535*, **2850, 2862, 2891, 2903, 2949, 3018, 3038,** 3216, **3244, 3274.**

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Section		Index page
	UNFAIR LABOR PRACTICES—Continued	
8 (4)------	File Charges or Testify:	
	[In General]----------	*740*, **1300**, 1322, 1355, *1668*, *2065*, 2180, **2290**, 2309, 2311, 2335, 2401–2, **2420**, **2449**, **2463**, *2488*, **2850**, **2862**, **2891**, **2903**, 2924, 2927, **2949**, 2971, 2974, **3018**, **3038**, 3066, 3069, 3193, 3216, **3244**, **3274**.
	To discharge . . . ----------	**1300**, *2180*, **2290**, 2311, 2335, 2401, **2420**, **2449**, **2463**, *2488*, **2850**, **2862**, **2891**, **2903**, 2927, **2949**, 2971, **3018**, **3038**, 3069, 3216, **3244**, **3274**.
	or otherwise discriminate . . .	**1300**, *2180*, **2290**, 2311, 2335, 2401, **2420**, **2449**, **2463**, *2488*, **2850**, **2862**, **2891**, **2903**, 2927, **2949**, 2974, **3018**, **3038**, 3069, 3216, **3244**, **3274**.
	against an employee because he has filed charges . . .	**1300**, *2180*, **2290**, 2311, 2335, 2401, **2420**, **2449**, **2463**, *2488*, **2850**, **2862**, **2891**, **2903**, 2927, **2949**, 2974, **3018**, **3038**, 3069, 3216, **3244**, **3274**.
	or given testimony under this Act.	**1300**, *2180*, **2290**, 2311, 2335, 2401, **2420**, **2449**, **2463**, *2488*, **2850**, **2862**, **2891**, **2903**, 2927, **2949**, 2974, **3018**, **3038**, 3069, 3216, **3244**, **3274**.
8 (5)------	Refusal To Bargain:	
	[In General]----------	**4**, *38*, *67*, *79–80*, *89–90*, *147–8*, *211*, *222*, *264*, *273–4*, *315*, *388*, *533*, *538–40*, *690*, *701*, *1036*, *1042*, **1072**, **1130**, **1165**, 1327, 1331, 1333, *1697*, *2102*, **2290**, 2301–3, 2309, 2312, 2335–6, 2348, 2373–4, 2392–3, **2420**, 2436, 2440–2, *2490*, *2494*, *2649–50*, *2683*, **2850**, **2862**, **2891**, **2903**, 2927, **2949**, 2971, 2975, **3018**, **3038**, 3066, 3069, 3193, 3216, **3244**, **3274**.
8 (5)------	To refuse to bargain collectively . . .	**4**, **1072**, **1130**, **1165**, 1331, 1333, *2102*, **2290**, 2312, 2335, 2348, **2420**, *2650*, *2683*, **2850**, **2862**, **2891**, **2903**, 2927, **2949**, 2974, **3018**, **3038**, 3069, 3216, **3244**, **3274**.

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Section		Index page
	UNFAIR LABOR PRACTICES—Continued	
	Refusal to Bargain—Continued	
	with the representatives of his employees . . .	**4, 1072, 1130, 1165,** 1331, 1333, *2102*, **2290,** 2312, 2335, 2348, **2420,** *2650*, **2850, 2862, 2891, 2903,** 2949, **3018, 3038,** 3216, **3244, 3274.**
	subject to the provisions of section 9 (a).	**1130, 1165,** 1331, **2290,** 2312, 2348, **2420,** *2650*, **2850, 2862, 2891, 2903, 2949, 3018, 3038,** 3216, **3244, 3274.**
9	REPRESENTATIVES AND ELECTIONS:	
9 (a)	Representatives:	
	[In General]	16, *38–9, 79–80, 93, 256–7, 401, 403, 430, 463,* **1095,** 1108, **1115, 1137,** 1300, 1319, 1323, 1327, 1333, 1335–6, 1355–6, *1697, 1704, 1706–7, 1709–10, 1733–4, 1736, 1749,* 1881, 1897, *1911, 1919, 1934–5, 1990, 2021, 2043, 2181, 2200, 2207,* 2284, **2290,** 2305, 2312–13, 2336–7, 2350–1, 2371, 2390, 2391–2, **2421,** 2440–1, 2442, **2449, 2463,** *2490, 2535, 2649–50, 2684, 2696–7, 2781–2,* **2850, 2862, 2891, 2903,** 2918, 2927–30, **2949,** 2974, **3018, 3038,** 3069–70, 3167, 3218, **3244, 3274.**
	Representatives designated	*256,* **1095, 1115, 1137, 1300,** 1319, 1335, *1706, 1709, 1881, 1897, 1911, 1990, 2021, 2043, 2181, 2207,* **2290,** 2312, 2336, 2351, 2391–2, **2421, 2449, 2463,** *2490, 2535, 2684,* **2850, 2862, 2891, 2903,** 2927, **2949,** 2974, **3018, 3038,** 3069, 3218, **3244, 3274.**
	or selected	**1137, 1300,** 1319, 1335, *1706, 1881, 1897, 1911, 1990, 2043, 2181, 2207,* **2290,** 2312, 2336, 2351, 2391–2, **2421, 2449, 2463,** *2490, 2535, 2684,* **2850, 2862, 2891, 2903, 2949, 3018, 3038,** 3218, **3244, 3274.**

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Section	Index page
REPRESENTATIVES AND ELECTIONS—Continued	
Representatives—Continued	
for the purpose of collective bargaining	**1137, 1300,** 1319, 1335, *1706, 1709, 1881, 1911, 1990, 2043, 2181, 2207,* **2290,** 2312, 2336, 2351, 2391–2, **2421, 2449, 2463,** *2490, 2535, 2684,* **2850, 2862, 2891, 2903,** 2927, **2949,** 2974, **3018, 3038,** 3069–70, 3218, **3244, 3274.**
by the majority	**1095, 1137, 1300,** 1319, 1327, *1706, 1881, 1897, 1911, 1990, 2043, 2181, 2207,* **2290,** 2312, 2336, 2351, 2391–2, **2421, 2449, 2463,** *2490, 2535, 2684,* **2850, 2862, 2891, 2903,** 2927, **2949,** 2974, **3018, 3038,** 3070, 3218. **3244, 3274.**
of the employees	**1095. 1137. 1300,** 1319, 1327, *1706, 1881, 1897, 1911, 1990, 2043, 2181, 2207,* **2290,** 2312, 2336, 2351, 2391–2, **2421, 2449, 2463,** *2490, 2535, 2684,* **2850, 2862, 2891, 2903,** 2927, **2949,** 2974, **3018, 3038,** 3070, 3218, **3244, 3274.**
in a unit appropriate for such purposes . . .	**1095, 1300,** 1327, 1319, 1335, *1706, 1881, 1911, 1990, 2043, 2181, 2207,* **2290,** 2312, 2336, 2351, 2391–2, **2421, 2449, 2463,** *2490, 2535, 2684,* **2850, 2862, 2891, 2903,** 2927, **2949,** 2974, **3018, 3038,** 3070, 3218, **3244, 3274.**
shall be the exclusive representatives of all the employees in such unit . . .	**1095, 1300,** 1319, 1327, *1706, 1881, 1911, 1990, 2043, 2181, 2207,* **2290,** 2312, 2336, 2351, 2392, **2421, 2463,** *2490, 2535, 2684,* **2850, 2862, 2891, 2903, 2949,** 2974, **3018, 3038,** 3070, 3218, **3244, 3274.**
for the purpose of collective bargaining . . .	**1095, 1137, 1300,** 1319, 1327, 1335–6, *1706, 1881, 1911, 1990, 2043, 2181, 2207,* **2290,** 2312–3, 2336, 2351, 2392, **2421, 2449, 2463,** *2490, 2535, 2684,* **2850, 2862, 2891, 2903,** 2928, **2949,** 2974, **3018, 3038,** 3070, 3218, **3244, 3274.**

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Section | Index page

REPRESENTATIVES AND ELECTIONS—Continued
Representatives—Continued
in respect to rates of pay . . . *256*, **1137, 1300,** 1319, 1336, *1706*, *1881*, *1897*, *1911*, *2021*, *2043*, *2181*, *2207*, **2290,** 2312–3, 2336, 2351, 2392, **2421, 2449, 2463,** *2490*, *2535*, *2684*, **2850, 2862, 2891, 2903,** 2928, **2949,** 2974, **3018, 3038,** 3070, 3218, **3244, 3274.**
wages . . . ---------- *256*, **1137, 1300,** 1319, 1336, *1706*, *1881*, *1897*, *1911*, *2021*, *2043*, *2181*, *2207*, **2290,** 2312–3, 2336, 2351, 2392, **2421, 2449, 2463,** *2490*, *2535*, *2684*, **2850, 2862, 2891, 2903,** 2928, **2949,** 2974, **3018, 3038,** 3070, 3218, **3244, 3274,**
hours of employment . . . *256*, **1137, 1300,** 1319, 1336, *1706*, *1881*, *1897*, *1911*, *2021*, *2043*, *2181*, *2207*, **2290,** 2312–3, 2336, 2351, 2392, **2421, 2449, 2463,** *2490*, *2535*, *2684*, **2850, 2862, 2891. 2903,** 2928, **2949,** 2974, **3018, 3038,** 3070, 3218, **3244, 3274.**
or other conditions of employment . . . *256*, **1095, 1137, 1300,** 1319, 1336, *1706*, *1881*, *1897*, *1911*, *2021*, *2043*, *2181*, *2207*, **2290–1,** 2312–3, 2336, 2351, 2392, **2421, 2449, 2463,** *2490*, *2684*, **2850, 2862, 2891, 2903,** 2928, **2949,** 2974, **3018, 3038,** 3070, 3218, **3244. 3274,**
Proviso re Individual Grievances: [In General] *273–4*, *430*, *697*, **1095,** 1108, 1126, **1173–4,** 1185, **1300,** 1323, 1332, 1336, 1353, 1355–6, *1706*, *1709–10*, *1736*, *1750*, *1881*, *1897*, *1911*, *1934–5*, *2021*, 2181, *2207*, 2284, **2291,** 2313, 2337, 2351, 2390, 2392, 2421, 2441–2, **2449, 2463.** *2491*, *2536*, *2680*, *2684–6*, *2696–7*, *2711*, *2758*, *2775*, **2850, 2862, 2891, 2903,** 2929, **2949,** 2975, **3018, 3038.** 3071, 3167, 3218, **3244, 3274,**

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Section	Index page
REPRESENTATIVES AND ELECTIONS—Continued	
Representatives—Continued	
Provided, That any individual employee . . .	**1095. 1173–4, 1300,** 1332, 1336, 1353, 1356, *1706, 1881, 1897, 1911, 2021, 2181, 2207,* **2291,** 2313, 2337, 2351, 2392, **2421, 2449, 2463,** *2491, 2536, 2684–5, 2711, 2758, 2775,* **2850, 2862, 2891, 2903,** 2929, **2949,** 2975, **3018, 3038,** 3071, 3218, **3244. 3274,**
or a group of employees . . .	**1095, 1173–4, 1300,** 1332, 1336, 1353, 1356, *1706, 1881, 1897, 1911, 2021, 2207,* **2291,** 2313, 2337, 2351, 2392, **2421, 2449, 2463,** *2491, 2536, 2684–5, 2711, 2758, 2775,* **2850, 2862, 2891, 2903,** 2929, **2949,** 2975, **3018, 3038,** 3071, 3218, **3244, 3274,**
shall have the right at any time . . .	**1095. 1173–4, 1300,** 1332, 1336, 1353, 1356, *1706, 1881, 1897, 1911, 2021, 2207,* **2291,** 2313, 2337, 2351, 2392, **2421, 2449, 2463,** *2491, 2536, 2684–5,* 2711, *2758, 2775,* **2850, 2862, 2891, 2903,** 2929, **2949,** 2975, **3018, 3038,** 3218, **3244, 3274.**
to present . . . ----------	**1095, 1173–4, 1300,** 1332, 1336, 1353, 1356, *1706, 1709, 1881, 1897, 1911, 2021, 2181, 2207,* **2291,** 2313, 2337, 2351, 2392, **2421, 2449,** 2463, *2491, 2536, 2684–5, 2711, 2758, 2775,* **2850, 2862, 2891, 2903,** 2929, 2949, 2975, **3018, 3038,** 3071, 3218, **3244, 3274.**
grievances . . . ----------	**1095, 1173–4, 1300,** 1332, 1336, 1353, 1356, *1706, 1709, 1881, 1897, 1911, 2021, 2181, 2207,* **2291,** 2313, 2337, 2351, 2392, **2421, 2449, 2463,** *2491, 2536, 2684–5, 2711,* 2758, *2775,* **2850, 2862, 2891, 2903,** 2929, **2949,** 2975, **3018, 3038,** 3071, 3218, 3244, 3274.

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Section		Index page
	REPRESENTATIVES AND ELECTIONS—Continued	
	Representatives—Continued	
	to their employer	**1095, 1173–4, 1300,** 1332, 1336, 1353, *1881*, *1897*, *1911*, *2021*, *2207*, **2291,** 2313, 2337, 2351, 2392, **2421, 2449, 2463,** *2491*, *2536*, *2684–5*, *2758*, *2775*, **2850, 2862, 2891, 2903,** 2929, **2949,** 2975, **3018, 3038,** 3071, 3218, **3244, 3274.**
9 (b)	Appropriate Unit:	
	[In General]	**11,** *463*, *497*, *1054*, **1082, 1095,** 1107, **1173, 1300,** 1323, 1332, 1334, 1336, 1356, *1675–6*, *1679*, *1688*, *1819*, *1889*, *1934–5*, *1984*, *2058*, *2123–4*, *2135*, *2159*, *2195*, *2206*, **2291,** 2313, 2390–1, **2421, 2449, 2464,** *2536*, *2649*, *2653*, *2694*, *2705–7*, *2710*, *2758*, *2782*, **2850, 2862, 2891, 2903,** 2930, **2949,** 2976, **3018, 3038–9,** 3047, 3072, 3120, 3180, 3219, 3220–1, 3230, **3244,** 3253–4, 3256, 3260, 3261–2, 3267–8, **3274,**
	The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, . . .	**11, 1082, 1095, 1173, 1300,** 1332, 1356, *1688*, *2123–4*, *2195*, **2291,** 2313, **2421, 2449, 2464,** *2536*, *2694*, *2705*, **2850, 2862, 2891, 2903,** 2930, **2949,** 2976, **3018, 3038–9,** 3047, 3072, 3219, **3244,** 3253, 3262, 3267–8, **3274.**
	and otherwise to effectuate the policies of this Act, . . .	**11, 1082, 1095, 1300,** *1819*, *2123–4*, *2195*, **2291, 2421, 2449, 2464,** *2536*, *2694*, *2705*, **2850, 2862, 2891, 2903,** 2930, **2949,** 2976, **3018, 3038–9,** 3047, 3072, 3219, **3244,** 3253, 3262, 3267, **3274.**
	the unit appropriate . . .	**11, 1082, 1095, 1173, 1300,** *1688*, *1819*, *2123–4*, *2195*, **2291,** 2313, **2421, 2449, 2464,** *2536*, *2694*, *2705*, **2850, 2862, 2891, 2903,** 2930, **2949,** 2976, **3018, 3038–9,** 3047, 3072, 3219, **3244,** 3253, 3256, 3260, 3262, 3267, **3274.**
	for the purpose of collective bargaining. . . .	**11, 1082, 1095, 1173, 1300,** *1688*, *1819*, *2123–4*, *2195*, **2291,** 2313, **2421, 2449, 2464,** *2536*, *2694*, *2705*, **2850, 2862, 2891, 2903,** 2930, **2949,** 2976, **3018, 3038–9,** 3047, 3072, 3219, **3244,** 3253, 3262, 3267, **3274.**

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Section		Index page
	REPRESENTATIVES AND ELECTIONS—Continued	
	Appropriate Unit—Continued	
	shall be the employer unit . . .	**11,** *497*, *1054*, **1082, 1095, 1173, 1300,** 1336, *1688*, *1819*, *2123–4*, *2195*, **2291,** 2313, **2421, 2449, 2464,** *2536*, *2694*, *2705*, **2850, 2862, 2891, 2903,** 2930, **2949,** 2976, **3018, 3038–9,** 3047, 3072, 3219, **3244,** 3254, 3256, 3260, 3262, 3267, **3274.**
	craft unit . . . ----------	**11,** *497*, *1054*, **1082, 1095, 1173, 1300,** 1336, *1688*, *1819*, *2123–4*, *2195*, **2291,** 2313, **2421, 2449, 2464,** *2536*, *2694*, *2705*, **2850, 2862, 2891, 2903,** 2930, **2949,** 2976, **3018, 3038–9,** 3047, 3072, 3219, **3244,** 3254, 3256, 3260, 3262, 3267, **3274.**
	plant unit . . . ----------	**11,** *497*, *1054*, **1082, 1095, 1173, 1300,** 1336, *1688*, *1819*, *2123–4*, *2195*, **2291,** 2313, **2421, 2449, 2464,** *2536*, *2694*, *2705*, **2850, 2862, 2891, 2903,** 2930, **2949,** 2976, **3018, 3038–9,** 3047, 3072, 3219, **3244,** 3254, 3256, 3260, 3262, 3267, **3274.**
	or subdivision thereof . . .	**1173,** 3254, 3256, 3260, 3262, 3267, **3274.**
9(c)-------	Elections and Certifications:	
	[In General]----------	**11,** *79–80*, *87*, *93*, *224–5*, *274*, *463*, *472–3*, *566*, *693*, *721*, *927*, *1055*, **1081–2, 1095,** 1107–8, 1126, 1137, 1173, **1160–1,** 1206, **1224–5, 1255–6, 1300,** 1323, 1333, 1337–8, 1356, *1749*, *1991*, *2044*, *2104*, *2141*, *2262*, 2284, **2291,** 2314, 2373, **2421, 2432,** 2441, **2450, 2464, 2492,** *2537*, *2782*, **2850, 2862,** 2891, 2903, 2930, **2949,** 2976, **3018, 3039,** 3047, 3073, 3219, **3244–5,** 3252, 3256–7, **3274.**
	Whenever a question affecting commerce . . .	**11,** *87*, *472*, *693*, *1055*, **1081, 1095, 1137, 1160–1, 1173, 1300,** 1333, 1337–8, *2104*, **2291,** 2314, **2421, 2450, 2464,** *2782*, **2850, 2862, 2891, 2903, 2949, 3018, 3039,** 3219, **3244, 3274.**

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Section	Index page
REPRESENTATIVES AND ELECTIONS—Continued	
Elections and Certifications—Continued	
arises . . .	**11, *87*, *693*, *1055*, 1081, 1095, 1137, 1173, 1300,** 1333, 1337–8, ***2104*, 2291,** 2314, **2421, 2450, 2464,** ***2782*, 2850, 2862, 2891, 2903, 2949, 3018, 3039,** 3219, **3244, 3274.**
concerning the representation of employees . . .	**11,** *87*, *472*, *693*, *1055*, **1081, 1095, 1137, 1173, 1300,** 1333, **1337–8,** ***2104*, 2291,** 2314, **2421, 2450, 2464,** ***2782*, 2850, 2862, 2891, 2903, 2949, 3018, 3039,** 3219, **3244, 3274.**
the Board may . . .	**11,** *87*, *472*, *693*, *1055*, **1081, 1095, 1137, 1173, 1300,** 1333, 1337, ***2104*, 2291,** 2314, **2421, 2450, 2464,** ***2782*, 2850, 2862, 2891, 2903, 2949, 3018, 3039,** 3219, **3244, 3274.**
investigate . . .	**11,** *87*, *472*, *693*, *1055*, **1081, 1095, 1137, 1173, 1300,** 1333, 1337, ***2104*, 2291,** 2314, **2421, 2450, 2464, 2850, 2862, 2891, 2903, 2949, 3018, 3039,** 3219, **3244, 3274.**
such controversy . . .	**11,** *87*, *472*, *693*, **1081,** *1055*, **1095, 1137, 1173, 1300,** 1333, 1337, ***2104*, 2291,** 2314, **2421, 2450, 2464, 2850, 2862, 2891, 2903, 2949, 3018, 3039,** 3219, **3244, 3274.**
and certify . . .	**11,** *87*, *472*, *693*, *1055*, **1081, 1095, 1137, 1173, 1300,** 1333, 1337, ***2104*, 2291, 2421, 2450, 2464,** ***2782*, 2850, 2862, 2891, 2903, 2949, 3018, 3039,** 3219, **3244, 3274,**
to the parties in writing . . .	**11,** *87*, *472*, *693*, *1055*, **1081, 1095, 1137, 1173, 1300,** 1333, 1337, ***2104*, 2291, 2421, 2450, 2464,** ***2782*, 2850, 2862, 2891, 2903, 2949, 3018, 3039,** 3219, **3244, 3274.**
the name or names of the representatives that have been designated or selected.	**11,** *87*, *472*, *693*, *1055*, **1081, 1095, 1137, 1173, 1300,** 1333, 1337, ***2104*, 2291, 2421, 2450, 2464,** ***2782*, 2850, 2862, 2891, 2903, 2949, 3018, 3039,** 3219, **3244–5, 3274.**

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Section		Index page
	REPRESENTATIVES AND ELECTIVES—Continued	
	Elections and Certifications—Continued	
	In any such investigation, the Board shall provide for an appropriate hearing . . .	**1095, 1137, 1173, 1300,** 1337, *2044*, **2291, 2421, 2450, 2464, 2850, 2862, 2891, 2903, 2949, 3018, 3039,** 3219, **3245, 3274.**
	upon due notice, ...	**3039,** 3047, 3219, **3245,** 3252, 3256–7, **3274.**
	either in conjunction with a proceeding under section 10 or otherwise, . . .	**1137, 1300,** 1337, *2044*, **2291, 2421, 2450, 2464, 2850, 2862, 2891, 2903, 2949, 3018, 3039,** 3219, **3245, 3274.**
	and may take a secret ballot . . .	**11,** *225*, *566*, *693*, *1055*, **1082, 1095,** 1107, *1126*, **1137, 1173, 1300,** 1333, 1337, *1991*, *2044*, **2291,** 2314, **2421, 2450, 2464, 2850, 2862, 2891, 2903, 2949, 3018, 3039,** 3219, **3245, 3274.**
	of employees	**11,** *225*, *566*, *693*, *1055*, **1082, 1095,** 1107, *1126*, **1137, 1173, 1300,** 1333, 1337, *1991*, *2044*, **2291, 2421, 2450, 2464, 2850, 2862, 2891, 2903, 2949, 3018, 3039,** 3219, **3245, 3274.**
	or utilize any other suitable method to ascertain such representatives.	**11,** *225*, *566*, *693*, *1055*, **1082, 1095,** 1107, *1126*, **1137, 1173, 1300,** 1337, *1991*, *2044*, **2291, 2421, 2450, 2464, 2850, 2862, 2891, 2903, 2949, 3018, 3039,** 3219, **3245, 3274.**
9 (d).....	Review of Representation Proceedings:	
	[In General].....	**1161, 1300–1,** 1323, 1333, 1357, **2291,** 2314, **2421, 2450, 2464,** *2494*, **2850–1, 2862–3, 2891–2, 2903–4,** 2930–1, **2949–50,** 2977, **3019, 3039,** 3073, 3167, 3219, **3245, 3274.**
	Whenever an order	**1300, 2291, 2421, 2450, 2464, 2850, 2862, 2891, 2903,** 2930, **2949,** 2977, **3019, 3039,** 3073, 3219, **3245, 3274.**
	of the Board made pursuant to section 10 (c) . . .	**1300, 2291, 2421, 2450, 2464, 2850, 2862, 2891, 2903–4,** 2930, **2949–50,** 2977, **3019, 3039,** 3073, 3219, **3245, 3274.**
	is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, . . .	**1300–1,** 1333, **2291, 2421, 2450, 2464, 2850, 2862, 2891, 2904,** 2930, **2950,** 2977, **3019, 3039,** 3073, 3219, **3245, 3274.**

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Section		Index page
	REPRESENTATIVES AND ELECTIONS—Continued	
	Review of Representation Proceedings—Continued	
	and there is a petition for the enforcement or review of such order, . . .	**1301, 2291, 2421, 2450, 2464, 2850, 2862, 2891, 2904, 2950, 3019, 3039,** 3219, **3245, 3274.**
	such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), . . .	**1301, 2291, 2421, 2450, 2464, 2850, 2862,** 2891–2, **2904,** 2931, **2950,** 2977, **3019, 3039,** 3073, 3219, **3245, 3274,**
	and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.	**1301, 2291, 2421, 2450, 2464, 2850–1, 2862–3, 2892, 2904, 2950, 3019, 3039,** 3219, **3245, 3274.**
10	PREVENTION OF UNFAIR LABOR PRACTICES:	
10 (a)	Power to Prevent:	
	[In General]	**5–6,** *472, 497–8, 692,* **1075, 1090,** 1107, **1116, 1133, 1168,** 1204–5, **1301,** 1323, 1332, 1337, 1357, *1643, 1750, 2045, 2096–7,* 2291. 2304, 2315, 2351, **2421, 2450, 2464,** *2758, 2761,* **2851, 2863, 2892, 2904,** 2918, 2931, **2950, 2977, 3019, 3039,** 3073–4, 3139, 3158, 3221, 3224–5, **3245, 3274–5.**
	The Board is empowered as hereinafter provided, to prevent any person . . .	**5,** *498, 692,* **1075, 1090, 1116, 1133, 1168, 1301,** 1323, 1332, 1337, *1750, 2045, 2096,* **2291,** 2351, **2421. 2450, 2464, 2851, 2863, 2892, 2904, 2950,** 2977, **3019, 3039,** 3073, 3158, 3221, **3245, 3274.**
	from engaging in any unfair labor practice (listed in sec. 8) . . .	**5–6,** *498, 692,* **1075, 1090, 1116, 1133, 1168, 1301,** 1332, 1337, *1750, 2045, 2096,* **2291,** 2351, **2421, 2450, 2464, 2851, 2863, 2892, 2904,** 2931, **2950,** 2977, **3019, 3039,** 3073, 3158, 3221, **3245, 3274.**

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Section	Index page
PREVENTION OF UNFAIR LABOR PRACTICES—Con.	
Power to Prevent—Continued	
affecting commerce . . .	**5–6, 1075, 1090, 1116, 1133, 1168, 1301,** 1332, 1337, *1750*, *2045*, *2096*, **2291,** 2351, **2421, 2450, 2464, 2851, 2863, 2892, 2904,** 2931, **2950,** 2977, **3019, 3039,** 3073, 3158, 3221, **3245, 3274.**
This power shall be exclusive . . .	**1301,** 1323, 1337, 1357, *1643*, *1750*, *2045*, *2097*, **2291,** 2315, 2351, **2421, 2450, 2464, 2851, 2863, 2892, 2904, 2950,** 2931, 2977, **3019, 3039,** 3074, 3139, 3221, **3245, 3274.**
and shall not be affected . . .	**1301,** 1323, 1357, *1643*, *1750*, *2045*, *2097*, **2291,** 2351, **2421, 2450, 2464, 2851, 2863, 2892, 2904,** 2931, **2950,** 2977, **3019, 3039,** 3074, 3139, 3221, **3245, 3275.**
by any other means of adjustment . . .	**1301,** 1323, 1357, *1643*, *1750*, *2045*, *2097*, **2291,** 2351, **2421, 2450, 2464, 2851, 2863, 2892, 2904,** 2931, **2950,** 2977, **3019, 3039,** 3074, 3139, 3221, **3245, 3275.**
or prevention . . . -------	**1301.** 1323, 1357, *1643*, *1750*, *2045*, *2097*, **2291,** 2351, **2421, 2450, 2464, 2851, 2863, 2892, 2904,** 2931, **2950,** 2977, **3019, 3039,** 3074, 3221, **3245, 3275.**
that has been or may be established by agreement . . .	**1301,** 1323, 1357, *1643*, *1750*, *2045*, *2097*, **2291,** 2351, **2421, 2450, 2464, 2851, 2863, 2892, 2904, 2950, 3019, 3039,** 3139, 3221, **3245, 3275.**
code, . . . ----------	**1301,** 1323, 1357, *1643*, *2045*, *2097*, **2291,** 2351, **2421, 2450, 2464, 2851, 2863, 2892, 2904, 2950, 3019, 3039,** 3139, 3221, 3224–5, **3245, 3275.**
law, . . . ----------	**1301,** 1323, 1357, *1643*, *2045*, *2097*, **2291,** 2351, **2421, 2450, 2464, 2851, 2863, 2892, 2904, 2950, 3019, 3039,** 3139, 3221, 3224–5, **3245, 3275.**
or otherwise----------	**1301,** 1323, 1357, *1643*, *2045*, *2097*, **2291,** 2351, **2421, 2450, 2464, 2950, 3019, 3039,** 3139, 3221, **3245, 3275.**

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Section		Index page
	PREVENTION OF UNFAIR LABOR PRACTICES—Con.	
10 (b)-----	Complaints, Evidence:	
	[In General]----------	**6,** *215–6, 459, 497–8, 535, 537, 538, 616, 692, 1005–6,* **1075–6, 1090,** 1107, **1115, 1132, 1133, 1133, 1168, 1301–2,** 1323, 1324, 1333, 1358–9, *1643, 1688–9, 1772, 1833–4, 1889, 2016, 2022, 2037, 2045,* **2292,** 2314, 2351–2, **2421–2, 2450–1, 2464, 2851, 2863, 2892, 2904, 2931, 2950,** 2977, **3019, 3039–40,** 3047, 3073, 3075, 3139, 3158, 3167–8, 3222–4, **3245,** 3252, 3257, **3275.**
	whenever it is charged . . .--	**6, 1075, 1090, 1133, 1168, 1301, 2292,** 2351, **2421, 2450, 2464, 2851, 2863, 2892, 2904, 2950, 3019, 3039,** 3158, 3222, 3224, **3245, 3275.**
	that any person has engaged in . . .	**6, 1075, 1090, 1133, 1168, 1301, 2292,** 2351, **2421, 2450, 2464, 2851, 2863, 2892, 2904, 2950, 3019, 3039,** 3158, 3222, 3224, **3245, 3275.**
	or is engaging in . . . ----	**6, 1075, 1090, 1133, 1168, 1301, 2292,** 2351, **2421, 2450, 2464, 2851, 2863, 2892, 2904, 2950, 3019, 3039,** 3158, 3222, 3224, **3245, 3275.**
	any such unfair labor practice . . .	**6, 1075, 1090, 1133, 1168, 1301, 2292,** 2351, **2421, 2450, 2464, 2851, 2863, 2892, 2904, 2950, 3019, 3039,** 3158, 3222, 3224, **3245, 3275.**
	the Board . . . ----------	**6, 1075, 1090, 1133, 1168, 1301, 2292,** 2351, **2421, 2450, 2464, 2851, 2863, 2892, 2904, 2950, 3019, 3039,** 3158, 3222, 3224, **3245, 3275.**
	or any agent or agency . . .--	**6, 1075, 1133, 1168, 1301, 2292,** 2351, **2421, 2450, 2464–5, 2851, 2863, 2892, 2904, 2950, 3019, 3039,** 3158, 3222, 3224, **3245, 3275.**
	designated by the Board for such purpose . . .	**6, 1075, 1133, 1168, 1301, 2292,** 2351, **2421, 2450, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3039,** 3158, 3222, 3224, **3245, 3275.**

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Section	Index page
PREVENTION OF UNFAIR LABOR PRACTICES—Con.	
Complaints, Evidence—Con.	
shall have power to issue and cause to be served upon such person a complaint . . .	**6, 1075, 1090, 1132, 1168, 1301, 2292,** 2351–2, **2421–2, 2450, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3039,** 3158, 3222, 3224, **3245, 3275.**
stating the charges	**6, 1075, 1090, 1133, 1168, 1301, 2292, 2352, 2422, 2450, 2465, 2851, 2892, 2863, 2904, 2950, 3019, 3039,** 3158, 3222, 3224, **3245, 3275.**
in that respect, ...	**6, 1075, 1090, 1133, 1168, 1301, 2292,** 2353, **2422, 2450–1, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3039,** 3158, 3222, 3224, **3245, 3275.**
and containing a notice of hearing . . .	**6, 1075, 1090, 1133, 1168, 1301, 2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3039,** 3158, 3222, **3245, 3275.**
before the Board	**6, 1075, 1090, 1133, 1168, 1301, 2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3039,** 3158, 3222, **3245, 3275.**
or a member thereof	**6, 1075, 1133, 1168, 1301, 2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3039,** 3158, 3222, **3245, 3275.**
or before a designated agent or agency . . .	**6, 1075, 1090, 1133, 1168, 1301, 2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3039,** 3158, 3222, **3245, 3275.**
at a place therein fixed	**6, 1076, 1090, 1133, 1168, 2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3039,**3158, 3222, **3245, 3275.**
not less than five days after the serving of said complaint . . .	**6, 1076, 1090, 1133, 1168, 1301,** 1324, **2292,** 2351–2, **2422, 2851, 2863, 2892, 2904, 2950, 3019, 3039,** 3158, 3222, **3245, 3275.**
Any such complaint may be amended by the member, . . .	**6, 1076, 1090, 1133, 1168, 1301,** 1324, *1643*, **2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3039,** 3222, **3245, 3275.**

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Section | Index page

PREVENTION OF UNFAIR LABOR PRACTICES—Con.

Complaints, Evidence—Con.

agent, . . . ---------- **6, 1076, 1090, 1133, 1168, 1301,** 1324, *1643*, **2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3039,** 3222, **3245, 3275.**

or agency . . . ---------- **6, 1076, 1090, 1133, 1168, 1301,** 1324, *1643*, **2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3039,** 3222, **3245, 3275.**

conducting the hearing . . . . **1133, 1168, 1301,** 1324, *1643*, **2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3039–40,** 3222, **3245, 3275.**

or the Board . . . ------- **6, 1076, 1090, 1133, 1168, 1302,** 1324, *1643*, **2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3040,** 3222, **3245, 3275.**

in its discretion . . . ----- **6, 1076, 1090, 1133, 1168, 1302,** 1324, *1643*, **2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3040,** 3222, **3245, 3275.**

at any time prior to the issuance of an order based thereon . . . **6, 1076, 1090, 1133, 1168, 1302,** 1324, *1643*, **2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3040,** 3222, **3245, 3275.**

The person so complained of shall have the right to file an answer . . . **6, 1076, 1090, 1133, 1168, 1302,** *1643*, **2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3040,** 3222, **3245, 3275.**

to the original . . . ------ **1090, 1133, 1168, 2292,** 2351–2, **2422, 2851, 2863, 2892, 2904, 2950, 3019, 3040,** 3222, **3245, 3275.**

or amended complaint . . . . **1090, 1133, 1168, 2292,** 2351–2, **2422, 2851, 2863, 2892, 2904, 2950, 3019, 3040,** 3222, **3245, 3275.**

and to appear in person . . . . **6, 1076, 1090, 1133, 1168, 1302,** 1643, **2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3040,** 3222, **3245, 3275.**

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Section	Index page
PREVENTION OF UNFAIR LABOR PRACTICES—Con.	
Complaints, Evidence—Con.	
or otherwise . . .	**1133, 1168, 1302,** *1643*, **2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3040,** 3222, **3245, 3275.**
and give testimony . . .	**6, 1076, 1090, 1133, 1168, 1302,** *1643*, **2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3040,** 3222, **3245, 3275.**
at the place and time fixed in the complaint . . .	**6, 1076, 1090, 1133, 1168, 1302,** *1643*, **2292,** 2352, **2422, 2451 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3040,** 3222, **3245, 3275.**
in the discretion . . .	**6, 1076, 1133, 1302, 2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3040,** 3222, **3245, 3275.**
of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding . . .	**6, 1076, 1133, 1302, 2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3040,** 3047, 3075, 3222–3, **3245,** 3257, **3275.**
and to present testimony . . .	**6, 1076, 1133, 1302, 2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3040,** 3047, 3222, **3245, 3275.**
in any such proceeding the rules of evidence . . .	**6,** *215*, **1076, 1133,**1359,**1302,1359,** *1688*, *1772*, *1889*, *2016*, *2037*, **2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3040,** 3139, 3158, 3167, 3222, 3224, **3245, 3275.**
prevailing in courts of law . . .	**6,** *215*, **1076, 1133, 1302,** 1359, *1688*, *1772*, *1889*, *2016*, *2037*, **2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3040,** 3139, 3158, 3167, 3222, 3224, **3245, 3275.**
or equity . . .	**6, 1076, 1133, 1302,** 1359, *1688*, *1772*, *1889*, *2016*, *2037*, **2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3040,** 3139, 3158, 3167, 3222, 3224, **3245, 3275.**

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Section		Index page
	PREVENTION OF UNFAIR LABOR PRACTICES—Con.	
	Complaints, Evidence—Con.	
	shall not be controlling----	**6,** *215*, **1076, 1133, 1302,** 1359, *1688–9*, *1722*, *1889*, *2016*, *2037*, **2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3040,** 3139, 3158, 3167, 3222, 3224, **3245, 3275.**
10 (c)------	Cease and Desist Order:	
	[In General]----------	**6–7,** *537–8*, **1076, 1090,** 1107, **1116, 1134, 1168–9, 1302,** 1324, 1332, 1360, *1834*, *2058*, *2231*, 2233–4, **2292,** 2314, 2352, **2422, 2451, 2465,** *2758–9*, **2851–2, 2863–4, 2892–3, 2904–5,** 2931, **2950–1,** 2977–8, **3019–20,** 3040, 3073–4, 3222, **3245–6, 3275.**
	The testimony taken by such member, agent or agency or the Board shall be reduced to writing . . .	**6,** *537*, **1076, 1090, 1134, 1168, 1302,** *1834*, **2292,** 2314, 2352, **2422, 2451, 2465,** 2851, **2863, 2892, 2904, 2950, 3019, 3040,** 3222, **3245, 3275.**
	and filed with the Board . . .	**6, 1076, 1090, 1134, 1168–9, 1302,** *1834*, **2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3040,** 3222, **3245–6, 3275.**
	Thereafter, in its discretion, . . .	**6, 1076, 1090, 1134, 1169, 1302,** *1834*, **2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3040,** 3222, **3246, 3275.**
	the Board upon notice may . . .	**6, 1076, 1090, 1134, 1169,** 1302, **2292,** 2352, **2422, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3040,** 3222, **3246, 3275.**
	take further testimony . . .	**6, 1076, 1090, 1134, 1169, 1302,,** *1834*, **2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3040,** 3222, **3246 3275.**
	or hear argument . . . ----	**6, 1076, 1090, 1134, 1169, 1302,** *1834*, **2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019, 3040,** 3222, **3246, 3275.**
	If upon all the testimony taken . . .	**6, 1076, 1090, 1134, 1169, 1302, 2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3019–20, 3040,** 3222, **3246, 3275.**

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Section	Index page
PREVENTION OE UNFAIR LABOR PRACTICES—Con.	
Cease and Desist Order—Con.	
the Board shall be of the opinion . . .	**6, 1076, 1090, 1134, 1169, 1302, 2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3020, 3040,** 3222, **3246, 3275.**
that any person named in the complaint . . .	**6, 1076, 1090, 1134, 1169, 1302, 2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904, 2950, 3020, 3040,** 3222, **3246, 3275.**
has engaged in . . . -----	**6, 1076, 1090, 1134, 1169, 1302,** *2233*, **2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2904–5, 2950–1, 3020, 3040,** 3222, **3246, 3275.**
or is engaging in . . . ----	**6, 1076, 1090, 1134, 1169, 1302, 2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2905, 2951, 3020, 3040,** 3222, **3246, 3275.**
any such unfair labor practice, then the Board shall . . .	**6, 1076, 1090, 1134, 1169, 1302,** *2233*, **2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2905, 2951, 3020, 3040,** 3222, **3246, 3275.**
state its findings of fact	**6, 1076, 1090, 1134, 1169, 1302,** *2233*, **2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2905, 2951, 3020, 3040,** 3222, **3246, 3275.**
and shall issue . . . ------	**6, 1076, 1090, 1134, 1169, 1302,** *2233*, **2292,** 2314, 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2905, 2951, 3020, 3040,** 3222, **3246, 3275.**
and cause to be served	**1090–1, 1134, 1169, 1302,** 1332. *2233*, **2292,** 2352, **2422, 2451, 2465, 2851, 2863, 2892, 2905, 2951, 3020, 3040,** 3222, **3246, 3275.**
on such person an order requiring such person to cease and desist from such unfair labor practice . . .	**6, 1076, 1091, 1134, 1169, 1302,** 1332, 1360, *1834*, *2233–4*, **2292** 2314, 2352, **2422, 2451, 2465, 2851, 2863, 2892–3, 2905, 2951, 3020, 3040,** 3222, **3246, 3275.**
and to take such affirmative action, . . .	**7, 1076, 1096, 1134, 1169, 1302,** 1360, *1834*, *2234*, **2292,** 2314, 2352, **2422, 2451, 2465, 2851, 2863, 2893, 2905, 2951, 3020, 3040,** 3222, **3246, 3275.**

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Section		Index page
	PREVENTION OF UNFAIR LABOR PRACTICES—Con.	
	Cease and Desist Order—Con.	
	including reinstatement of employees . . .	**7, 1076, 1134, 1302,** 1324, 1332, 1360, **2292,** 2314, 2352, **2422, 2851, 2863, 2893, 2905, 2951, 3020, 3040,** 3222, **3246, 3275.**
	with . . .	**7, 1076, 1134,** 1324, 1332, 1360, **2292,** 2314, 2352, **2422, 2851, 2863, 2893, 2905, 2951, 3020, 3040,** 3222, **3246, 3275.**
	or without back pay . . .	**7, 1076, 1134,** 1324, 1332, 1360, **2292,** 2314, 2352, **2422, 2851, 2863, 2893, 2905, 2951, 3020, 3040,** 3222, **3246, 3275.**
	as will effectuate the policies of this Act . . .	**7, 1076, 1134, 1302,** 1324, 1332, 1360, *1834*, *2234*, **2292,** 2314, 2352, **2422, 2451, 2465, 2851, 2863, 2893, 2905, 2951, 3020, 3040,** 3222, **3246, 3275.**
	Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order . . .	**7, 1076, 1134, 1169, 1302,** 1332, **2292,** 2352, **2422, 2451, 2465, 2851–2, 2863–4, 2893, 2905, 2951, 3020, 3040,** 3222, **3246, 3275.**
	If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint . . .	**1302,** 1324, 1332, **2292,** 2352, **2422, 2451, 2465, 2852, 2864, 2893, 2905, 2951, 3020, 3040,** 3222, **3246, 3275.**
10 (d)-----	Modification of Orders:	
	[In General]----------	**7,** *539*, *692*, **1076–7, 1091, 1134, 1169, 1302,** 1324, 1360–1, *1828*, *2233*, **2292–3,** 2351, *2422*, *2451*, *2465*, *2852*, *2864*, *2893*, *2905*, 2951, *3020*, *3040*, 3222, **3246, 3275.**
	Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, . . .	**7,** *539*, **1076, 1091, 1134, 1169, 1302, 2292, 2422, 2451, 2465, 2852, 2864, 2893, 2905, 2951, 3020, 3040,** 3222, **3246, 3275.**

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Section		Index page
	PREVENTION OF UNFAIR LABOR PRACTICES—Con.	
	Modification of Orders—Con.	
	the Board may at any time, . . .	**7,** *692,* **1076, 1091, 1134, 1169, 1302, 2292, 2422, 2451, 2465, 2852, 2864, 2893, 2905, 2951, 3020, 3040,** 3222, **3246, 3275.**
	upon reasonable notice . . .	**7, 1076, 1091, 1134, 1169, 1302,** 1334, 1360–1, **2292, 2422, 2451, 2465, 2852, 2864, 2893, 2905, 2951, 3020, 3040,** 3222, **3246, 3275.**
	and in such manner as it shall deem proper, . . .	**7,** *692,* **1076, 1091, 1134, 1169, 1302,** 1334, **2292–3, 2422, 2451, 2465, 2852, 2864, 2893, 2905, 2951, 3020, 3040,** 3222, **3246, 3275.**
	modify . . . ----------	**7,** *692,* **1077, 1091, 1134, 1169, 1302, 2293, 2422, 2451, 2465, 2852, 2864, 2893, 2905, 2951, 3020, 3040,** 3222, **3246, 3275.**
	or set aside, . . . --------	**7,** *692,* **1077, 1091, 1134, 1169, 1302, 2293, 2422, 2451, 2465, 2852, 2864, 2893, 2905, 2951, 3020, 3040,** 3222, **3246, 3275.**
	in whole or in part, any finding or order made or issued by it.	**7,** *692,* **1077, 1091, 1134, 1169, 1302, 2293, 2422, 2451, 2465, 2852, 2864, 2893, 2905, 2951, 3020, 3040,** 3222, **3246, 3275.**
10 (e)----	Enforcement of Orders:	
	[In General]----	**4, 7–8,** *41, 66–7, 216–7, 222, 480–1, 534–5, 539, 692, 927, 1006, 1056,* **1073, 1077–8, 1091–2,** 1107, **1113, 1134–5, 1169–70, 1302–3,** 1324–5, 1361–2, *1831, 1890, 2235,* **2293–4,** 2314, **2320,** 2352–3, **2422–3, 2451–2, 2465–6,** *2650, 2759, 2783,* **2852–3, 2864–5, 2893–4, 2905–6,** 2931–2, **2951–2,** 2977–8, **3020–1, 3040–1, 3048, 3073, 3075, 3139,** 3222-3, **3246–7,** 3252, 3257, **3275–6.**
	The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), . . .	**4, 7, 1073, 1077, 1091, 1113, 1134, 1169, 1302,** *1890, 2183,* **2293, 2320,** 2352, **2422, 2451, 2465,** *2650, 2759,* **2852, 2864, 2893, 2905, 2951, 3020, 3040,** 3222-3, **3246, 3275.**

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Section	Index page
PREVENTION OF UNFAIR LABOR PRACTICES—Con.	
Enforcement of Orders—Con.	
or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), . . .	**1134, 1302,** 1361, **2293,** 2352, **2422, 2852, 2864, 2893, 2905, 2951, 3020, 3040,** 3222, **3246, 3275.**
within any circuit or district, respectively, wherein the unfair labor practice in question occurred . . .	**7, 1077, 1091, 1134, 1169, 1302, 2293,** 2352, **2423, 2451, 2465–6, 2852, 2864, 2893, 2905, 2951, 3020, 3040,** 3222, **3246, 3275.**
or wherein such person resides . . .	**7, 1077, 1091, 1134, 1169, 1302, 2293,** 2352, **2423, 2451, 2466, 2852, 2864, 2893, 2905, 2951, 3020, 3040,** 3222, **3246, 3275.**
or transacts business, . . .	**7, 1077, 1091, 1134, 1169, 1302,** *1361*, **2293,** 2352, **2451, 2466, 2852, 2864, 2893, 2905, 2951, 3020, 3040,** 3222, **3246, 3275.**
for the enforcement of such order . . .	**7, 1077, 1091, 1134, 1169, 1302, 2293,** 2353, **2451, 2466, 2852, 2864, 2893, 2905, 2951, 3020, 3040–1,** 3222, **3246, 3275.**
and for appropriate temporary relief . . .	**1134, 1302–3,** 1324–5, 1361, **2293,** 2353, **2423, 2451–2, 2466, 2852, 2864, 2893, 2905, 2951, 3020, 3041,** 3222, **3246, 3275.**
or restraining order . . .	**1134, 1303,** 1324–5, 1361, **2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2905, 2951, 3020, 3041,** 3222, **3246, 3275.**
and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board.	**7, 1077, 1091, 1134, 1169, 1303, 2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2905, 2951, 3020, 3041,** 3222, **3246, 3275–6.**
Upon such filing, the court shall cause notice thereof to be served upon such person . . .	**7, 1077, 1091, 1134, 1169, 1303, 2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2905, 2951, 3020, 3041,** 3222, **3246, 3276.**

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Section	Index page
PREVENTION OF UNFAIR LABOR PRACTICES—Con.	
Enforcement of Orders—Con.	
and thereupon shall have jurisdiction . . .	**7, 1077, 1091, 1134, 1169, 1303, 2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2905, 2951, 3020, 3041,** 3222, **3246, 3276,**
of the proceeding . . . ----	**7, 1077, 1091, 1134, 1169, 1303, 2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2905, 2951, 3020, 3041,** 3222, **3246, 3276,**
and of the question determined therein . . .	**7, 1077, 1091, 1134, 1169, 1303, 2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2951, 3020, 3041,** 3222, **3246, 3276.**
and shall have power to grant such temporary relief . . .	**1134, 1303,** 1361–2, **2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2905, 2951, 3020, 3041,** 3222, **3246, 3276.**
or restraining order . . . --	**1134, 1303,** 1361–2, **2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2905, 2951, 3020, 3041,** 3222, **3246, 3276.**
as it deems just and proper . . .	**1134, 1303, 2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2905, 2951, 3020, 3041,** 3222, **3246, 3276.**
and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing . . .	**7, 1077, 1091, 1134, 1169, 1303, 2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2905, 2951, 3020, 3041,** 3222, **3246, 3276.**
modifying . . . ----------	**7, 1077, 1091, 1134, 1169, 1303, 2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2905, 2951, 3020, 3041,** 3222, **3246, 3276.**
and enforcing as so modified . . .	**1134, 1169, 1303, 3041, 3246, 3276.**
or setting aside in whole or in part the order of the Board.	**7, 1077, 1091, 1134, 1169, 1303, 2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2905, 2951, 3020, 3041,** 3222, **3246, 3276,**
No objection . . . -------	**7, 1077, 1091, 1134, 1169, 1303,** 1362, **2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2905, 2951, 3020, 3041,** 3222, **3246, 3276.**
that has not been urged . . .	**7, 1077, 1091, 1134, 1169, 1303,** 1362, **2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2905, 2951, 3020, 3041,** 3222, **3246, 3276.**

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Section	Index page
PREVENTION OF UNFAIR LABOR PRACTICES—Con.	
Enforcement of Orders—Con.	
before the Board . . .	**7, 1077, 1091, 1134, 1169, 1303,** 1362, **2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2905, 2951, 3020, 3041,** 3222, **3246, 3276.**
its member, . . .	**1134, 1169, 1303,** 1362, **2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2905, 2951, 3020, 3041,** 3222, **3246, 3276.**
agent . . .	**1134, 1169, 1303,** 1362, **2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2905, 2951, 3020, 3041,** 3222, **3246, 3276.**
or agency . . .	**1134, 1169, 1303,** 1362, **2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2905, 2951, 3020, 3041,** 3222, **3246, 3276,.**
shall be considered . . .	**7, 1077, 1091, 1134, 1169, 1303,** 1362, **2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2905, 2951, 3020, 3041,** 3222, **3247, 3276.**
by the court, . . .	**7, 1077, 1091, 1134, 1169, 1303,** 1362, **2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2905, 2951, 3020, 3041,** 3222, **3247, 3276.**
unless the failure or neglect . . .	**1091, 1134, 1169, 1303,** 1362, **2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2905, 2951, 3020, 3041,** 3222, **3247, 3276.**
to urge such objection shall be excused . . .	**1091, 1134, 1169, 1303,** 1362, **2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2905, 2951, 3020–1, 3041,** 3222, **3247, 3276.**
because of extraordinary circumstances.	**1091, 1134, 1169, 1303,** 1362, **2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2905, 2951, 3021, 3041,** 3222, **3247, 3276.**
The findings of the Board as to the facts, if supported by evidence, shall be conclusive . . .	**7,** *40, 692,* **1077, 1091, 1135, 1169 1303, 2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2905–6, 2951–2, 3021, 3041,** 3139, 3222, **3247, 3276.**
If either party shall apply to the court for leave to adduce additional evidence . . .	**7, 1077, 1091, 1135, 1169, 1303, 2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2906, 2952, 3021, 3041,** 3222, **3247, 3276.**

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Section	Index page
PREVENTION OF UNFAIR LABOR PRACTICES—Con.	
Enforcement of Orders—Con.	
and shall show to the satisfaction of the court that such additional evidence is material . . .	**7, 1077, 1091, 1135, 1169, 1303, 2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893, 2906, 2952, 3021, 3041,** 3222, **3247, 3276.**
and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency . . .	**7, 1077, 1091, 1135, 1170. 1303, 2293,** 2353, **2423, 2452, 2466, 2852, 2864, 2893–4, 2906, 2952, 3021, 3041,** 3222, **3247, 3276,**
the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript . . .	**7,** *1056*, **1077, 1091, 1135, 1170, 1303, 2293,** 2353, **2423, 2452, 2466, 2852–3, 2864–5, 2894, 2906, 2952, 3021, 3041,** 3222, **3247, 3276.**
The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence shall be conclusive, and shall file its recommendations, if any, for the modification, or setting aside of its original order . . .	**7–8, 1077, 1091–2, 1135, 1170, 1303, 2293–4,** 2353, **2423, 2452, 2466, 2853, 2865, 2894, 2906, 2952, 3021, 3041,** 3222, **3247, 3276.**
The jurisdiction of the court shall be exclusive . . .	**8, 1078, 1092, 1135, 1170, 1303, 2294,** 2353, **2423, 2452, 2466, 2853, 2865, 2894, 2906, 2952, 3021, 3041,** 3222–3, **3247, 3276.**
and its judgment and decree shall be final, . . .	**8, 1078, 1092, 1135, 1170, 1303, 2294,** 2353, **2423, 2452, 2466, 2853, 2865, 2894, 2906, 2952, 3021, 3041,** 3223, **3247, 3276.**
except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, . . .	**8, 1078, 1092, 1135, 1170, 1303, 2294,** 2352–3, **2423, 2853, 2865, 2894, 2906, 2952, 3021, 3041,** 3223, **3247, 3276.**

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Section		Index page
	PREVENTION OF UNFAIR LABOR PRACTICES—Con.	
	Enforcement of Orders—Con.	
	and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 . . .	**8, 1078, 1092, 1135, 1170, 1303, 2294,** 2353, **2423, 2452, 2466, 2853, 2865,** 2894, **2906,** 2952, **3021, 3041,** 3223, **3247, 3276.**
	and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).	**8, 1078, 1092, 1135, 1170, 1303, 2294,** 2353, **2423, 2452, 2466, 2853, 2865, 2894, 2906, 2952, 3021, 3041,** 3223, **3247, 3276.**
10 (f)-----	Appeal:	
	[In General]----------	**8,** *86–7, 693, 1006, 1051–2,* **1078, 1092, 1170, 1303–4,** 1360, 1363–1364, *2234–5,* 2284, **2294,** 2342–3, 2353, **2423–4, 2452–3,** 2466–7, *2783,* **2853, 2865, 2894, 2906,** 2931–2, **2952,** 2977–8, **3021, 3041–2** 3048, 3073–5, 3159, 3223, **3247–8,** 3252, 3257, **3276.**
	Any person aggrieved . . . ----	**8,** *87, 1051,* **1078, 1092, 1170, 1303,** *2234,* **2294,** 2353, **2423, 2452, 2466, 2853, 2865, 2894, 2906,** 2932, **2952,** 2978, **3021, 3041,** 3075, 3159, **3247, 3276.**
	by a final order----------	**8,** *87, 1051,* **1078, 1092, 1170, 1303,** 1363, **2294,** 2353, **2423, 2452, 2466, 2853, 2865, 2894, 2906,** 2932, **2952,** 2978, **3021, 3041,** 3075, 3159, **3247, 3276,**
	of the Board . . . --------	**8,** *87, 1051,* **1078, 1092, 1170, 1303,** 1363, **2294,** 2353, **2423, 2452, 2466, 2853, 2865, 2894, 2906,** 2932, **2952,** 2978, **3021, 3041,** 3075, 3159, **3247, 3276.**
	granting or denying in whole . . . ----------	*1052,* **1092, 1170, 1303,** 1363, **2294,** 2353, **2423, 2452, 2466, 2853, 2865, 2894, 2906,** 2932, **2952,** 2978, **3021, 3041,** 3075, 3159, **3247, 3276.**
	or in part . . . ----------	*1052,* **1092, 1170, 1303,** 1363, **2294,** 2353, **2423, 2452, 2466, 2853, 2865, 2894, 2906,** 2932, **2952,** 2978, **3021, 3041,** 3075, 3159, 3223, **3247, 3276,**

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Section	Index page
PREVENTION OF UNFAIR LABOR PRACTICES—Con.	
Appeal—Continued	
the relief sought	*1052*, **1092, 1170. 1303,** 1363, **2294,** 2353, **2423, 2452, 2466, 2853, 2865, 2894, 2906,** 2932, **2952,** 2978, **3021, 3041,** 3075, 3159, 3223, **3247, 3276,**
may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, . . .	**8, 1078, 1092, 1170, 1303–4, 2294,** 2353, **2423–4,** 2432, **2452, 2466–7, 2853, 2865, 2894, 2906,** 2932, **2952,** 2978, **3021, 3041–2,** 3159, 3223, **3247, 3276.**
by filing . . .	**8, 1072, 1078, 1170, 1304, 2294,** 2353, **2424, 2452, 2467, 2853, 2865, 2894, 2906, 2952, 3021, 3042,** 3159, 3222, **3247, 3276.**
in such court a written petition praying that the order of the Board be modified or set aside.	**8,** *1052*, **1078, 1092, 1170, 1304, 2294,** 2353, **2424, 2452, 2467, 2853, 2865, 2894, 2906, 2952, 3021, 3042,** 3159, 3223, **3247, 3276.**
A copy of such petition shall be forthwith served upon the Board . . .	**8, 1078, 1092, 1170, 1304, 2294,** 2353, **2424, 2452, 2467, 2853, 2865, 2894, 2906, 2952, 3021, 3042,** 3223, **3247, 3276.**
and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding . . .	**8, 1078, 1092, 1170, 1304,** 1364, **2294,** 2353, **2424, 2452, 2467, 2853, 2865, 2894, 2906, 2952, 3021, 3042,** 3223, **3247, 3276.**
certified by the Board . . .	**8, 1078, 1092, 1170, 1304,** 1364, **2294,** 2353, **2424, 2452–3, 2467, 2853, 2865, 2894, 2906, 2952, 3021, 3042,** 3223, **3247, 3276.**
including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board . . .	**8, 1078, 1092, 1170, 1304, 2294,** 2353, **2424, 2453, 2467, 2853, 2865, 2894, 2906, 2952, 3021, 3042,** 3223, **3247, 3276.**

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Section		Index page
	PREVENTION OF UNFAIR LABOR PRACTICES—Con.	
	Appeal—Continued	
	Upon such filing the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.	**8–9, 1078, 1092, 1170, 1304,** 1334, **2294,** 2353, **2424, 2453, 2467, 2853, 2865, 2894, 2906, 2952, 3021, 3042,** 3048, 3223, **3247–8, 3276.**
10 (g)-----	Stay of Order:	
	[In General]----------	**9,** *480–1, 539,* **1078, 1092,** 1101, **1170, 1304,** 1325, 1364, *1684,* **2294,** 2353–4, **2424, 2453, 2467, 2853, 2865, 2894, 2906, 2952, 3022, 3042,** 3223, **3248, 3277.**
	The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.	**9, 1078, 1092, 1170, 1304,** *1684,* **2294,** 2354, **2424, 2453, 2467, 2853, 2865, 2894, 2906, 2952, 3022, 3042,** 3223, **3248, 3277.**
10 (h)------	Norris-LaGuardia Act Inapplicable:	
	[In General]----------	**1092, 1170–1, 1304,** 1334, 1364, **2294,** 2354, **2424, 2453, 2467, 2853, 2865, 2895, 2907, 2953,** 2956, **3022, 3042,** 3048, 3223, **3248,** 3252, 3257, **3277.**

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Section		Index page
	PREVENTION OF UNFAIR LABOR PRACTICES—Con.	
	Norris-LaGuardia Act Inapplicable—Continued	
	When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101–115).	**1092, 1170–1, 1304,** *1325*, **2294,** 2354, **2424, 2453, 2467, 2853, 2865, 2895, 2907, 2953, 3022, 3042,** 3223, **3248, 3277.**
10 (i)-----	Expeditious Hearings:	
	[In General]----------	**9, 1078, 1092, 1171, 1135, 1304,** 1325, 1364, **2295,** 2354, **2424, 2453, 2467, 2854, 2866, 2895, 2907, 2953, 3022, 3042,** 3223, **3248, 3277.**
	Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.	**9, 1079, 1092, 1135, 1171, 1304, 2295,** 2354, **2424, 2453, 2467, 2854, 2866, 2895, 2907, 2953, 3022, 3042,** 3223, **3248, 3277.**
11--------	INVESTIGATORY POWERS:	
	For the purpose of all hearings . . .	**11, 1082, 1095, 1138, 1174, 1307,** *2248*, **2297,** 2356, **2424, 2456, 2470, 2854, 2866, 2895, 2907,** 2932, **2953,** 2978, **3022, 3042,** 3076, 3225, **3248, 3277.**
	and investigations . . . . --	**11, 1082, 1095, 1138, 1174, 1307,** 1367, *2231*, *2248*, **2297,** 2356, **2424, 2456, 2470, 2854, 2866, 2895, 2907,** 2932, **2953,** 2978, **3022, 3042,** 3076, 3159, 3225, **3248, 3277.**
	which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10 . . .	**11, 1082, 1095, 1138, 1174, 1307,** 1367, *2231*, *2248*, **2297,** 2355–6, **2424, 2456, 2470, 2854, 2866, 2895, 2907,** 2932, **2953,** 2978, **3022, 3042,** 3076, 3225, **3248, 3277.**

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Section		Index page
	INVESTIGATORY POWERS—Continued	
11 (1)-----	Investigations and Subpenas	
	[In General]----------	**11,** *215*, *223–4*, **1082, 1095–6,** 1108, **1138, 1174,** 1206, 1307–8, 1325, 1366–8, *1891*, *2003*, *2022*, *2058*, *2231–2*, *2248*, **2297–8,** 2315, 2355–6, **2424–5, 2456, 2470,** *2493*, *2783*, **2854, 2866, 2895, 2907,** 2932, **2953,** 2978–9, 2997, **3022, 3042–3,** 3076, 3159, 3225, **3248, 3277.**
	The Board or its duly authorized agents . . .	**1138, 1307,** 1325, 1367, *2231*, *2248*, **2297, 2424, 2456, 2470,** *2783*, **2854, 2866, 2895, 2907, 2953, 3022, 3042,** 3159, 3225, **3248, 3277.**
	or agencies . . . --------	**1138, 1307,** 1325, *2231*, *2248*, **2297, 2424, 2456, 2470,** *2783*, **2854, 2866, 2895, 2907, 2953, 3022, 3042,** 3159, 3225, **3248, 3277.**
	shall at all reasonable times . . .	**1138, 1307,** 1325, 1367, *2232*, *2248*, **2297, 2424, 2456, 2470, 2854, 2866, 2895, 2907, 2953, 3022, 3042,** 3159, 3225, **3248, 3277.**
	have access to . . . -----	**1138, 1307,** 1325, 1367, *2231–2*, *2248*, **2297, 2424, 2456, 2470,** *2783*, **2854, 2866, 2895, 2907, 2953, 3022, 3042,** 3159, 3225, **3248, 3277.**
	for the purpose of examination, . . .	**1138, 1307,** 1325, 1367, *2232*, *2248*, **2297, 2424, 2456, 2470,** *2783*, **2854, 2866, 2895, 2907, 2953, 3022, 3042,** 3159, 3225, **3248, 3277.**
	and the right to copy	**1138, 1307,** 1325, 1367, *2232*, *2248*, **2297, 2424, 2456, 2470,** *2783*, **2854, 2866, 2895, 2907, 2953, 3022, 3042,** 3159, 3225, **3248, 3277.**
	any evidence of any person being investigated . . .	**1138, 1174, 1307,** 1325, 1367, *2232*, *2248*, **2297, 2424, 2456, 2470,** *2783*, **2854, 2866, 2895, 2907, 2953, 3022, 3042–3,** 3159, 3225, **3248, 3277.**
	or proceeded against	**1138, 1174, 1307,** 1325, 1367, *2232*, *2248*, **2297, 2424, 2456, 2470, 2854, 2866, 2895, 2907, 2953, 3022, 3043,** 3159, 3225, **3248, 3277.**

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Section	Index page
INVESTIGATORY POWERS—Continued	
Investigations and Subpenas—Continued	
that relates . . . -------	**1138, 1174, 1307,** 1325, 1367, *2232*, **2297, 2424, 2456, 2470, 2854, 2866, 2895, 2907, 2953, 3022, 3043,** 3159, 3225, **3248, 3277.**
to any matter under investigation . . .	**1138, 1174, 1307,** 1325, 1367, *2232*, **2297, 2424, 2456, 2470, 2854, 2866, 2895, 2907, 2953, 3022, 3043,** 3159, 3225, **3248, 3277.**
or in question . . . -----	**1138, 1174, 1307,** 1325, 1367, *2232*, **2297, 2424 2456, 2470, 2854, 2866, 2895, 2907, 2953, 3022, 3043,** 3159, 3225, **3248, 3277.**
Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses . . .	**12, 1082, 1095, 1138, 1174, 1307–8,** 1367-8, *2232*, **2297, 2424, 2456, 2470, 2854, 2866, 2895, 2907,** 2932, **2953,** 2979, **3022, 3043,** 3076, 3159, 3225, **3248, 3277.**
and the production of any evidence . . .	**12, 1082, 1095, 1115, 1138, 1174, 1308,** 1368, **2297, 2424, 2456, 2470, 2854, 2866, 2895, 2907,** 2932, **2953,** 2979, **3022, 3043,** 3076, 3159, 3225, **3248, 3277.**
that relates . . . ---	**12, 1082, 1095, 1138, 1174, 1308,** 1368, *2232*, **2297, 2424, 2456, 2470, 2854, 2866, 2895, 2907,** 2932, **2953,** 2979, **3022, 3043,** 3076, 3159, 3225, **3248, 3277.**
to any matter under investigation . . .	**12, 1082, 1095, 1115, 1138, 1174, 1308,** 1368, *2232*, **2297, 2424, 2456, 2470, 2854, 2866, 2895, 2907,** 2932, **2953,** 2979, **3022, 3043,** 3076, 3159, 3225, **3248, 3277,**
or in question, ...	**12, 1082, 1095, 1138, 1174, 1308,** 1368, **2297, 2424, 2456, 2470, 2854, 2866, 2895, 2907,** 2932, **2953,** 2979, **3022, 3043,** 3076, 3159, 3225, **3248, 3277.**
before the Board, its member, agent, or agency conducting the hearing or investigation . . .	**1138, 1174, 1308, 2297–8, 2424–5, 2456, 2470, 2854, 2866, 2895, 2907, 2953, 3022, 3043,** 3159, 3225, **3248, 3277.**

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Section		Index page
	INVESTIGATORY POWERS—Continued	
	Investigations and Subpenas—Continued	
	any member of the Board, . . .	**12, 1082, 1095, 1138, 1174, 1308,** 1368, **2298, 2425, 2456, 2470, 2854, 2866, 2895, 2907, 2953, 3022, 3043,** 3159, 3225, **3248, 3277.**
	or any agent or agency designated by the Board for such purposes, . . .	**12, 1082, 1095–6, 1138, 1174, 1308,** 1368, **2298 2425, 2456, 2470, 2854, 2866, 2895, 2907, 2953, 3022, 3043,** 3159, 3225, **3248, 3277.**
	may administer oaths and affirmations, . . .	**12, 1082, 1096, 1138, 1174, 1308,** 1368, **2298, 2425, 2456, 2470, 2854, 2866, 2895, 2907, 2953, 3022, 3043,** 3159, 3225, **3248, 3277.**
	examine witnesses, ...	**12, 1082, 1096, 1138 1174, 1308,** 1368, **2298, 2425, 2456, 2470, 2854, 2866, 2895, 2907, 2953, 3022, 3043,** 3159, 3225, **3248, 3277.**
	and receive evidence.	**12, 1082, 1096, 1138, 1174, 1308,** 1368, **2298, 2425, 2456, 2470, 2854, 2866, 2895, 2907, 2953, 3022, 3043,** 3159, 3225, **3248, 3277.**
	such attendance of witnesses and the production of such evidence may be required from any place in the United States or any territory or possession thereof, at any designated place of hearing.	**12, 1082, 1138, 1174, 1308,** 1367–8 **2298, 2425, 2456, 2470, 2854, 2866, 2895, 2907, 2953, 3022, 3043,** 3159, 3225, **3248, 3277.**
11 (2)	Enforcement of Subpena:	
	[In General].	**12, 1082, 1096, 1138, 1174, 1308, 1325–6,** 1368, **2298, 2320, 2356, 2425, 2456, 2470–1, 2854, 2866, 2895–6, 2907–8, 2953–4,** 2979, **3022–3, 3043,** 3076, 3225, **3248–9, 3277.**
	In case of contumacy . . .	**12, 1082, 1096, 1138, 1174, 1308,** 2298, 2356, **2425, 2456, 2470, 2854, 2866, 2895, 2907, 2953,** 2979, **3022, 3043,** 3076, 3225, **3248, 3277.**

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Section	Index page
INVESTIGATORY POWERS—Continued	
Enforcement of Subpena—Con.	
or refusal to obey a subpena issued to any person . . .	**12, 1082, 1096, 1138, 1174, 1308,** 1325, **2298,** 2356, **2425, 2456, 2470, 2854, 2866, 2895, 2907, 2953,** 2979, **3022, 3043,** 3076, 3225, **3248, 3277.**
any district court of the United States, or of the United States courts of any territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on . . .	**12, 1082, 1096, 1138, 1174, 1308,** 1325, 1368, **2298,** 2356, **2425, 2456, 2470, 2854, 2866, 2895, 2907, 2953, 3022, 3043,** 3225, **3248–9, 3277.**
or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found . . .	**12, 1082, 1096, 1138, 1174, 1308, 2298,** 2356, **2425, 2456, 2470, 2854, 2866, 2895, 2907, 2953, 3022–3, 3043,** 3225, **3249, 3277.**
or resides . . . ----------	**12, 1082, 1096, 1138, 1174, 1308, 2298,** 2356, **2425, 2456, 2470, 2854, 2866, 2895, 2907, 2953, 3023, 3043,** 3225, **3249, 3277.**
or transacts business . . .	**1138, 1174, 1308, 2298,** 2356, **2425, 2456, 2470, 2854, 2866, 2895, 2907, 2953, 3023, 3043,** 3225, **3249, 3277.**
upon application by the Board . . .	**12, 1082, 1096, 1138, 1174, 1308, 2298,** 2356, **2425, 2456, 2470, 2854, 2866, 2895, 2907, 2953,** 2979, **3023, 3043,** 3076, 3225, **3249, 3277.**
shall have jurisdiction to issue to such person an order requiring such person to appear before the the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question.	**12, 1082, 1096, 1138, 1174, 1308, 2298,** 2356, **2425, 2456, 2470 2854, 2866, 2895–6, 2907–8, 2953–4,** 2979, **3023, 3043,** 3076, 3225, **3249, 3277.**
and any failure to obey such order of the court may be punished by said court as contempt thereof.	**12, 1082, 1096, 1138, 1174, 1308, 2298,** 2356, **2425, 2456, 2471, 2854, 2866, 2896, 2908, 2954,** 2979, **3023, 3043,** 3076, 3225, **3249, 3277.**

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Section		Index page
	INVESTIGATORY POWERS—Continued	
11 (3)-----	Self-Incrimination:	
	[In General]----------	**12,** *538, 616, 802,* **1082–3, 1096, 1138–9, 1174–5, 1308,** 1326, 1368–9, *2149,* **2298, 2425, 2456–7, 2471, 2854–5, 2866–7, 2896, 2908, 2954, 3023, 3043,** 3076, 3225, **3249, 3277.**
	No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience, to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.	**12, 1082–3, 1096, 1138–9, 1174–5, 1308, 2298, 2425, 2456–7, 2471, 2854–5, 2866–7, 2896, 2908, 2954, 3023, 3043,** 3225, **3249, 3277.**
11 (4)-----	Service of Process:	
	[In General]----------	**9, 12–13,** *481, 693,* **1079–80, 1083, 1092–3, 1096, 1135–6, 1139, 1171, 1174–5, 1308–9,** 1326, 1369, **2298–9, 2425–6, 2457, 2471,** *2759,* **2855, 2867, 2896, 2908, 2932, 2954,** 2979, **3023, 3043–4,** 3076, 3159, 3225–6, **3249, 3278.**
	Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally . . .	**9, 1079, 1092 1135, 1171, 1308, 2298, 2425, 2457, 2471, 2855, 2867, 2896, 2908, 2954, 3023, 3043,** 3159, 3225, **3249, 3278.**
	or by registered mail . . .	**9, 1079, 1093, 1136, 1171, 1308, 2298, 2425, 2457, 2471, 2855, 2867, 2896, 2908, 2954, 3023, 3043,** 3159, 3225, **3249, 3278.**

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Section		Index page
	INVESTIGATORY POWERS—Continued	
	Service of Process—Continued	
	or by telegraph . . .	**9,** *693*, **1079, 1093, 1136, 1171, 1308, 2298, 2425, 2457, 2471, 2855, 2867, 2896, 2908, 2954, 3023, 3043,** 3159, 3225, **3249, 3278.**
	or by leaving a copy thereof at the principal office . . .	**9, 1079, 1093, 1136, 1171, 1308, 2298, 2425, 2457, 2471, 2855, 2867, 2896, 2908, 2954, 3023, 3043,** 3159, 3225, **3249, 3278.**
	or place of business of the person required to be served . . .	**9, 1079, 1093, 1135, 1171, 1308–9, 2298, 2425, 2457, 2471, 2855, 2867, 2896, 2908, 2954, 3023, 3043,** 3159, 3225, **3249, 3278.**
	The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same . . .	**9, 1079–80, 1093, 1136, 1171, 1309, 2298, 2425, 2457, 2471, 2855, 2867, 2896, 2908, 2954, 3023, 3043–4,** 3225–6, **3249, 3278.**
	Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States . . .	**12,** *693*, **1083, 1096, 1139, 1175, 1309, 2298–9, 2425, 2457, 2471, 2855, 2867, 2896, 2908, 2954, 3023, 3044,** 3226, **3249, 3278.**
	and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.	**12–13,** *693*, **1083, 1096, 1139, 1175, 1309,** 1326, **2299, 2425–6, 2457, 2471, 2855, 2867, 2896, 2908, 2954, 3023, 3044,** 3226, **3249, 3278.**
11 (5).....	Place of Service:	
	[In General].....	**1309,** 1326, **1369–70, 2299, 2426, 2457, 2471, 2855, 2867, 2896, 2908, 2954, 3023, 3044,** 3226, **3249, 3278.**

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Section		Index page
	INVESTIGATORY POWERS—Continued	
	Place of Service—Continued	
	All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.	**1309, 2299, 2426, 2457, 2471, 2855, 2867, 2896, 2908, 2954, 3023, 3044,** 3226, **3249, 3278.**
11 (6).....	Interdepartmental Information:	
	[In General].....	**13,** *459*, *539*, *693*, *1043*, **1083, 1096–7, 1139, 1175, 1309,** 1326, 1370, *2299*, *2426*, *2457*, *2471*, *2855*, **2867, 2896,** *2908*, *2954*, *3023*, *3044*, 3159, 3226, **3249, 3278.**
	The several departments and agencies of the government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.	**13,** *693*, **1083, 1096–7, 1139, 1175, 1309,** 1370, **2299, 2426, 2457, 2471, 2855, 2867, 2896, 2908, 2954, 3023, 3044,** 3159, 3226, **3249, 3278.**
12.....	INTERFERENCE WITH BOARD AGENT:	
	[In General].....	**13,** *473*, *693*, *1028*, **1083, 1097,** 1108, **1139, 1161, 1175,** 1206, **1225, 1256, 1309,** 1326, 1371, *1668*, **2022,** *2149*, **2299,** 2315, 2356, **2426, 2457, 2471,** *2759*, **2855, 2867, 2896, 2908,** 2933, **2954,** 2979, 2997, **3024, 3044,** 3076, 3157, 3170, 3226, **3250. 3278.**
	Any person who shall willfully resist, . . .	**13, 1083, 1097, 1139, 1175, 1309, 2299,** 2356, **2426,** 2457, **2471, 2855, 2867, 2896, 2908,** 2933, **2954,** 2979, **3024, 3044,** 3076, 3157, 3170, 3226, **3250, 3278.**
	prevent, ...	**13, 1083, 1097, 1139, 1175, 1309, 2299,** 2356, **2426, 2457, 2471, 2855, 2867, 2896, 2908,** 2933, **2954,** 2979, **3024, 3044,** 3076, 3157, 3170, 3226, **3250, 3278.**
	impede, ...	**13, 1083, 1097, 1139, 1175, 1309, 2299,** 2356, **2426, 2457, 2471, 2855, 2867, 2896, 2908,** 2933, **2954,** 2979, **3024, 3044,** 3076, 3157, 3170, 3226, **3250, 3278.**

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Section		Index page
	INTERFERENCE WITH BOARD AGENT—Con.	
	or interfere . . .	**13, 1083, 1097, 1139, 1175, 1309, 2299,** 2356, **2426, 2457, 2471, 2855, 2867, 2896, 2908,** 2933, **2954,** 2979, **3024, 3044,** 3076, 3157, 3170, 3226, **3250, 3278.**
	with any member of the Board . . .	**13, 1083, 1097, 1139, 1175, 1309, 2299,** 2356, **2426, 2457, 2471, 2855, 2867, 2896, 2908,** 2933, **2954,** 2979, **3024, 3044,** 3076, 3157, 3170, 3226, **3250, 3278.**
	or any of its agents . . .	**13, 1083, 1097, 1139, 1175, 1309, 2299,** 2356, **2426, 2457, 2855, 2867, 2896, 2908,** 2933, **2954,** 2979, **3024, 3044,** 3076, 3157, 3170, 3226, **3250, 3278,**
	or agencies . . .	**1309, 2299,** 2356, **2426, 2457, 2471, 2855, 2867, 2896, 2908,** 2933, **2954,** 2979, **3024, 3044,** 3076, 3157, 3170, 3226, **3250, 3278.**
	in the performance of duties pursuant to this Act . . .	**13, 1083, 1097, 1139, 1175, 1309, 2299,** 2356, **2426, 2457, 2471, 2855, 2867, 2896, 2908,** 2933, **2954,** 2979, **3024, 3044,** 3076, 3157, 3170, 3226, **3250, 3278.**
	shall be punished by a fine of not more than $5,000, or by imprisonment for not more than one year, or both.	**13, 1083, 1097, 1139, 1175, 1309, 2299,** 2356, **2426, 2457, 2471, 2855, 2867, 2896, 2908,** 2933, **2954,** 2979, **3024, 3044,** 3076, 3157, 3170, 3226, **3250, 3278.**
13	RIGHT TO STRIKE:	
	[In General]	**14,** *40–1, 83, 150, 153, 494, 694, 702, 717, 726, 946, 1028, 1052–3,* **1084, 1097,** 1108, **1140,** 1207, 1242–3, **1255–6, 1309,** 1326, 1336, 1371, *1685, 1689, 1714, 1715, 1760–1, 2014, 2058, 2157, 2163, 2199,* **2299,** 2315, 2356, **2426, 2457, 2472, 2855, 2867, 2897, 2909,** 2933, **2955,** 2979, **3024, 3044,** 3076, 3160, 3226–7, **3250, 3278.**
	Nothing in this Act shall be construed so as to interfere with . . .	**14,** *40–1, 83, 702, 1028,* **1084, 1140,** 1242, **1309,** 1336, *1689, 1714, 2163, 2199,* **2299,** 2315, 2356, **2426, 2457, 2472, 2855, 2867, 2897, 2909, 2955, 3024, 3044,** 3160, 3226, **3250, 3278.**

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Section		Index page
	RIGHT TO STRIKE—Con.	
	or impede . . . ----------	**14,** *702*, *1028*, **1084, 1140,** 1242, **1309,** 1336, *1689*, *1714*, *2163*, *2199*, **2299,** 2315, 2356, **2426, 2457, 2472, 2855, 2867, 2897, 2909, 2955, 3024, 3044,** 3160, 3226, **3250, 3278.**
	or diminish . . . --------	**14,** *83*, *1028*, **1084, 1140,** 1242, **1309,** 1336, *1689*, *1714*, *2163*, *2199*, **2299,** 2315, 2356, **2426, 2457, 2472, 2855, 2867, 2897, 2909, 2955, 3024, 3044,** 3160, 3226, **3250, 3278.**
	in any way the right to strike.	**14,** *83*, *702*, *1028*, **1084, 1140,** 1242, **1309,** 1336, *1689*, *1714*, *2163*, *2199*, **2299,** 2315, 2356, **2426, 2457, 2472, 2855, 2867, 2897, 2909, 2955, 3024, 3044,** 3160, 3226, **3250, 3278.**
14--------	CONFLICT WITH OTHER ACTS:	
	[In General]----------	**14,** *694*, *1056*, **1084, 1097,** 1108, **1140, 1309–10, 1326, 1371, 2299,** 2315, 2356, **2426, 2457–8, 2472, 2855–6, 2867–8, 2897, 2909, 2955–6, 3024, 3044,** 3048, 3226, **3250,** 3252, 3258, **3278.**
	Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C. Supp. VII, title 15, sec. 707 (a)), as amended from time to time, or of section 77B, paragraphs (l) and (m) of the Act approved June 7, 1934, entitled, "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 13, 1934 (48 Stat. 1183), conflicts . . .	**1309–10, 2299,** 2356, **2426, 2457–8, 2472, 2855–6, 2868, 2897, 2909, 2955, 3024, 3044, 3250, 3278.**

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Section		Index page
	CONFLICT WITH OTHER ACTS—Continued	
	with the application of the provisions of this Act, this Act shall prevail, . . .	**1310, 2299,** 2356, **2426, 2457–8, 2472, 2855–6, 2868, 2897, 2909, 2955, 3024, 3044, 3250, 3278.**
	Provided, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.	**1310, 2299,** 2356, **2426, 2457–8, 2472, 2855–6, 2868, 2897, 2909, 2955, 3024, 3044, 3250, 3278.**
15	SEPARABILITY	**14, 1085, 1097,** 1108, **1140, 1176,** 1207, **1310,** 1336, 1371, **2299,** 2315, 2356, **2426, 2458, 2856, 2868, 2897, 2909,** 2933, **2955,** 2979, **3024, 3045,** 3076, 3227, **3250,** 3252, **3278.**
	If any provision of this Act, . . .	**14, 1140, 1176, 1310, 2299,** 2356, **2426, 2458, 2856, 2868, 2897, 2909, 2955, 3024, 3045,** 3227, **3250, 3278.**
	or the application of such provision to any person. . . .	**14, 1140, 1176, 1310, 2299,** 2356, **2426, 2458, 2856, 2868, 2897, 2909, 2955, 3024, 3045,** 3227, **3250, 3278.**
	or circumstance, . . .	**14, 1140, 1176, 1310, 2299,** 2356, **2426, 2458, 2856, 2868, 2897, 2909, 2955, 3024, 3045,** 3227, **3250, 3278.**
	shall be held invalid . . .	**14, 1140, 1176, 1310, 2299,** 2356, **2426, 2458, 2856, 2868, 2897, 2909, 2955, 3024, 3045,** 3227, **3250, 3278.**
	the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.	**14, 1140, 1176, 1310, 2299,** 2356, **2426, 2458, 2856, 2868, 2897, 2909, 2955, 3024, 3045,** 3227, **3250, 3279.**
16	CITATION:	
	[In General]	**1098, 1128, 1310,** 1326, 1371, **2299,** 2315, 2356, **2426, 2458, 2472, 2856, 2868, 2897, 2909, 2955, 3024, 3045,** 3227, **3250,** 3252, 3258, **3279.**
	This Act may be cited as the "National Labor Relations Act."	**1310, 1371, 2299,** 2315, 2357, **2426, 2458, 2472, 2856, 2868, 2897, 2909, 2955, 3024, 3045,** 3227, **3250, 3279.**

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TOPICAL INDEX TO LEGISLATIVE HISTORY OF THE NATIONAL LABOR RELATIONS ACT*

A

Index page

Ability to pay as factor in collective bargaining. *607*, 1292, *2016*, *2022*, *2064*.

Affecting commerce:

Definition ... *427*, **1297**, 1320, 1347, 1357–8, *1719*, *1835*, *2020*, **2287**, 2306, 2378–80, **2417**, **2446**, **2460**, **2847**, **2859**, **2888**, **2900**, 2918, **2946**, 2964, 2977, **3015**, **3035**, 3047, 3057, 3058, 3074, 3123, 3126, 3136, 3150, 3200, 3205, **3241**, 3252, 3255, **3271**.

Remarks of Senator Wagner ... *1835*.

Agents:

Employee as agent ... *91*, *1042*, *1945*, *2224*.

Supervisor as agent ... *102*, *257*.

Agricultural employees ... *269*, *733*, *940*, *1005*, *1038*, 1099, 1119, 2306, 2936, 2983, 3081, 3199–3202.

See also section 2 (3) of the Sectional Index.

American Federation of Labor:

Favored by National Labor Relations Act. *261*, *270*, *340*, *473*, *974*.

Membership statistics ... *141–2*, *603*.

Structure ... *180*, *1017*.

Antitrust law:

Application to trade unions ... *377*, *427*, *1408*, *1409*, *1634*, *1638*.

Remarks of Senator Wagner ... *377*, *1408*.

Failure to enforce ... *185*.

Appeal from National Labor Relations Board orders. **8**, *86–87*, *693*, *1006*, *1051*, *1052*, **1078**, **1092**, **1170**, **1303**, 1360, 1363–4, *2234*, *2235*, 2284, **2294**, 2342–3, 2353, **2423**, **2452**, 2466, *2783*, **2853**, **2865**, **2894**, **2906**, 2931–2, **2952**, 2977, 2978, **3021**, **3041**, 3048, 3073, 3074, 3075, 3159, 3223, **3247**, 3252, 3257, **3276**.

Remarks of Senator Wagner ... 2342–3.

Appropriate bargaining units:

In general ... 1356, *1458*, *1496*, *1675*, *1679*, *1681*, *1984*, *2261*, 3178.

Remarks of Senator Wagner ... *1675*, *1679*, *168*.

Collective bargaining history, as factor. *1459*.

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	Index page
Appropriate bargaining units—Continued	
Craft unit proviso	*257*, *258*, *266*.
Determination by National Labor Relations Board.	*274*, *1458*, *1681*, *1688*, *1819*, *1851*, *2044*.
Remarks of Senator Wagner	*1681*, *1819*.
Multiemployer units	*237*, *313*, *317–18*, 3219–21, 3230.
Multiplant unit	*2710*, 3178.
One-man unit	1342.
Plant-wide units	*237*, *1433*, *1510*, *1511*, *1676*, *1935*.
Remarks of Senator Wagner	*1676*.
Arbitration of labor disputes	17, 21, 26, *47*, *50*, *52*, *59*, *103*, *125–6*, *150*, *161*, *186*, *246*, *259–60*, *342–55*, *384*, *405*, *414*, *416*, *459*, *473*, *497*, *500*, *522*, **1093–4**, 1106, **1136–7**, **1171–3**, 1229, 1292, **1305–7**, 1325, 1365–6, *1424*, *1714–17*, *2020*, **2277**, **2295**, 2341, 2354, 2443, **2454**, *2708*, *2784*.
Remarks of Senator Wagner	17, 21, 26, *47*.
Associations. *See* Employer associations, this index.	
Automobile dispute settlement (1933):	
Principles	*1997–8*.
Text	*754–5*.
Text of President Roosevelt's statement.	1067.
Attorney General:	
Enforcement of Board orders. *See* Judicial review and enforcement of Board orders, this index.	
B	
Back-pay orders	*1834*, *2136*, *2232–4*.
Remarks of Senator Wagner	*1834*.
See also Remedies for unfair labor practices; Judicial review and enforcement of Board orders.	
Bargaining. *See* Collective Bargaining, this index.	
Bargaining agents:	
Expert character	15, 21, 22, 24, *262*, *265*.
Remarks of Senator Wagner	15, 21, 22, 24.
Inside employee	24, *114*, *170*, *238*, *262*, *813*, 1319.
Remarks of Senator Wagner	24, *114*.
Restrictions on choice	*56*, *68*, *114*, *121*, *124*, *158–9*, *170*, *222*, *237*, *262*, 1211, 1241, *1416*.
See also Officers and agents of unions, this index.	

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Index page

Bargaining power:
Equality of ... 15, 17, 20, 26, *39*, *47*, *98*, *99–100*, *202*, *211*, *216*, *312*, *316*, *375*, *390*, 1147, 1148, 1291, 1318, *1408*, *1454*, *1478*, *1527*, *1543*, *1553*, *1569*, *1734*, *1866*, *1902*, 2910.
Remarks of Senator Wagner ... 15, 17, 20, 26, *39*, *47*, *202*, *1408*, *1866*.
Bargaining units. *See* Appropriate bargaining units, this index.
Bills and resolutions:
S. 1958, 74th Cong., 1st sess.:
Original Senate print ... **1295.**
Compared with S. 2926 ... 1319.
Hearings before Senate Committee. *1373.*
Second Senate print, as reported ... **2285.**
Senate Report No. 573 ... 2300.
Senate debate ... 2321.
Passage by Senate ... 2414.
Third Senate print ... **2416.**
First House print, as passed Senate. **2886.**
Second House print, as reported ... **2944.**
House Report No. 972 ... 2956.
Third House print ... **3003.**
Fourth House print ... **3032.**
House Report No. 1147 ... 3046.
House debate ... 3112.
Passage by House ... 3228.
Fourth Senate print, as passed House. **3238.**
House Conference Report No. 1371. 3252.
Final print ... **3268.**
S. 2926, 73d Cong., 2d sess.:
Original Senate print ... **1.**
Hearings before Senate Committee. *27.*
Second Senate print ... **1070.**
Remarks of Senator Wagner ... **1070.**
Senate Report No. 1184 ... 1099.
H. R. 6187, 74th Cong., 1st sess.:
Original House print ... **2445.**
H. R. 6288, 74th Cong., 1st sess.:
Original House print ... **2459.**
Hearings before House Committee. *2473.*
H. R. 7937, 74th Cong., 1st sess.:
Original House print ... **2845.**
H. R. 7978, 74th Cong., 1st sess.:
Original House print ... **2857.**
Second House print ... **2898.**
House Report No. 969 ... 2910.

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Bills and resolutions—Continued Index page
H. R. 8423, 73d Cong., 2d sess.:
Original Senate print---------- **1128.**
S. J. Resolution 143, 73d Cong., 2d sess.:
Introduced in Senate---------- 1156.
Reported---------- **1160.**
Senate Report No. 1447-------- 1162.
Senate debate---------- 1177.
H. J. Resolution 375, 73d Cong., 2d sess.:
Introduced in House---------- 1224.
Passage by House---------- 1226.
Senate debate---------- 1232.
Passage by Senate---------- 1254.
House agrees to Senate amendments. 1254.
Public Resolution No. 44, 73d Cong., 2d. sess. **1255.**
H. Res. 227, 74th Cong., 1st sess.:
Original House print---------- **2990.**
H. Res. 250, 74th Cong., 1st sess.:
Original House print---------- **3089.**
H. Res. 263, 74th Cong., 1st sess.
Original House print---------- **3092.**
House Report No. 1259-------- 3093.
House debate---------- 3093.
Agreed to in House---------- 3112.
Blacklisting. *See* Interference, restraint, and coercion of employees, this index.
Boycotts. *See* Secondary boycotts, this index.
Building industry. *See* Restrictive trade-union practices, this index.
Business secrets:
Grounds for refusal of access to organizers. *606.*

C

Captive mines:
Collective bargaining in captive mines. *177.*
Catholic Church:
Attitude toward right to organize---- *484–5, 491–2.*
Remarks of Senator Wagner----- *491–2*
Cease and desist orders---------- **6,** *537–8,* **1076, 1090,** 1107, **1116, 1134, 1168, 1302,** 1324, 1332, 1360, *1834, 2058, 2231,* 2292, 2314, 2352, **2421, 2451, 2465,** *2758, 2759,* **2851, 2863, 2892, 2904,** 2931, **2950,** 2977, **3019,** 3040, 3073, 3074, 3222, **3245, 3275.**
Remarks of Senator Wagner--------- *1834*

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Index page

Certifications:
Duration of certifications---------- *93, 566, 801, 1820, 1832.*
Remarks of Senator Wagner----- *1820, 1832*
See also Judicial review of representation proceedings, this index.
Charges of unfair labor practices:
Status of charging party---------- *1826–7.*
Remarks of Senator Wagner----- *1826–7*
Investigation of charges---------- *2094–5.*
Remarks of Senator Wagner----- *2095*
Check-off of union dues---------- *421–2, 817,* 1100, 1120, *2269.*
Civil liberties in labor disputes---------- *331, 335, 973.*
Civil Works Administration:
Hiring through unions---------- *419, 420.*
Closed-shop contracts---------- *16, 25, 39, 81, 84, 85, 87, 109, 181, 246–7, 270, 271, 291, 301, 321, 366, 395, 463, 487, 533, 535, 544, 545, 552, 566, 568, 668, 691, 696, 698, 699, 726, 791, 800, 801, 933, 946, 1003, 1004, 1009, 1043, 1053–4,* 1100–6, 1119, 1313, 1327, *1418, 1420, 1497, 1516, 1560, 1599, 1615, 1616, 1657, 1666, 1731, 1734, 1735, 1742, 1743, 1772, 1817, 1818, 1889, 1917, 2026, 2027, 2057, 2061, 2062, 2083, 2084, 2086–7,* 3229–31.
Remarks of Senator Wagner-------- *16, 25, 39, 1418, 1420, 1817, 1818, 1889, 1917, 2026, 2061, 2062.*
Discharge under closed-shop contract for political reasons. *156–7.*
Discharge under closed shop for dual union activity. *1053–4, 1675,* 2442, *2746.*
Remarks of Senator Wagner---- *1675.*
Legality of closed shop---------- 1353–5, *1417, 1496, 1741.*
Collective bargaining:
Defenses to refusal to bargain:
Breach of contract---------- 3128.
Competitive disadvantage of employer. *273, 308, 313.*
Employee violence---------- *377, 533.*
Illegal strike---------- *406.*
Objectionable representative---- *751, 1043.*
Outside representative--------- *308.*
Political affiliation of union----- *533, 670, 690, 1917,* 3126.
Definition---------- *90, 147, 262, 669, 1433, 1479, 1517, 1697.*
Distinguished from mere conference-- *150, 222, 226, 264, 1517,* **2320.**
Remarks by Senator Wagner---- *264.*
Duty to accept proposals---------- *669,* 1124, 1192, 2393, 3116.

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Collective bargaining—Continued — Index page
Economic rationale — *211, 245, 273, 318, 1317, 1419, 1452, 1454, 1532, 1536, 1537, 1538, 1539, 1553–6, 1569, 1598, 2259,* 2915–16, 2928, 2962, 2974, 3054, 3070.
Remarks by Senator Wagner — *1419.*
Refusal to bargain — *16, 38, 40, 42, 89, 135, 137, 150, 173, 213, 222, 294, 306, 338, 540,* 1118, 1190, *1421, 1455–6, 1517, 1672, 1684, 1697, 1701, 1709.*
Remarks by Senator Wagner — *16, 38, 40, 42, 1421.*
Failure to reach agreement — *540, 1420.*
Unilateral employer action — *137, 1450.*
Scope of duty — *15, 24, 26, 38, 48, 90, 147, 245, 249, 315, 318, 320, 321, 333–4, 335, 380, 383, 386–7, 397, 441, 515, 552, 669, 763–4,* 1124, *1531, 1533, 1569, 1877, 2259,* 2443.
Remarks of Senator Wagner — *15, 24, 26, 38, 48, 380, 441, 515.*
Subjects of collective bargaining:
Ability to pay — *607, 1662.*
Closed shop — 2393.
Employee welfare plans — *16, 25, 39, 451, 1417.*
Remarks of Senator Wagner — *16, 25, 39.*
Grievances — 1347.
Office procedures — *441.*
Price and sales policy — *245.*
Production policy — *540.*
Wage and piece-work rates — *794, 1411, 1505, 1510.*
Working conditions — 1119.
Submission of membership lists as condition precedent to bargaining — *173,* 1210.
Time and place for bargaining — *2787.*
Commerce:
Definition — **2**, *427*, **1072**, **1086**, **1130**, **1164**, **1296**, 1331, 1347, *2163*, **2287**, 2346, 2378, **2417**, **2446**, **2460**, **2846**, **2858**, **2887**, **2900**, 2918, **2946**, 2964, **3015**, **3035**, 3047, 3057, 3123, 3150, 3200, **3240**, 3252, **3254**, **3271**.
Distinguished from production — *424–7, 536.*
See also Constitutionality of National Labor Relations Act.
Commission on Industrial Relations of the United States Government — *188–91.*
Communist Party of the United States:
Attitude toward National Labor Relations Act — *1967–73.*

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Index page

Company houses ..... *306–7.*
Company time and property:
Union activity on company time and property. *92, 105, 454–5, 606, 769, 1041,* **1087, 1322, 1336,** *1830, 1831, 1876, 1879, 1926, 2041, 2100, 2101,* **2401,** *2766–7.*
Remarks of Senator Wagner .... *1830, 2041, 2100,* **2401.**
Company towns ..... *137, 300, 306–7, 314.*
Company unions:
In general ..... *15, 20, 21, 22, 26, 39 42–3, 56, 98–9, 101–32, 141, 149, 158, 163, 165–7, 168, 170, 172, 173, 202, 213, 221, 228–33, 238, 245, 249, 272, 286–8, 291, 300, 312, 318, 319, 338–9, 366, 379–80, 389, 394, 395, 403–4, 408, 410, 415, 421, 429, 436–7, 440–1, 489–90, 602, 603, 634, 643, 681, 767, 818–20, 822, 919, 975, 979, 1058,* **1104, 1149, 1151, 1190.**
Remarks of Senator Wagner .... *15, 20, 21, 22, 26, 39, 42–3, 338–9, 379–80, 389, 394, 404, 408, 410, 440–1.*
Cause of labor disputes ..... *109, 112, 118, 170, 227, 265, 335.*
Collective bargaining by company unions. *102, 106–7, 110, 121, 166, 176, 180–1, 221, 244, 245, 265, 271, 504, 828, 836, 843, 847, 874, 884, 892, 950, 966,* **1319,** *1434, 1508, 1544, 1877, 2063.*
Remarks of Senator Wagner .... *265.*
Distinguished from inside unions .... *109, 379, 410, 429, 440, 490.*
Remarks of Senator Wagner .... *410, 429, 440.*
Election procedure ..... *204–5, 451, 503–4, 838–9, 843, 899–900, 950, 1546.*
Grievance procedures ..... *125, 204–6, 319, 452–3, 455, 505, 820, 838.*
Indicia of domination:
Bylaws and constitutions ..... *39, 105, 112, 113, 115, 129, 263, 452, 808, 828,* **1237, 1313,** *1417,* **2375.**
Remarks of Senator Wagner. *39, 112, 1237,* **1417, 2375.**
Difficulty of proof ..... *90–1, 112, 144, 163, 258, 391–2.*
Remarks of Senator Wagner. *391–2.*
Employee benefits ..... *16, 21, 25, 39, 40, 105, 128, 130, 254, 393, 402, 638, 667, 710–11, 715, 771, 794, 830,* **1103, 1313,** *1418, 1664.*
Remarks of Senator Wagner. *16, 21, 25, 39, 40, 1418.*
Employer facilities ..... *125, 128, 205, 454–5,* **2374.**

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Index page

Company unions—Continued
Indicia of domination—Continued
Financial assistance and control— *57, 105, 111, 125, 128, 130, 149, 163, 174, 199, 237, 318, 393, 436, 454, 459, 809, 814–15, 821, 837, 839, 875, 912, 951–2,* 1125, 1334, *1418–19, 1493, 1544, 1545, 1559, 1566, 1612, 1614, 1615, 1625, 1682, 1712, 1713, 1749, 1755, 1765, 1780, 1797, 1798, 1808, 1829, 1830, 1860, 1862, 1863, 1876, 1907, 1923, 1925, 1926, 1930, 1935–7, 1987, 1988, 2041, 2042, 2269,* **2374.**
Remarks of Senator Wagner— *111, 393, 1418–19, 1682, 1780, 1829, 1830, 1863, 1907, 2041.*
Initiation and creation— *68, 90–2, 111, 144, 290, 389, 926, 951.*
Remarks of Senator Wagner— *111, 389.*
Interference with elections— *39, 40, 91, 112, 129, 174, 237, 290, 319, 520–1.*
Lack of formal meetings— *129.*
Management prerogative clause— *115, 119, 131.*
Participation of supervisors— *236, 455.*
Restriction on choice of representatives— *237, 238, 262.*
Revenue from concessions— *459.*
Selection of officers— *197, 204, 341.*
Method of formation— *112–35, 174, 290, 505–6, 1546.*
Remarks of Senator Wagner— *505–6.*
Development prior to the National Labor Relations Act— *106–8, 395, 1416, 1485, 1545.*
Remarks of Senator Wagner— *1416.*
See also Employee representation plans; Independent unions, this index.
Competitive position of employers— *299, 300, 308, 313, 319, 609, 1594.*
Remarks of Senator Wagner— *1594.*
See also Wage standardization, this index.
Complaints:
Amendment of complaints— *67, 460, 538, 1005,* 1359, *1643, 2230, 2231.*
Issuance of complaints— *67, 395, 405–6, 535, 537–8, 1750.*
Variance of complaint from charge— *396, 538.*
Remarks of Senator Wagner— *396.*
Compulsory audience— *1549.*
Conciliation and mediation of labor disputes:
In general— *17, 21, 26, 40, 47, 48, 50, 51–3, 58, 59, 60–3, 68, 100–1, 149, 161, 186, 214, 251, 259, 266–7, 416, 418, 460, 473, 613, 722,* 1084, **1114, 1133, 1139,** *1435, 1437, 1514, 2095.*
Remarks of Senator Wagner— *17, 21, 26, 40, 47, 48, 53, 2095.*

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Index page

Conciliation and mediation of labor disputes—Continued
Foreign experience ... *342–55.*
Distinguished from Quasi-Judicial techniques. ... *51, 65, 161, 186, 258–9, 266, 1463, 1464, 2092, 2094, 2106, 2256, 2272, 2760, 2763,* 2920–3, 2966–8, **3060–2.**

Conclusiveness of Labor Board orders. *See* Judicial Review, this index.

Constitutionality of National Labor Relations Act:
In general ... *139, 402, 431–4, 728–30, 800–1, 934,* 1111–12, *1630, 2236,* 2317, 2338, 2403–11, *2495–8,* 3006–8, 3027–9, 3105.
Remarks of Senator Wagner ... *402,* 2403.
Commerce power ... *81–2, 375, 387, 405, 415, 424–8, 431–2, 536, 728, 730,* 1111–12, 1338–40, 1347, *1421–2, 1428, 1430, 1629–36, 1638–40, 1645, 1649, 1718–20, 1835–6, 2129–31, 2163, 2164–6, 2178–9, 2211, 2226–30,* 2377–80, 3008–12, 3096–9, 3104–7, 3111–12, 3122–5, 3128, 3131–48, 3170–5.
Remarks of Senator Wagner ... *1421–2, 1428, 1430, 1634–6, 1638–40, 1835–6, 2211.*
Due process ... *81, 432–3, 1428, 1630, 1643.*
Impairment of contract ... *432, 1729.*
Jury trial ... *2233–5.*
Search and seizure ... *2233.*
States' rights ... *81, 375, 424, 728, 2226.*

Contempt proceedings ... *539,* 1334.

Contracts:
Breach of contract as unfair labor practice. 1337.
See Closed-shop contracts, this index.
Contract with assisted union ... *93.*
Registration of contracts ... *2092, 2101–3, 2106.*
Remarks of Senator Wagner ... *2102–03.*
Responsibility of parties ... *149, 316, 376–8, 382, 389, 428, 494, 568, 653, 677, 748, 755, 783–90, 802, 924, 936, 1046–7, 1048,* 1292, 1312, *2092, 2103.*
Remarks of Senator Wagner ... *2103.*
Written contracts ... 1211, 1318, *1706, 1781, 1882.*
Remarks of Senator Wagner ... *1781.*

Coughlin, Father Charles E.:
Interpretation of Quadragessimo Anno. *481–9.*
Remarks of Senator Wagner ... *481.*

Craft unionism ... *155, 249, 584, 639–40, 643, 764, 1458, 1606, 1607, 1935.*

Criminal sanctions in earlier measures ... *385,* **1131, 1161,** 1179, 1225, **1256,** 1361.

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D

Index page

Damage awards. *See* Remedies, this index.
Declaratory judgments ..... *217.*
Discharge and lay-offs:
In general ..... *99, 114, 145, 149, 153, 163, 173, 175, 199, 211, 214, 224, 288, 750,* 1105, 1186, 1191, 1210, *2115.*
Discharge for cause ..... 1126, *1482.*
Economic consequences to employee ..... *99, 670, 1480, 1482, 1888, 2210–12.*
Remarks of Senator Wagner ..... *1888, 2211.*
Family status as a factor ..... *754.*
Seniority as a factor ..... *226, 555, 754,* 1068, 1211, *1482.*
Discrimination against employees:
By employer. *See* Collective bargaining; Discharge and lay-offs; Interference, restraint, and coercion of employees; Company unions, this index.
By unions. *See* Interference, restraint, and coercion of employees, this index.
Disestablishment orders ..... *202.*
District courts:
Enforcement in first instance. *See* Judicial review and enforcement of Board orders, this index.
Domestic workers:
Exemption as employees from Act ..... 2306.
See also section 2 (3) of the Sectional Index.
Domination of unions:
Indicia of domination. *See* Company unions, this index.
Dual union activity. *See* Closed-shop contracts, this index.
Dues and fees:
In general ..... *91, 487, 551, 556, 561, 585, 728, 790, 814, 875, 876, 936, 947, 949, 1009, 1531, 1666, 1798.*
Check-off ..... *421–2, 817,* 1100, 1120, *2269.*

E

Economic origins of Act:
See National Labor Relations Act, Economic origins and rationale, this index.
Elections:
In general ..... *50, 60, 115, 176, 179, 463, 544, 566, 571, 593, 1426, 1434, 1473, 1497, 1530.*
Remarks of Senator Wagner ..... *176, 1426.*
Consent elections ..... *1474.*
Employer neutrality ..... *1474, 1530.*

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Elections—Continued Index page
Frequency. *See* certifications, duration of, this index.
Secret ballot ... *150, 544, 566, 721, 1210, 1434, 1832, 1833*, 2373, 2391.
Remarks of Senator Wagner ... *1832–3*
Employee benefits ... *16, 21, 25, 39, 40, 105, 128, 130, 254, 451, 638, 667, 710–11, 715, 830, 961*, 1103.
Remarks of Senator Wagner ... *16, 21, 35, 39, 40.*
Employee representation plans:
Examples:
Acme Steel Co ... *1770–1, 1847, 1848.*
A. C. Spark Plug Co ... *130.*
Allen Wood Steel Co ... *114, 122.*
American Rolling Mills Co ... *122, 768, 783, 853–70, 1810–15, 1820–3.*
American Sheet & Tin Plate Co ... *1842.*
American Steel & Wire Co ... *114, 117, 122.*
American Telephone & Telegraph Co. ... *713–15, 1858–62.*
Armour & Co ... *122.*
Auto Car Co ... 130.
Beaver Roller Bearing Co ... *130.*
Bendix Aviation Co ... *130.*
Bethlehem Steel Co ... *119, 520–2, 823, 824, 834–45*, 1219, 1220, *1753–6, 1762–4, 1791–4.*
Remarks of Senator Wagner ... *1793.*
Budd Co ... *130, 131.*
Buick Plan ... *128.*
Cadillac Co ... 130.
Carnegie Steel Co ... *113, 114, 119–21, 122, 915–18, 1846.*
Carter Oil Co ... *2038, 2042, 2043, 2045, 2046, 2048.*
Cheney Bros ... *122.*
Chevrolet Employees Association. ... *102, 130.*
Chrysler Motor Plan ... *113, 124.*
Continental Can Co ... *117, 122.*
Dennison Manufacturing Co ... *435, 436.*
S. Dresner & Sons, Inc ... *102.*
Employees Cooperative Association. ... *2141, 2146.*
Fisher Body Corp ... *118, 129.*
General Cable Corp ... *102, 122.*
General Electric ... *130.*
Goodrich Co ... *131, 1923–6.*
Remarks of Senator Wagner ... *1923.*
Goodyear Rubber Co ... *131, 132, 1928–31, 1937, 1938.*
Green Bay Drop Forge Co ... *122.*
Houde Co ... *122.*
Hudson Motor Co ... *130.*
Illinois Steel Co ... *114, 117, 122.*

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Employee representation plans—Con. Index page
Examples—Continued
Inland Oil Co---------- *2147.*
Inland Steel Co---------- *122.*
Interlake Iron Co---------- *910–13.*
International Harvester---------- *950–2, 956–9.*
Jones & Laughlin Steel---------- *120, 1843–5.*
Kelsey Hayes Wheel Corp---------- *129.*
Kimberley Clark Mills Corp---- *118–19.*
Leeds & Northrup Cooperative Association. *450–6, 2158, 2159.*
Link Belt Co---------- *108.*
Lyon Metal Products Co---------- *122.*
Michigan Limestone & Chemical Works. *114, 122.*
Motor Wheel Co---------- *129.*
Nash Motors Co---------- *126, 127.*
National Tube Co---------- *1061–4.*
Newport Rolling Mills Co---------- *122.*
N. Y. Telephone Co., Upstate--- *712, 713.*
Packard Motor Co---------- *127, 128.*
Phillips Packing Co---------- *122.*
Pittsburgh Plate Glass Co---------- *114, 115, 122.*
Pontiac Plan---------- *128.*
Real Silk Hosiery Mills---------- *1669.*
Republic Steel---------- *1773–9, 1784–90.*
Remarks of Senator Wagner- *1777–9.*
Rockefeller Plan---------- *341.*
Roebling's John A. Sons Co---- *2148.*
Seaman Body Co---------- *130.*
Sobol Bros---------- *502–7.*
Spang Chalfant & Co., Inc---------- *1807.*
Standard Oil Co. of Indiana---- *122.*
Standard Oil Co. of New Jersey-- *113.*
Standard Sanitary Manufacturing Co. *122.*
Studebaker Co---------- *130.*
Sun Oil Co---------- *117, 118.*
Swift & Co---------- *122.*
Tennessee Coal, Iron & Railroad Co. *918–20.*
Ternstedt Manufacturing Co---- *129.*
United Motors Co---------- *130.*
United Railway Employees Association of Baltimore. *704–10.*
United States Pipe & Foundry-- *122.*
U. S. Steel Corp---------- *759–64, 1746, 1747, 1751, 1752.*
Viscose Co---------- *122.*
Warren Nash Co---------- *130.*
Weirton Steel---------- *114, 122, 132–4, 803–9, 882–94, 1796–9.*

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Index page

Employee representation plans—Con.
Examples—Continued
Wheeling Steel ... *871–909, 1799–1806.*
Remarks of Senator Wagner ... *1802–3, 05.*
Wilcox Rich Co ... *130.*
Wisconsin Steel Works ... *959–62.*
Youngstown Sheet & Tube ... *122, 827–31, 846–52.*
See also Company unions, this index.
Employees:
Definition ... *2, 269, 377, 395, 406, 459, 463, 535, 690, 721, 940, 1005, 1042,* **1071, 1085,** 1099, 1102, **1129, 1164, 1296,** 1342–46, 1683, *1688, 1748, 1883, 1884, 1989,* **2286,** 2305–6, 2400, **2417, 2446, 2460, 2508, 2846, 2858, 2887, 2899,** 2917, 2936, **2945,** 2963, 2983, **3014, 3034,** 3056, 3081, 3119, 3157, 3200, 3201–4, **3240. 3271.**
Remarks of Senator Wagner ... *1883,* 2400.
See also Agricultural employees; Domestic workers, this index.
Rights of employees:
Freedom of association ... *56, 200, 220, 381, 499, 501, 511, 514–15, 517, 523, 719, 720, 1044,* 1067, 1103, 1147, 1312, *1411, 1558, 1611, 2239–40.*
Remarks of Senator Wagner ... *381, 499, 501, 511, 514–5.*
Freedom of choice of representative ... *16, 25, 38, 82–3, 98, 147, 180, 261, 440.*
Remarks of Senator Wagner ... *16, 25, 38, 440.*
Freedom of contract ... *20, 47, 165, 428, 533, 547, 676, 728, 1005,* 1145, 1317, *1454, 2239,* 2389.
Remarks of Senator Wagner ... *20, 47.*
See also section 7 of the Sectional Index.
Employer:
Definition ... *2, 3, 256–7, 269, 325, 395, 494, 507–8, 689–90, 720, 790, 940, 989, 1005, 1055,* **1071, 1085,** 1099, 1102, **1129, 1163, 1296,** 1320, 1342, *1887, 1990,* **2286,** 2305, 2346, **2417, 2446, 2460,** *2653,* **2846, 2858, 2887, 2899, 2945, 3014, 3034,** 3199, **3240, 3271.**
Employer associations ... *15, 21, 23, 26, 38, 39, 40, 143, 148, 170, 171, 201, 223, 236, 268, 272, 308, 386, 514–15, 977, 979,* **1086,** 1123, **1164,** 1311, *1411, 1528, 2656.*
Remarks of Senator Wagner ... *15, 21, 23, 26, 38, 39–40, 143, 515,* 1311.
Neutrality ... *222, 239, 926, 1057, 1666, 2104.*
Remarks of Senator Wagner ... *2104.*

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Index page

Employer—Continued
Responsibility for acts of agents. *See* Agents.
Labor organization as employer----- 1102.
See also section 2 (2) in Sectional Index.
Enforcement of Board orders. *See* Judicial review and enforcement of Board orders.
Espionage. *See* Interference, restraint, and coercion of employees, this index.
Evidence:
Additional evidence---------- *67, 539, 1056.*
Conclusiveness of Board findings. *See* Findings of fact.
Rules of evidence applicable to complaint proceedings. *396, 400, 1001,* 1349, 1359, *2231.*
Remarks of Senator Wagner-- *396.*
See also section 10 (b) of the Sectional Index.
Unfair labor practice findings supporting evidence required. *1889–90.*
Remarks of Senator Wagner---- *1889–90.*
See also section 10 (c) of the Sectional Index.
Exclusive representative. *See* Majority rule in collective bargaining, this index.
Exclusive Jurisdiction. *See* Jurisdiction, this index.

F

Fact-finding in labor disputes---------- *246, 260, 348,* **1255,** *1828, 1831, 1890, 2016.*
Remarks of Senator Wagner-------- *1831, 1890.*
Federal Trade Commission Act compared with National Labor Relations Act. *17, 40, 41, 396, 400–1, 403, 405–6, 418,* 1100, 1103, 1313, 1329, *1557.*
Remarks of Senator Wagner---- *17, 40, 41, 396, 400–1.*
Financial assistance to unions. *See* Company unions, this index.
Findings of fact:
Conclusiveness of Board's findings--- *41, 67, 396, 400–2, 480, 535, 539, 550, 647, 927, 2232, 2236–7.*
Remarks of Senator Wagner---- *41, 396, 400–2.*
See also section 10 (e) of the Sectional Index.
Foremen. *See* Supervisors, this index.
Freedom of association. *See* Employees, rights of, this index.
Freedom of choice of representative. *See* Employees, rights of, this index.
Freedom of contract. *See* Employees, rights of, this index.

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Index page

Free speech ..... *56, 138, 389, 533, 569, 668, 719–20, 797, 875, 938, 939, 952, 990, 1057,* 1103, 1125, 1127, *1691, 1943, 1944, 2001, 2003, 2019, 2099, 2100,* 2376, 3229, **3248,** 3256, 3258, 3264–5.

Remarks of Senator Wagner ..... *389, 1691, 2100,* 2376, 3229.

G

Government employees. *See* Strikes, this index.

Grievances and grievance procedure. *See* section 9 (a) of the Sectional Index; majority rule in collective bargaining, this index.

H

Hearings:

Conduct of hearings ..... *67, 538.*

Notice of hearings ..... *535, 538,* 1359.

See also Evidence, this index; section 10 (b) of the Sectional Index.

I

Imperial Valley:

Labor conditions ..... *2503–25.*

Incorporation and regulation of labor organizations. *326, 376, 478–80, 1046, 1607, 2089, 2794.*

Individual bargaining ..... *16, 20, 25, 39, 47, 93, 145, 146, 239, 246, 267, 269, 273, 299, 396, 428, 448, 472, 498, 509–10, 544, 572, 624, 651, 812, 892, 923, 976, 977, 978, 988, 1004,* 1126, **1140,** 1148, 1317, 1318, *1419, 1420, 1433, 1457, 1478, 1495, 1553, 1560, 1613, 1647, 1657, 1665, 1864, 1866, 1874, 2132, 2181, 2270.*

Remarks of Senator Wagner ..... *16, 20, 25, 39, 1419–20, 1495, 1866.*

Independent unions ..... *15, 21, 23, 24, 25, 39, 42, 91–2, 103, 109, 237, 245, 270, 340–1, 376, 379, 440, 489–90, 565, 653, 669,* 1100, 1119, 1234, 1313, *1416, 1418, 1612,* 3120.

Remarks of Senator Wagner ..... *15, 21, 23, 24, 25, 39, 42, 440,* 1234, *1416, 1418.*

See also Company unions; Domination of unions, this index, and section 8 (2) of the Sectional Index.

Industrial democracy ..... *15, 24, 47,48, 81, 96, 106, 120, 124–5, 139–40, 166, 188, 190, 268, 273, 314, 332, 334–5, 339, 463, 501, 502, 748, 755, 763–4, 769, 820, 1017, 1969,* 1103, **1129,** 1148, 1291, 1318, *1418, 2028.*

Remarks of Senator Wagner ..... *15, 24, 339, 501, 502, 2088.*

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Index page

Industrial unionism ..... *155, 249, 764.*
Industry-wide bargaining. *See* Appropriate bargaining units, Multi-employer units; Wage standardization, this index.
Influence as unfair labor practice ..... *15, 102, 165, 221–2, 391, 394, 422–23, 533, 564–5, 719,* **1072,** 1103, 1125, *1691, 1943–4, 2099.*
Remarks of Senator Wagner ..... *15, 1691.*
See also Interference, restraint, and coercion, this index.
Initiation fees. *See* Dues and fees, this index.
Injunctions ..... 2382.
History of injunctions in labor disputes.
Insurance benefit plans. *See* Employee benefits, this index.
Interest representation. *See* National Labor Relations Board, this index.
Interference, restraint, and coercion of employees:
By unions ..... *156–7, 167, 180, 248, 320, 325, 376, 381–2, 387, 390, 400–1, 409, 415, 428, 436, 459, 480, 487, 494–5, 513, 517, 531, 532, 544, 549, 564, 568–70, 573, 595, 628, 646, 652, 657, 673, 679–80, 682, 688, 699, 720–1, 752, 754, 771, 783–90, 791, 797, 815, 817, 827, 908, 925–6, 934, 946–7, 977, 982–4, 989–91, 1008, 1009, 1017, 1041, 1044–5, 1047, 1057, 1058,* 1068, **1081,** 1104, 1125, 1127, **1165, 1166,** 1190–1, 1222, 1236, 1238, 1240, 1293, 1327, 1335, *1423, 1484, 1559, 1560, 1624, 1628, 1646, 1657, 1658, 1677, 1688, 1692, 1699, 1711, 1730, 1733, 1737, 1748, 1761, 1771, 1824, 1825, 1849, 1850, 1864, 1868, 1869, 1871,* **1872,** *1878, 1887, 1888, 1899, 1914, 1988, 2029, 2030, 2039, 2040, 2057, 2084, 2086, 2088, 2098, 2125, 2161, 2181, 2205, 2207, 2244, 2245,* 2315, 2348–50, 2357–69, 2370–1, 2376, 2380–2, 2384–8, 2396, 2400, 2411–12, 2437–8, *2492, 2652, 2695, 2746,* 2923–4, 2969–71, 3064–5, 3120, 3188–90, 3194–7, 3214–15, 3226, 3232, 3264.

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Index page

Interference, restraint, and coercion of employees—Continued
Remarks of Senator Wagner—— *167, 381–2, 400–1, 409, 494–5, 513,* 1236, 1238, 1240, *1423, 1628, 1646, 1677, 1692, 1825, 1868, 1869, 1871, 1887, 1888, 2029, 2030, 2039, 2040,* 2349, 2357, 2358, 2359.
By employers:
In general—— *22, 56, 80, 104, 138, 148, 149, 212, 213, 234, 276, 291, 293, 312, 938, 1944, 2100.*
Remarks of Senator Wagner—— *22, 2100.*
Coercion distinguished from persuasion. *390.*
Blacklist—— *254, 406, 1055, 1582, 2654, 2734.*
Coercion inherent in master-servant relationship. *102, 126, 154, 163, 202, 221–2, 288, 340,* 1186, 2381.
Economic coercion distinguished from physical. 1127, *1478, 1849, 1850, 1944, 2086, 2100.*
Remarks of Senator Wagner— *2100.*
Espionage—— *172, 189, 267, 274, 309, 330, 338, 339, 340, 463, 1055,* 1149, *1482, 1483, 1530, 2654.*
Favoring unions—— *92–3, 247–9, 1044, 1053,* 1125, *1549.*
Run-away shops—— *212, 801, 1481, 1484.*
Yellow-dog contract—— *82, 83, 84, 101, 200, 640, 697,* 1154, 1327, *1414, 1429, 1558, 1607,* 2335, 2394, 2439, *2488,* 2927, 2973, 3068, 3190.
Remarks of Senator Wagner— *1414, 1429*

J

Judicial review and enforcement of Board orders:
In general—— *406, 534, 1051–2,* **1131, 1304,** 1324, 1334, 1361–2, 1364.
Conclusiveness of findings. *See* Findings of fact, this index.
Enforcement by Attorney General— *1469–71, 1498, 1530, 1533, 1535, 1562, 1644,* **2295,** 2304, **2320,** 2331, **2453,** *2493, 2650, 2759,* 2913, 2959, 3052.
Remarks of Senator Wagner—— *1644.*
Enforcement in District courts—— *4, 7,* **1073, 1077, 1134,** *1644, 2295,* 2354, **2453,** *2759.*
Remarks of Senator Wagner—— *1644.*
Enforcement by private suit—— *1533, 1535.*
See also section 10 (e) of the Sectional Index.
Judicial review of representation proceedings. *87, 401,* 1323, 1356, 1357, *1459,* 2331, 2370.
Remarks of Senator Wagner—— *401.*

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Index page

Jurisdiction:
Exclusive jurisdiction ... *1427, 1514, 1536, 1563, 2760.*
See also section 10 (a) of Sectional Index.
Size of employer ... *94, 269, 299–300, 390, 395, 593, 625, 626, 645, 649, 733, 940, 989, 1005, 1085,* 1099, 1119, 1320, 1342, *1649, 2036,* 2306.
Remarks of Senator Wagner ... *1649.*
See also Constitutionality of National Labor Relations Act, Commerce power, this index.
Jurisdictional disputes ... *91, 103, 407, 409, 518, 564, 765, 1009,* 1210, 1335, *2088, 2247.*
Remarks of Senator Wagner ... *407, 409.*

L

Labor, Department of:
National Labor Relations Board part of Department of Labor. *54–6, 62–4, 94–5, 161, 187,* **1088,** 1320, 1331, 1332, *1415, 1428, 1441, 1442, 1444, 1461, 1462, 1463, 1464, 1465, 1466, 1490–2, 1497, 1511, 1512, 1513, 1551, 1556, 1557, 1583, 1584, 1590, 1613, 1615, 1874, 2273–6, 2495, 2651, 2657, 2681–3, 2701–5, 2754–6, 2764, 2772,* **2859, 2900,** 2918–22, 2933–7, **2946,** 2964–8, 2979–83, **3015, 3036,** 3058–62, 3077–81, 3203–12.
Remarks of Senator Wagner ... *55, 1415, 1874.*
Labor disputes:
Causes ... *16, 25, 26, 38, 42, 44, 60, 105, 109, 112, 118, 135–6, 145, 153, 159, 165, 170, 178, 199, 212, 213, 227, 239, 246, 294, 306, 334, 335–3, 513, 1001, 1026,* 1111, 1117, 1123, 1141, 1182, 1190, 1202, 1312, *1412, 1430, 1497, 1540, 1649, 1942, 2263.*
Remarks of Senator Wagner ... *16, 25, 26, 38, 42, 44, 1412, 1649.*
Definition ... **1297,** 1348, *1688, 1825, 1826, 1884, 1887, 1989, 2021,* **2287,** 2307, **2417, 2446, 2460, 2847, 2859, 2888, 2900,** 2917, **2946,** 2963, **3015, 3035,** 3056, 3200, **3241, 3271.**
Remarks of Senator Wagner ... *1825, 1826.*
Minimization by National Labor Relations Act. *153, 165, 187, 203, 218, 221, 224, 246, 265, 312, 336,* 1119.
Labor organizations:
Definition ... *2, 271–2, 690, 1005,* **1072,** 1086, 1103, **1129, 1164, 1296,** 1320, 1331, 1332, 1347, **2287,** 2306, 2346, **2417, 2446, 2460, 2846, 2858, 2887, 2899, 2945, 3015, 3035,** 3200, 3204, **3240, 3271.**

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Labor organizations—Continued Index page
Employer. *See* section 2 (2) of the Sectional Index.
Financial aspects and responsibility_ *316, 326, 551, 553–4, 560, 783–5, 802, 814, 876, 936, 949, 982–4, 1044, 1058,* 1069, 1334, *1593, 1988, 2087,* 3129.
See Incorporation and regulation of labor organizations, this index.
Membership rules and regulations___ *247, 325, 377–8, 423, 699, 765, 784, 785–6, 982–4, 1016, 1047, 1048,* 1334, *1705, 2085, 2086, 2087, 2154–5, 2652, 2746–7,* 3120.
See Officers and agents of unions, this index.
Organizational techniques_____ *624, 763.*
See Political action of labor organizations, this index.
Restrictive practices_____ *377–8, 423, 517, 519, 540, 542, 585, 673, 674, 1043, 1044, 1046,* 1335.
Remarks of Senator Wagner____ *377–8.*
Welfare and educational activities___ *192, 316, 1593.*
Lock-outs_____ *68, 145, 212, 224, 326, 406, 545, 570, 691, 946, 969.*
National and international unions___ *25, 92, 103, 237, 541, 550–2, 602–3, 625, 653, 812, 948,* 1236, *1659.*
Remarks of Senator Wagner__ *25.*
See also Company unions; Independent unions; Wage standardization, this index.

M

Majority rule in collective bargaining:
In general_____ *47, 50, 79, 85–6, 93, 472, 566, 668, 696–8, 791,* 1126, 1313, 1318–19, 1323, 1327, 1355–6, *1419–20, 1422, 1434, 1455, 1457, 1493–5, 1507, 1519, 1531, 1560, 1570, 1575, 1605, 1624, 1625, 1629, 1646–9, 1651, 1657, 1661, 1670–4, 1697, 1704, 1706–11, 1734, 1742, 1789, 1851, 1866, 1874, 1882, 1897, 1900, 1920–1, 1990, 2003, 2016, 2057, 2135, 2178, 2195, 2206, 2207, 2241, 2261–4,* 2313, 2390–6, 2412, 2436, *2490–2, 2649, 2653, 2655, 2676–7, 2752–3,* 2927–31, 2974–6, 3069–72.
Remarks of Senator Wagner____ *1419–20, 1422, 1646–9, 1651, 1661, 1670, 1789, 1882,* 2394.

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Index page

Majority rule in collective bargaining—Continued
Individual and minority adjustment of grievance. *92–3*, *571*, 1185, 1323, 1353, 1355, *1419–20*, *1493–5*, *1560*, *1706–11*, *1736*, *1760*, *1822*, *1897*, *2044*, *2108*, *2135*, *2207*, *2262*, 2313, 2390–6, *2491*, *2684–5*, *2695–6*, 2929, 2975, 3071.
Remarks of Senator Wagner.... *1419–20*, *1495*, 2394.
Individual and minority bargaining.. *16*, *25*, *175*, *246*, *273–4*, *531–2*, *702*, *791–3*, *797*, 1067, 1069, 1106, **1173**, 1185, 1211, 1313, 1323, *1419–20*, *1434*, *1458*, *1493–5*, *1531*, *1542*, *1560*, *1571*, *1573*, *1575*, *1603*, *1624*, *1646*, *1692*, *1697*, *1706–11*, *1730–1*, *1734*, *1760*, *1765*, *1822*, *1851*, *1919*, *1984*, *2043–4*, *2135*, *2195*, *2207*, *2241*, *2261*, 2313, 2390–6, 2412, 2436–7, 2441, *2490*, *2684–5*, *2695–6*, *2722*, 2927–31, 2974–6, 3069–72.
Remarks of Senator Wagner.... *16*, *25*, *1419–20*, *1495*, *1646*, *1692*, 2394.
Under N. R. A. section 7 (a)..... *430–1*, *544*, *1496*, *1506*, *1572*, *1574*, *1575*.
Remarks of Senator Wagner.... *430*.
Unilateral changes by employer..... *137*, *392*, *1419–20*, *1493–5*, 2441.
Remarks of Senator Wagner.... *392*.
Management prerogatives..... 2394.
Mediation in labor disputes. *See* Conciliation and Mediation of labor disputes, this index.
Minority strikes..... *1055*, *1678*, *1681*, 2390.
Remarks of Senator Wagner..... *1678*, *1681*.
Minority unions and rights. *See* Majority rule in collective bargaining, this index.
Multiple representation. *See* Majority rule in collective bargaining, Individual and minority bargaining, this index.

N

N. R. A. section 7 (a):
In general..... *15*, *23*, *24*, *37*, *46*, *49*, *67*, *68–70*, *85*, *98*, *99–101*, *104*, *142*, *148*, *154*, *171*, *201*, *211*, *236*, *241–2*, *246*, *315*, *383*, *384*, *385*, *386–7*, *397*, *430*, *510*, **1067–9**, 1123, *1424*, *1426*, *1529*, *1537*, *1538*, *1539*, *1611*, *1612*.
Remarks of Senator Wagner.... *15*, *23*, *24*, *37*, *46*, *397*, *430*, *1424*, *1426*.
Company unions under section 7 (a).. *101–2*, *121–2*, *237*, *242*, *244–5*, *262*, *332*, *372*, *466*, *470*, 1189, 1234, 1249, *1413*, 2310.
Remarks of Senator Wagner.... 1234, *1413*.

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N. R. A. section (a)—Continued — Index page

Criticism of section 7 (a)—— *15, 16, 20, 21, 23, 25, 38, 39, 50–1, 68, 100, 110, 133–5, 152, 157–8, 179, 216–17, 222, 227, 237, 245, 253, 288, 319, 372–3, 397, 523, 530, 621–2, 965–72, 1001,* 1123, 1143, 1181, 1186, 1189, 1202, 1246, 1252, *1412, 1423–5, 1506, 2220,* 2303–4, 2436, 2440, *2486, 2492–3, 2650–1, 2659, 2672, 2698–2700, 2709,* 2911–14, 2957–9, 3049–52, 3187.

Remarks of Senator Wagner—— *15, 16, 20, 21, 23, 25, 397,* 1181, *1412, 1423–5.*

Enforcement of section 7 (a)—— *50–1, 100, 133–5, 385, 499, 922 965–71, 980, 1469–70.*

Text of section 7 (a)—— 1110.

National Labor Board—— *43–4, 58–60, 79, 398–400, 416–17, 466–9, 1209–11, 1436–7, 1438–40.*

Remarks of Senator Wagner—— *43–4, 398–400, 1211.*

National Labor Relations Act:

Economic origins and rationale—— *15, 18–19, 22, 48, 98, 142, 144, 151, 152, 163, 196–7, 210, 241–4, 245, 248, 315, 333, 334, 382–3, 441–5, 470, 473, 491–2, 500, 540, 1031–5, 1049,* 1146, 1288–90, 1315–17, *1410–11, 1430, 1453, 2485–7.*

Remarks of Senator Wagner—— *15, 18–19, 22, 48, 441, 491–2, 500,* 1315.

See also section 1 of the Sectional Index.

Historical antecedents—— *161–2,* 1111, 2431, 2483–7, *2752–3,* 2911–15.

National Labor Relations Board:

Board members' term of office—— *1466, 1467, 1518.*

Composition of Board based on interest representation. *17, 20, 26, 53–5, 61–2, 141, 186, 219, 223–4, 244, 259, 266, 417–19, 439, 495–7, 524, 534, 585, 594, 646–7, 754, 927, 1051,* **1088,** 1106, **1132,** 1205, 1320, 1348, *1497, 1577, 1677, 2272,* 3212.

Remarks of Senator Wagner—— *17, 20, 26, 439, 1677, 2272.*

See also section 4 (a) of the Sectional Index.

Definition—— **3, 1072, 1086, 1130, 1164, 1297,** 1348, **2287, 2418, 2447, 2847, 2859, 2888, 2900, 2946, 3015, 3035,** 3200, **3241, 3271.**

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Index page

National Labor Relations Board—Con.
Investigatory and subpena power--- *11*, *215*, *223*, *224*, **1082**, **1095**, 1108, **1138**, **1174**, 1206, **1307**, 1325, 1366, 1367, *1891*, *2003*, *2022*, *2058*, *2231*, *2232*, *2248*, **2297**, 2315, 2355–6, **2424**, **2456**, **2470**, *2493*, *2783*, **2854**, **2866**, **2895**, **2907**, 2932, **2953**, 2978, 2997, **3022**, **3042**, 3076, 3159, 3225, **3248**, **3277**.
Remarks of Senator Wagner---- *1891*, *2248*.
Joined to Labor Department. *See* Labor, Department of, this index.
Regional offices---------- 1349, *1465*, *1466*.
Review function---------- *1468*.
Separation of functions---------- *417*, *433*, *534*, *752*, 1324, 1363, *1415*, *1683*, *1750*, *1869*, *2094*, *2232*, *2233*.
Remarks of Senator Wagner---- *1415*.
Negative order doctrine---------- *86–7*, *1051–2*, *1425*.
Remarks of Senator Wagner-------- *1425*.

O

Officers and agents of unions---------- *15*, *16*, *222*, *237*, *262*, *265*, *308*, *541*, *550*, *669*, *856*, *936*, 1319, *1508*, *1509*.
Remarks of Senator Wagner------ *15*, *16*.
See also Bargaining agents, this index.
Open shop---------- *154*, *155*, *172*, *298*, *332*, *533*, *535*, *602*, *603*, *800*.
Open union---------- 3118–19.

P

Person:
Definition---------- *2*, **1071**, **1085**, **1113**, **1129**, **1163**, **1296**, 1342, **2286**, 2346, **2416**, **2445**, **2459**, **2846**, **2858**, **2887**, **2899**, 2917, **2945**, 2963, **3014**, **3034**, 3056, 3199, **3240**, **3271**.
Political action of labor organizations---- *24*, *437*, *486–7*, *942*, *1004*.
Remarks of Senator Wagner-------- *24*.
Private rights. *See* Remedies for unfair labor practices, this index.
Public opinion in labor disputes-------- *40*, *61*, *214–15*, *239*, *246*, *373*, 1228.

Q

Quasi-Judicial techniques compared with conciliation. *See* Conciliation and mediation of labor disputes, this index.

R

Racketeering in labor organizations------ *326*, *376*, *584*, *585*, *640–1*, *679–80*, *783–90*, *904*, *983–4*, *1008*, *1017*, *1045*, 1319.
See also Labor organizations, Restrictive practices, this index.

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Index page

Railway Labor Act compared with National Labor Relations Act. *17, 21, 26, 38, 47, 65, 104, 161–2, 391, 403–5, 415–16,* 1109, **1329–30, 1351.**
Remarks of Senator Wagner ..... *17, 21, 26, 38, 47, 404.*
Refusal to bargain. *See* Collective bargaining, this index.
Regional Offices. *See* National Labor Relations Board, Regional Offices, this index.
Remand procedure ..... *222, 1056.*
Remedies for unfair labor practices:
Back pay ..... 1360, *1832, 2236.*
Damages ..... *396,* **1134,** 1364, *1630, 1832, 2230, 2234.*
Private remedies ..... *86,* 1334, 2931, 2978, 3074.
Reinstatement ..... *60, 199, 211, 396, 726, 749,* 1211.
Representatives:
Definition ..... *2, 68, 1060,* **1072, 1086,** 1102, **1129, 1164, 1296,** 1346–7, *1989, 1990,* **2287, 2417, 2446, 2460, 2846, 2858, 2887, 2899, 2945, 3014, 3034,** 3202, **3240, 3271.**
See also Officers and agents of unions, this index.
Research functions proposed in S. 1958 .. **1350.**
Restraint of employees. *See* Interference, restraint, and coercion of employees, this index.
Restrictive trade-union practices. *See* Labor organizations, this index.
Review function. *See* National Labor Relations Board, this index.
Right to strike. *See* Strikes, this index.
Roosevelt, Franklin D.:
Text of auto labor dispute settlement statement. *754–5.*

S

Secondary boycotts ..... *1409, 1625.*
Secret ballot. *See* Elections, this index.
Separation of functions. *See* National Labor Relations Board, this index.
Sherman Act. *See* Antitrust law, this index.
Stock ownership plans ..... *447, 666,* 1103.
See also Employee benefits, this index.
Strikers:
Employee status ..... *406, 535, 721,* 1102, 1343–6.
See also section 2 (3) of the Sectional Index.
Strikebreakers:
In general ..... *330–1, 1059,* 3115–17.
Employee status ..... *406, 434, 459, 463, 535, 690, 721, 726, 1005, 1042,* **1129.**

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Index page

Strikes:
Causes. *See* Labor disputes, Causes, this index.
Cooling-off periods ... *238, 260, 288, 691.*
Foreign experience ... *346.*
During pendency of Board care ... *752–3.*
Government employees' strike ... 1117.
Illegal strikes ... *406*, 1335, *2059.*
Minority union strikes ... *1055, 1678, 1681*, 2390.
Public utility employees' strikes ... 1117.
Right to strike ... *40, 41, 83, 103, 150, 153, 238, 245, 246, 326, 336–7, 379, 406, 407, 459, 466, 471, 499, 525, 571, 692, 946*, 1117, 1121, 1122, 1222–3, **1255**, 1292, 1335, 1344, *1678, 1679, 1689, 1700, 1714–17, 1904, 2025, 2059, 2157.*
Remarks of Senator Wagner ... *40, 41, 407, 1678, 1904, 2025.*
Right not to strike ... **1223.**
Sympathetic strikes ... *409, 564, 1625, 1748.*
Timing of strikes ... *238, 1028, 1498, 1612, 1833, 1942, 1946, 1947.*
Remarks of Senator Wagner ... *1833.*
Unfair labor practice strikes ... *60, 199, 247, 1517.*
Subpenas ... *61, 67, 223, 225, 395, 802*, 1068, 1325, *1470, 2247.*
Remarks of Senator Wagner ... *2247.*
Supervisors:
Definition ... 3118.
See also Agents, this index.
Sympathetic strikes. *See* Strikes, this index.
Suability of labor organizations ... *2794.*

T

Trade agreements. *See* Contracts, this index.
Trade associations. *See* Employer associations, this index.

U

Unfair labor practices:
In general. *See* section 8 (1) of the Sectional Index.
Breach of contract as unfair practice ... 1337.
Definition ... *3*, **1072, 1086, 1130, 1164, 1297**, 1348, *2163*, **2287**, 2308, **2417, 2446, 2460, 2847, 2859, 2888, 2900, 2946, 3015, 3035**, 3200, **3241, 3271.**
Remarks of Senator Wagner ... *404.*
Prior legislation ... *252–4, 403–5, 531.*
Unfair labor practice strike. *See* Strikes, this index.

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Index page

Unilateral employer action. *See* Majority rule in collective bargaining, this index.
Unions. *See* Labor organizations, this index.
Units. *See* Appropriate bargaining units, this index.

V

Votes:
Agricultural laborers, Marcantonio amendment relating to. 3204.
Closed-shop proviso, Taber amendment relating to. 3217.
Coercion from any source:
Rich amendment relating to 3199.
Deen amendment relating to 3217.
Tydings amendment relating to 2400.
Commerce, Kenney amendment relating to. 3205.
Free speech 3229.
Multiemployer units, Ramspeck amendment relating to. 3221.
National Labor Relations Board affiliated with Labor Department; House committee amendment relating to. 3214.
Right to strike, Biermann amendment relating to. 3226.
Rules of evidence, Halleck amendment relating to. 3224.
Unit determination, Taber amendment relating to. 3219.
See also Bills and resolutions, this index.

W

Wage standardization *15, 21, 23, 39, 94, 154, 237, 296, 297–8, 308, 313, 317–18, 639, 654, 979,* **1085,** *1481, 1510–11, 1553, 1736, 2012.*
Remarks of Senator Wagner *15, 21, 23.*
See also Appropriate bargaining units, Multiemployer units, this index.
Written agreements *1781.*
Remarks of Senator Wagner *1781.*

Y

Yellow-dog contracts. *See* Interference, restraint, and coercion of employees, this index.

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TO THE
LEGISLATIVE HISTORY OF THE
NATIONAL LABOR RELATIONS ACT

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INDEX OF CASES AND NAMES*

Index page

Ableman ..... *288.*
Abraham & Strauss Inc ..... 1258, 1259, 3290.
A. C. Spark Plug Co ..... *130.*
Academy of Political Science ..... *794.*
Ackerman ..... 2880.
Acme-Evans Co ..... *2207.*
Acme Finishing Co ..... *2190.*
Acme Steel Co ..... *1838, 1847.*
Adair *v.* United States, 205 U. S. 161 ..... *82, 2240, 2257,* 2403, 2404, 2405, **2407,** 2410, 2411, *2484, 2496, 2810,* **3109.**
Adair *v.* United States, 208 U. S. 161 ..... *432,* 2325, 2338.
Adams Mfg. Co., J. D ..... *2207.*
Adams, Senator Alva B ..... 1244, 2344, 2397, 2400, 2415.
Adamson Act ..... 2997.
Atkins *v.* Children's Hospital, 245 U. S. 229. ..... *432,* 2404, 2406, 2410.
Aeh, John E ..... 3282.
Aerovox Corp ..... 1269.
A. F. G. W. *v.* Local 137 ..... 3305.
Agriculture Department ..... *2071.*
Agricultural Adjustment Act ..... *629,* 1290, 1368, 1369, 1370, *2071, 2074, 2821, 2824, 2825,* 2883, 2885, 3004, 3025, 3026, 3095, 3135, 3186, 3187.
Aiken, M. M ..... 1262.
Akron Times Press ..... *1950.*
Alabama, Associated Industries of ..... *374, 1626.*
Alan Wood Steel Co ..... *122.*
Aljinovic, Thomas ..... *2214.*
Allan Excelsior Co ..... *987.*
Allen, R. C ..... *2010.*
Allen Tool Corp ..... *986.*
Allen, Walter ..... *2036.*
Allenwood Steel Co ..... *114.*
Allegeyer *v.* Louisiana ..... 2405.
Allied Beauticians of America ..... 1259.
Allied Building Trades Council ..... 3286.
Allied Printing Trades ..... *2019.*
Allied Printing Trades Council ..... 1264.
Allied Printing Trades Council of Greater New York. ..... 3297.
Aliquippa Lodge ..... *1845.*
Aluminum Container Corp ..... *987.*

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Index page

Amalgamated Assoc. of Bridge Structural, Ornamental, Iron, & Bronze Erectors & Affiliated Trades of America. *573, 574.*

Amalgamated Association of Iron, Steel, and Tin Workers. *132, 276, 284, 524, 765, 769, 770, 775, 776, 777, 804, 853, 854, 855, 857, 874, 876, 881, 882, 884, 895, 896, 898, 902, 903, 904, 905, 906, 907, 916, 1060, 1599, 1812, 2049, 2200,* 3294, 3304.

Amalgamated Association of Street & Electric Railways Employees of America. *160, 162, 716, 718, 739,* 1275.

Amalgamated Clothing Workers *87, 150, 151, 153, 155, 212, 467, 789, 1022, 1562,* 3295, 3296, 3298.

Amalgamated Food Workers *765.*

Amalgamated Garment Workers Union *180.*

Amalgamated Housing Corp *151.*

Amalgamated Meat Cutters & Butchers Workers Union of North America. *289, 290, 292, 293, 765,* 1272.

Amalgamated Silver Workers Union 3286.

Amalgamated Society of Carpenters & Joiners. *765.*

Amalgamated Watch Workers Local Union 80. 3282.

Amateur Athletic Union Convention *1616.*

Ambassador Hotel *378.*

American Agricultural Chemical Co 1269.

American Association of Creamery Butter Manufacturers. *2125.*

American Association of Manufacturers *2078.*

American Baking Co *625.*

American Bar Association 3154.

American Bridge Co *172, 762.*

America's Capacity to Consume, by Brookings Institution. *1410.*

American Civic Federation *1025.*

American Civil Liberties Union *336, 337, 467, 541.*

American Coach & Body Co 2880.

American Cotton Manufacturing Association. *656, 657, 2079.*

American Cyanamid Co *546.*

American Economic Association *719.*

American Express Co. *v.* Iowa 3148.

American Farm Bureau Federation *507.*

American Federation of Hosiery Workers *992, 2010,* 3284.

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Index page

American Federation of Labor---------- *87, 97, 103, 125, 167, 179, 180, 289, 303, 323, 332, 486–8, 523–4, 526–7, 561–2, 586, 764, 953, 1021, 1477, 1489, 1521, 1527, 1528, 1529, 1533, 1534, 1535, 1539, 1568, 1580, 1592, 1594, 1595, 1596, 1597, 1598, 1599, 1607, 1609, 1659, 1664, 1666, 1675, 1694, 1701, 1725, 1726, 1727, 1728, 1733, 1761, 1798, 1799, 1812, 1864, 1875, 1880, 1887, 1888, 1896, 1897, 1907, 1908, 1910, 1911, 1924, 1925, 1931, 1932, 1933, 1938, 1941, 1949, 1950, 1952, 1955, 1956, 1963, 1966, 1967, 1968, 1969, 1972, 1975, 1976, 1979, 1982, 1983, 1984, 1990, 1993, 1994, 1995, 1996, 2000, 2003, 2011, 2012, 2015, 2039, 2042, 2050, 2056, 2058, 2082, 2085, 2154, 2155, 2156, 2170, 2171, 2174, 2181, 2182, 2197, 2199, 2200, 2204, 2209, 2220, 2250, 2262, 2266, 2267, 2268,* 2364, 2374, 2375, 2427, 2428, 2429, 2879, 2880, 2937, 2983, 2991, 2992, 2993, 2994, 2995, 2997, 3001, 3002, 3003, 3029, 3081, 3105, 3106, 3109, 3114, 3120, 3122, 3127, 3130, 3135, 3156, 3162, 3165, 3187, 3192, 3201, 3206, 3235, 3279, 3294, 3297, 3299, 3303, 3304.

American Federation of Railroad Workers. *765.*

American Financiers Protective & Investigation Bureau. *787.*

American Finishing Co ---------- *2190.*

American Institute of Laundering------- *591.*

American Institute of Warehouses------- 1282.

American Laundry Machinery Co------- *461.*

American Magazine---------- *2250, 2252,* 3129.

American Management Association------ *113.*

American Manufacturing Co ---------- 3292.

American Mining Congress---------- *943, 948,* 1276, 1277, *2003, 2004, 2005.*

American Museum of Safety---------- *757.*

American Newspaper Guild---------- *2110.*

American Newspaper Publishers Association. *1552, 2014, 2016, 2018, 2035, 2111, 2112, 2118.*

American Petroleum Institute---------- *1632, 1638, 2127.*

American Rattan & Reed Manufacturing Co. 1262, 1263.

American Rolling Mill Co---------- *122, 723, 768, 771, 772, 773, 775, 776 778, 779, 853, 856, 858, 859, 861, 862, 863, 1810, 1811, 1820,* 2873.

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Index page

American Sheet & Tin Plate Co---------- *762*, *905*, *913*, *1838*, *1842*, *2007*, *2009*.
American Shipbuilding Co---------- 2879, 2880.
American Steel Foundries *v.* Tri-City Central Trades Council, 257 U. S. 184. 2317, 2322, 2324, 2339, 2917, 2964, 3009, 3057, 3142, 3169.
American Steel Foundries Co---------- *122*, *2484*, 3168, 3169.
American Steel & Wire Co---------- *114*, *117*, *122*, *762*.
American Sugar Refining Co---------- 3149.
American Telephone & Telegraph Co---- *713*, 1256, 1257, 1266, *1857*, *1858*, *1859*, *2119*, 3283, 3290.
American Train Dispatchers Association-- *765*.
American Transit Association---------- *716*.
American Well & Prospecting Co-------- 1260.
American Wire Weavers Protective Association. *1059*.
American Woolen Co---------- *987*.
American Wool & Cotton Reporter------ *664*.
American Zinc, Lead & Smelting Co----- 2882.
American Zinc Oxide Co---------- 2882.
Ames Baldwin Wyoming Co---------- *1549*, *1551*.
Ames Iron Works---------- *586*.
Amherst University---------- *156*.
Amlie---------- 3304.
Amoskeag Co---------- *308*, *2190*.
Analysis of Strike Statistics, Journal of American Statistical Association. 2916.
Anderson, H. W---------- *1980*.
Anderson, Charles---------- *283*, *289*.
"Annalist"---------- *1030*.
Andrews, Representative Walter G------ 3094.
Anstice & Co., Josiah---------- *461*.
Anthony, H. C---------- 3281, 3283.
Anthracite Coal Strike Commission, Report of. 2916, 2962, 3055.
Anthracite Institute---------- *2006*.
Anti-Monopoly Party---------- *2258*.
Antitrust Act---------- *428*, *432*, *1046*, 1369, *1401*, *1408*, *2164*, 3142.
Apex Hosiery Co---------- *462*, *992*, *993*.
Appalachian Agreement---------- *341*.
Appalachian Coals, Inc. *v.* United States, 288 U. S. 344. 2319, 2340, *2497*.
Apponaug Co---------- *2190*.
Arbuckle Bros---------- 3291.
Architectural Guild of America---------- 1268.
Arizona Daily Star---------- 1270.
Arkadelphia Milling Co. *v.* St. Louis Southwestern Ry. Co. 3147.
Arkansas Press Association---------- *2036*.
Armour & Co---------- *122*, *291*, *293*, *1875*.
Armour Institute of Technology--------- *154*, *715*.
Armour, Lester---------- *1906*.
Armstrong Cork Co---------- *987*, 1258, 1280, 1281.

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Index page

Arnold, Representative William W------ 3112, 3183, 3204, 3227.
Arrow Sand & Gravel Co------ *724.*
Art in Buttons, Inc------ *461.*
Artery, Mike------ *680.*
Ashurst, Senator Henry F------ 1244, 1270, 2344, 2400, 2414–15.
Aspinook Co------ *2190.*
Association of Clerical Employees, Southern Pacific Lines. *2249.*
Associated Cooperage Industries of America. 1262, 1263, 3285.
Association of Employees, American Telephone & Telegraph Co. *2119.*
Association of Employees, Long Lines Department. 1256, 1257, *1857*, *1858.*
Associated General Contractors of America. *2129*, *2131.*
Associated Grocery Manufacturers of America, Inc. *2208.*
Associated Industries of Alabama------ *374*, *1626.*
Associated Industries of Florida------ *374*, *1626.*
Associated Industries of Kansas------ *374*, *1626.*
Associated Industries of Kentucky------ *374*, *1626.*
Associated Industries of Maine------ *374*, *1626.*
Associated Industries of Massachusetts--- *374*, *650*, *1626.*
Associated Industries of Missouri------ *374*, 1268, *1626.*
Associated Industries of Montana------ *374*, *1626.*
Associated Industries of New York State-- *374*, *1626.*
Associated Industries of Oklahoma------ *374*, *1626.*
Associated Industries of Vermont------ *374*, *1626.*
Association of the Brier Hill Division of the Bethlehem Steel Co. *849*, *850.*
Atalah, Oliver------ *2049.*
Atchison, Topeka & Santa Fe Railway Co. *v.* Gee, 139 Fed. 582, (1905.) 2324.
Atkins *v.* Children's Hospital, 261 U. S. 525. 2279.
Atlanta Constitution------ 3175.
Atlantic Service Co------ 1258.
Atlantic Steel Co------ *812.*
Atterberry------ 3179.
Auburn Automobile Co------ *324.*
Auburn Button Works------ *986.*
Auld, D. L------ *130*, *723*, *724.*
Auchmuty------ *1548*, *1549.*
Austin, Senator Warren R------ 1209, 1244, 2344, 2399, 2415.
Australian Labor Mission------ *758.*
Auto Car Co------ *130*, *324.*
Automobile Labor Board------ *1493*, *1527*, *1911*, *1986*, *1991.*
Automobile Manufacturers Association--- *1979*, *1980*, *1991*, *1993.*
Automobile Workers Union------ *130*, *468*, *765.*
Automobile & Vehicle Workers Local Union. 1268, 1270.

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Index page

Automotive Parts & Equipment Manufacturers, Inc. *2207.*
Available Truck Co *1482.*
Avondale Mills *656, 657, 664, 663, 2079.*
Axelson Manufacturing Co *1891.*
Axton, Wood F *1594, 1595.*
Axton-Fisher Tobacco Co *1592, 1594.*
Ayers, R. W *2123.*
Bachman, Senator Nathan L 1244, 2344, 2399, 2400, 2415, 3295.
Bacon *576,* 3267.
Bacon Coal Co 1280, 1281.
Bacon-Davis Act *2692, 2793.*
Bacon *v.* Illinois 3142.
Badgley, F. L *1876.*
Bailey, G. O *2120.*
Bailey, Senator Josiah W 1244, 2344, 2397, 2399, 2415.
Bailey *v.* Drexel Furniture Co., 259 U. S. 20. *434.*
Bakelite Corp 1239.
Baker *192, 204, 205.*
Baker Raulang F. L. U 3305.
Bakery Driver Local 28 3296.
Balleisen, L. L *687, 701.*
Baltimore Sun 2993.
Baltimore & Ohio Railway *317, 1018, 1057.*
Baltimore & Ohio Railroad *v.* Brady *2235.*
Bambrick, J. J *2196, 2209.*
Bancroft & Sons, Jos *2191.*
Bang, Homer *1906.*
Bankhead, Senator John H 1244, *2078,* 2344, 2397, 2399, 2415, 3094.
Bankruptcy Act *108,* 1103, 1104, 1353, *1414, 1416, 2273,* 2308, 2309, 2332, 2333, 2431, *2487, 2488, 2751,* 2883, 2923, 2925, 2942, 2969, 2971, 2989, 3064, 3066, 3088, 3191.
Banner Die Tool & Stamping Co *723.*
Barbour, Senator W. Warren *536,* 1244, *2225,* 2344, 2397, 2399, 2415.
Bardo *1551.*
Barkley, Senator 18, 1244, 2344, 2360, 2362, 2364, 2365, 2379, 2398, 2399, 2415.
Barnes, Senator 2282.
Bates, Cole 1257.
Bauer, Joseph A 3300.
Bausch & Lomb Optical Co *461.*
Baum, William *1669.*
Bayridge Dock Co 1262, 1263.
Beachdale Co., The *2191.*
Beachler, Walter 1270.

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Index page

Beacon Journal ... *1950.*
Beacon Milling Co ... *986.*
Beam, Representative Harry P ... 3152.
Beamish, R. R ... *2138.*
Bearing Workers Association Union ... 3294.
Beaton Motor Co ... 1259.
Beauticians of America. *See* Allied Beauticians.
Beaver Machine & Die Casting Corp ... *986.*
Beaver Mahoning Canal ... 3298.
Beaver Roller Bearing Co ... *130.*
Bedford Cut Stone Co. *v.* Journeymen Stone Cutters Association, 274 U. S. 37, (1927.) ... 2317, 2324, 2339, *2484*, *2496*, 3009, 3010, 3099, 3114, 3134, 3177.
Beiter, Representative Alfred F ... 1148, 1258, 1269, 1275, 3156, 3231.
Belden ... *602*, 1216.
Belden Manufacturing Co ... *60*, *1909.*
Bell, Representative C. Jasper ... 3297, 3298, 3299.
Bell, William B ... *546*, *553*, *589*, *590*, *591.*
Bellman Brook Bleachery ... *2191.*
Beloit Commercial Club ... 3302.
Bemis *v.* State ... 2411.
Bendix Aviation Co ... *130.*
Benedict Manufacturing Co ... *986.*
Benisch Bros ... 1260.
Berks County Hosiery Employees Association. ... *2153.*
Berkshire Employees Assoc ... *2010.*
Berkliner-Joyce Factory ... 1218.
Bernheim, Alfred L ... *2098.*
Berquist ... *1906.*
Berry, Mayor George, ... *2068.*
Berry, George L. (AFL) ... *465*, *466*, *467*, *469*, *474*, *661*, *1018*, 1155, 1209.
Berry, Paul D ... *858.*
Bethlehem Shipbuilding Corp ... *825*, *840*, *841.*
Bethlehem Steel Co ... *119*, *521*, *522*, *813*, *818*, *823*, *834*, *835*, *838*, *839*, *1064*, 1219, 2880.
Better ... 1266.
Beyer ... *250*, *261*, *264*, *288*, *317*, *1018*, *1019.*
Biddle, Francis ... 1314, 1323, *1449*, *1461*, *1539*, *1543*, *1551*, *1562*, *1576*, *1873*, *2102*, *2129*, *2201*, *2203*, 2328, *2647*, 2871, 2912, 2913, 2922, 2959, 2968, 3051, 3062, 3187, 3188, 3190, 3206.
Biermann, Representative Fred ... 3217, 3226, 3227.
Bilbo, Senator Theodore G ... 2344, 2397, 2400, 2415.
Bilt-Rite Baby Carriage Co ... 1268.
Binderup *v.* Pathe Exchange ... 3147, 3148.
Bismarck ... 3183.
Bituminous Coal Labor Board ... *2229.*

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Index page

Black, Senator Hugo L---------- *28, 289, 368, 371, 664, 684*, 1244, 1251, *1374, 1502, 1618, 2053, 2067, 2069, 2075, 2077–8, 2080*, 2344, 2397, 2400, 2415, *2564*, 3293.
Black-Connery 30-Hour-Week Bill------- *2529, 2564, 2767*, 2992, 2993, 2994, 2998, 3281, 3282, 3283, 3284, 3285, 3286, 3287, 3289, 3290, 3292, 3293, 3294, 3298, 3300, 3302, 3304, 3305.
Blackmer---------- *117.*
Blackstone---------- *2243.*
Blankenhorn---------- *1546.*
Blanton, Representative Thomas L------- 1229, 2991, 2993, 3000, 3001, 3002, 3029, 3154, 3155, 3164, 3185.
Block *v.* Hersh---------- *2240, 2241*, 2406.
Blood & Co., Inc., John---------- 3297.
Bloom, Representative Sol---------- 1265, 1274.
Bloom, S. A---------- 3301.
Bluestone Lime & Quartzite Co--------- *2007.*
Board of Labor Review---------- *1036.*
Bogni *v.* Perotti---------- 2410.
Boggs, Harry L---------- *1891.*
Boileau, Representative Gerald J-------- 3202–3203.
Boland, Representative Patrick J-------- 2430, 2438.
Bolton, Representative Chester C------- 1230, 3094, 3301.
Bonbright, Professor James,---------- *414, 2254.*
Bondville Bleachery & Dyeworks-------- *2191.*
Bone, Senator Homer T---------- 1191, 1193, 1244, 2344, 2397, 2400, 2415.
Bookbinders Joint Conference Board---- 3300.
Boot & Shoe Repair Local 620---------- 3290.
Boot & Shoe Workers Local 385 and 120--- 3282.
Borah, Senator William E---------- *28, 31, 97, 107–11, 114–15, 169, 177–81, 183–5, 188, 196–7, 241, 257–8, 368, 371, 389–91, 394, 413, 436, 442–3, 448, 542, 553, 684*, 1179, 1235, 1244, *1374, 1377, 1415, 1418, 1421–2, 1425, 1428–9, 1502, 1618, 1977, 1983, 1992*, 2344, 2349–50, 2360, 2364–5, 2377–9, 2397, 2400, 2403, 2415, 3237, 3254, 3259, 3262.
Bordens Dairy & Ice Cream Co--------- *724.*
Borders, Jr., M. W---------- 3026, 3027.
Bores, Anna---------- 3288.
Born, Guy Z---------- 3284.
Bossert Corp & Brunner Mfg. Co-------- *986.*
Bossert *v.* Dhuy, 221 N. Y. 342, (1917)-- 2324, *2484.*
Boston Herald Traveler---------- *2112.*
Boswell, H. V---------- *1021.*
Bowen, Ivan---------- *733, 734.*
Bowen, O. J---------- *2141.*
Bowery Savings Bank---------- *662.*

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	Index page
Boylan, Representative John J	1257, 1264, 1266, 1268, 1271, 1272, 1273, 3296, 3297, 3299, 3304.
Boyle, Patrick	*680*, *913*.
Boys, George	*545*.
Brach, Otto W	3283.
Bradford Dyeing Association	*2191*.
Bradly, Justice	*2243*.
Brandeis, (Justice) Louis D	*376*, *406*, *413*, *414*, *1409*, *1512*, *2238*, *2242*, *2254*, 2325.
Brangan, Margaret	3294.
Braverman, Max	*679*, *680*.
Brazos Valley Automobile Dealers Association.	1257.
Brenckman, Fred	*1038*.
Breslan, Thomas	*2049*.
Brewer-Titchener Corp	*986*.
Brewster	1278.
Brewster Printing Co	*625*.
Bricklayers, Masons & Plasterers International Union.	*880*, *961*, 1273, 3284, 3300.
Bricklayers Union No. 9	3300.
Bridge, Structural, Ornamental, Iron & Bronze Erectors, *see* Amalgamated Association of Bridge Structural, Ornamental, Iron and Bronze Erectors.	
Brightman Manufacturing Co	*723*.
Brindell	*377*, *698*.
Brissenden, Paul F	*241*.
Bristol Silver Mines Co	*2007*.
British Columbia Federation of Labor	*1019*, *1020*.
British Federation of Industries	*335*.
British Trade Disputes	*2176*.
Broach, H. H	*784*.
Broadway Merchants Chamber of Commerce.	1278, 1281.
Brock, C. M	*742*.
Brooklyn Borough Gas Co	1276.
Brooklyn Chamber of Commerce	*687*, 1269, 1275, 1276, *2204*.
Brooklyn Eastern District Terminal	1269, 1278.
Brooklyn & Long Island Automobile Dealers Association.	1257.
Brooklyn Real Estate Board	1281.
Brooklyn Savings Bank	1276, 1277.
Brooks, S. G	*723*.
Brosseau, A. J	*1980*.
Brotherhood of Locomotive, Firemen and Enginemen.	*226*, *228*, *229*, *230*, *231*, *233*, *734*, *735*, *736*, *737*, *745*, *747*, *1021*, 2323.
Brotherhood of Maintenance of Way Employees.	*765*.
Brotherhood of Painters, Decorators and Paperhangers.	*765*, 1274, *2197*, 3300.

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Index page

Brotherhood of Railway Carmen of America. *764*, 1267.
Brotherhood of Railroad Shop Crafts of America. *2131*, *2132*.
Brotherhood of Railway Clerks. *764*, *2264*.
Brotherhood of Railroad Signalmen of America. *765*.
Brotherhood of Railway and Steamship Clerks, Freight Handlers, and Station Employees. *1059*, 3301.
Brotherhood of Trainmen. *737*, *739*, *740*, *765*.
Brown, Justice. 2281.
Brown, Grover C. *1757*.
Brown & Bonnel. *881*.
Brown Co. *986*.
Brown, Senator Fred H. 1244, 2344, 2399–400, 2414–15.
Brown, Millard D. *2196*.
Brown *v.* Walker, 161 U. S. 591. 1368.
Brown-Williamson Tobacco Corp. *1594*, *1596*, *1597*.
Browntree, Seebohm B. *334*.
Bruce, Stanley. *558*, *559*.
Bruere, Dr. Robert W. *661*, *662*.
Brunner. *576*.
Buchanan, W. C. *632*, *633*.
Buck. 1277, 1278, 3282.
Buck, Robert M. *2110*.
Bucker, William. *2009*.
Buckeye Coal Co. *366*.
Buckeye Steel Casting Co. *723*.
Buckley, Representative Charles A. 3094.
Buckman, William D. *1891*, 3094.
Budd Co. *134*, *135*, *136*, *522*, *1015*.
Budd-Ranney Engineering Co. *723*.
Buffalo Chamber of Commerce. 1266.
Buick Employees Association. *129*.
Buick Motor Co. *324*.
Building Service Employees International Union. *289*, *290*, *2196*, 3296, 3297.
Building Trade Council. *785*.
See also Allied Building Trades.
Bulkley, Senator Robert J. 1244, 2344, 2399–400, 2414–15.
Bulow, Senator William J. 1244, 2344, 2397, 2400, 2415.
Bulwinkle, Representative Alfred L. 2369, 3094.
Burdick, Representative Usher L. 3204.
Bureau of Census. *693*.
Bureau of Internal Revenue. *693*, *2031*.
Bureau of Labor Statistics. *197*, *242*, 1111, 1316, *1970*, 2301.
Bureau of Mediation and Conciliation. *1577*.
Burgess, Louis. *2115*.
Burke, Senator Edward R. 2344, 2397, 2399, 2415.
Burke, John J. *1602*.
Burroughs. *706*, *707*, *708*, *710*.

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Index page

Burton-Dixie Corp---------- 1277, 1278, 1279.
"Business as a Profession," Brandeis, Louis. *376, 414, 415.*
Business Week, December 30, 1933---------- *102.*
Buskirk, Van R---------- *773.*
Butchers' Union S. H. & L. S. L. Co. *v.* Crescent City L. S. L. & S. H. Co. 2405.
Butler Armco Plan of Employee Representatives. *863–870, 841, 842.*
Buxton, Veryl L---------- *707.*
Byrd, Senator Harry Flood---------- 1244, 2344, 2397, 2399, 2414–15.
Byrnes, Senator James F---------- 1244, 2344, 2397, 2400, 2415.
Byrns, Representative Joseph W---------- 1226–31, 1244, 1254–5.
Byrns Bill---------- 3287, 3288, 3292, 3295.
Cabinet & Carpenters Union of America---------- *1978.*
Cadillac Co---------- *130, 324.*
Cady---------- 1284.
Caldwell, Ed F. Co---------- 1279, 1284.
Caldwell, Robert T---------- *1820.*
California Commission on Immigration & Housing. *241.*
California Mfgs. Association---------- *374, 1626.*
Calkins & Dublin, Inc---------- 1237.
Callahan, Senator---------- *2011.*
Callahan Can Machine Co---------- 1277, 1278.
Callahan, Donald A---------- *1999.*
Calloway---------- *2070.*
Calumet Chemical Co---------- *625.*
Calumet & Hecla Consolidated Cooper Co---------- *2005.*
Camden Chamber of Commerce---------- *537.*
Camden Courier & Post---------- *2110.*
Camel Cigarettes---------- 2885, 3184.
Campo, Angelo---------- 3289.
Canadian Labor Congress---------- *1020.*
Canadian National Railroad---------- *250.*
Canastota Chamber of Commerce---------- 3291.
Cannon, Representative Clarence---------- 3094.
Cannon, Representative Raymond J---------- 3094.
Cannon Mills---------- *2191.*
Canovan, Edward---------- *584.*
Cantwell, J. J---------- *2149, 2204.*
Capital City Dairy Co. *v.* Ohio---------- 3147.
Capital City Products Co---------- *724.*
Capital Die Tool & Machine Co---------- *723.*
Capital Lift & Manufacturing Co---------- *723.*
Capper, Senator Arthur---------- 1244, 1267, 1272–4, 2344, 2397, 2400, 2415, 3282, 3284, 3286–7.
Caraway, Senator Hattie W---------- 1244, 2344, 2400, 2415, 3268.
Cardozo, Justice Benjamin---------- *2089.*
Carey, Senator Robert D---------- 1244, 2344, 2399–400, 2414–15.
Carey, W. Gibson, Jr---------- *1652.*
Carlisle---------- *2243.*

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Index page

Carmody, John P---------- *337.*
Carnegie Foundation Study of Academic & Industrial Information. *1605.*
Carnegie Natural Gas Co---------- *762.*
Carnegie Steel Co---------- *114, 119, 120, 172, 762, 913, 914, 915, 917, 1599, 1838, 1845, 1846, 2710.*
Carney, William---------- *1846.*
Carpenter, C. T---------- 2937, 2983, 3081, 3202.
Carpenter---------- 1144.
Carr, Charlotte---------- *978.*
Carranza---------- *2114.*
Carroll, Walter---------- *645.*
Carter Carburetor Co---------- *987.*
Carter, F. J---------- *2121.*
Carter Oil Co---------- *2015, 2038, 2045, 2048.*
Cartwright, Clifford U---------- *2015, 2038.*
Case Crane & Kilbourne Jacobs Co---------- *724.*
Case, Rodger E---------- 1264.
Casey, Representative Joseph E---------- 3094.
Cash, William---------- *1940, 2052.*
Caterpillar Tractor Co---------- *1918.*
Cathcart, A. C---------- *2142.*
Catholic Welfare Committee---------- *467.*
Cauble, Charles M---------- 3154, 3155.
Cavender, Harry---------- 3304.
Celler, Representative Emanuel---------- 3094.
Cement Workers Union #18457---------- 3300, 3301.
Census, Bureau of---------- *693.*
Central Ohio Paper Co---------- *724.*
Central Spinning & Weaving Co---------- *1969.*
Central Trades & Labor Council of Greater New York. 3299.
Central Union Labor Council of Greater New York. 1271, 1272.
Chaffee---------- 3236.
Chalmers, Allank---------- *2215.*
Chamber of Commerce---------- *553, 1848,* 2871.
Chamber of Commerce, Dayton, Ohio---- 2880, 2881.
Chamber of Commerce of the State of New York. 1281, 3300.
Chamberlain, W. H. H---------- *986.*
Champion Machinery Co---------- *622, 623, 625.*
Champion Sheet Metal Co---------- *986.*
Champlain Co. Case---------- 3148.
Champlain Refining Co. *v.* Cor. Comm., 286 U. S. 238. *426.*
Chandler, George B---------- *1729.*
Chapin, Roy---------- *338.*
Chapman, Representative Virgil---------- 3094.
Chardavoyne, N. S---------- 1278, 1280.
Charlton---------- 2281.

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Index page

Chase ---- *648.*
Chastleton Corp. *v.* Sinclair, 264 U. S. 547 ---- *2241.*
Checker Cab Manufacturing Corp ---- *324.*
Chemical Workers Union 19019 ---- 3302.
Chenery, William L ---- *2090, 2093.*
Chesterfield ---- 2885.
Chevrolet Employees Association ---- *102.*
Chevrolet Motor Co ---- *324.*
Chicago Association of Commerce ---- *995, 996, 2132, 2137.*
Chicago Board of Trade *v.* Olsen ---- *432,* 2318, 2339, 2497, 3108.
Chicago Building Trades ---- *1008.*
Chicago Daily News ---- *603.*
Chicago Federation of Labor ---- *955.*
Chicago Furniture Manufacturers ---- *627.*
Chicago Motor Coach Co ---- *1538.*
Chicago Rock Island ---- *2269.*
Chicago Tribune ---- *2112.*
Chicago University ---- *1873.*
Chief Consolidated Mining Co ---- *2007.*
Chipman, A. J ---- *219, 226.*
Chisholm, Henry ---- 3103.
Christianson, Representative Theodore ---- 3121.
Chrysler ---- *124, 126, 175, 324, 1545, 1980, 1986.*
Chrysler, Walter ---- *338.*
Chummey, John O ---- 3293.
Cincinnati Milling Machine Co ---- *573.*
Citizens Alliance of Duluth ---- *1637.*
Civil Works Administration ---- *337, 402, 418, 419, 420, 799, 934, 1015,* 2429.
Civilian Conservation Corp ---- *1015,* 1288, 3196.
Claiborne, Representative James R ---- 3094.
Clark, Representative D. Worth ---- 3094.
Clark, Senator Bennett Champ ---- 1244, 2114, 2344, 2377, 2397, 2400, 2415.
Clark, Evans ---- *2090,* 2377.
Clark, Representative J. Bayard ---- 3094.
Clarke, Justice ---- *1409.*
Classification Act of 1923 ---- *765,* **1139, 1298** 2347, **2418 2419, 2889, 2947,** 2995, **3016, 3017, 3036, 3037,** 3156, 3215, **3242, 3243, 3272, 3273.**
Clapp Manufacturing Co ---- *986.*
Claysmith Co., Inc ---- *2191.*
Clayton Act ---- *470,* 1344, 1359, 1360, 1362, 1364, 1369, *1409, 1644,* 2324, 2383, 2483, 2484, 2932, 2979, 3076.
Cleary, Thomas ---- *849.*
Cleveland Chamber of Commerce ---- *671, 672.*
Cleveland Plain Dealer ---- *2022.*
Climer, Fred ---- *2052.*
Cline *v.* Frink Dairy Co., 274 U. S. 445 ---- *434.*
Clow, Kent S ---- *1906.*

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Index page

Clyde Engineering Co. Ltd. *v.* Cowlurn, 37 C. L. R. 462. 2280.
"Coal Miner's Struggle for Industrial Status," Sufferin, A. *314.*
Cochran, Representative John J. 3094.
Coe *v.* Errol, 116 U. S. 517 *424, 431,* 3144, 3145.
Cohen, V. B *1591.*
Cohens *v.* Virginia 3012, 3108.
Coker, David R *70.*
Cold Spring Bleachery *2191.*
Colden, Representative Charles J 2869.
Cole Bates Chevrolet Co 1257.
Colley, Robert F *861, 1811, 1821.*
Collier's Weekly *2090,* 3194.
Collins, John J *502, 1725, 2217.*
Colorado Fuel & Iron Co *341, 759, 1545.*
Colorado Manufacturers' and Merchants' Association. *374, 1626.*
Colorado Milling & Elevator Co *2009.*
Colt Patent Firearms Co *2007,* 2991.
Columbia Steel Co *762, 862.*
Columbian Rope Co *986.*
Columbus Anvil & Forging Co *724.*
Columbus Auto Parts Co *724.*
Columbus Bolt Works Co *724.*
Columbus Brass Co *724.*
Columbus Coated Fabrics Corp *724.*
Columbus Die Tool & Machine Co *724.*
Columbus Federation of Labor *725.*
Columbus Forge & Iron Co *724.*
Columbus Metal Trades Assoc *723.*
Columbus Packing Co *724.*
Combined Metals Reduction Co *2007.*
Comer, Donald *656, 2066.*
Commercial Telegraphers Union of America. *1059.*
Committee to Investigate Textile Strike *2090.*
Commission on Industrial Relations *191.*
Commission of Inquiry for the Interchurch World Movement. 2916, 2962, 3055.
Commons & Andrews, Principles of Labor Legislation. 2916, 2962, 3055.
Commonwealth *v.* Hunt, (4 Metcalf 111) 2322.
Commonwealth *v.* Perty 2410.
Communications Act 1349, 1360, 1361, 1364, 1368, 1369.
Communications Commission 1348, *2037, 2063, 2275,* 2920, 2934, 2967, 2980, 3061, 3077, 3207.
Communistic Workers Party *548, 559, 1966, 1972.*
Compliance Board, NRA 3113.
Compton Looms Works *655.*
"Conciliation & Arbitration in The Coal Industry of America," Sufferin, A. *314.*

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Index page

Conciliation Service---------- *52*, *54*, *62*, *64*, *149*, *199*, *251*, *259*, *266*, 1102, **1139**, 1358, *1558*, 2921, 2922, 2935, 2967, 2981, 3062, 3208, 3269.
Congress of American Industry---------- *1422*, 2337.
"Congress, the Constitution and the Supreme Court" Warren, Charles. *2187*.
Conley, Clyde C---------- 3303.
Conn, C. W---------- *882*.
Connally *v.* General Construction Co., 269 U. S. 385. *433*.
Connally, Senator Tom---------- 1244, 2344, 2397, 2400, 2415.
Connecticut, Manufacturers Assn. of---------- *1626*, *2174*.
Connery, Representative William P., Jr-- 20, *44*, *97*, 1128, 1144, 1150, 1154–5, 1230, 2459, 2474–5, 2482, *2499–501*, *2503–5*, *2507–9*, *2512–3*, *2515*, *2517–18*, *2523*, *2525*, *2527–38*, *2541*, *2544*, *2549–50*, *2552–4*, *2557*, *2561*, *2563–70*, *2586–8*, *2647*, *2652–4*, *2656*, *2658–64*, *2666–71*, *2675*, *2682–7*, *2690–7*, *2702–3*, *2709–17*, *2725–6*, *2730*, *2734–41*, *2743–51*, *2759*, *2762*, *2765*, *2773–7*, *2780–2*, *2786–9*, *2814*, *2816*, 2842–5, 2857, 2869–71, 2898, 2910, 2919–20, 2956, 2965–6, 2990, 2992, 3003, 3006, 3012, 3046, 3058, 3060, 3089, 3091, 3096, 3099, 3109, 3111–13, 3115–23, 3127, 3131, 3135, 3152, 3154, 3165–8, 3171–2, 3179–80, 3183–5, 3193, 3197, 3199–200, 3202, 3206, 3210, 3212–13, 3217, 3220–1, 3224–8, 3251–2, 3254, 3258–60, 3262, 3264–8.
Conover, Julian D---------- *2004*, *2005*.
Consolidated Copper Corp---------- *2006*.
Consolidated Machine Tool Corp---------- *461*.
Constructors Association of Western Pennsylvania. *2137*, *2138*.
Consumers Advisory Board---------- *236*, *466*, *470*.
Consumers' Industries Group---------- *355*.
Continental Automobile Co---------- *324*.
Continental Can Co---------- *117*, *122*, *986*.
Continental Undergarment Co---------- 3291.
Conway, T. V---------- *1857*, *1858*.
Cook, Morris L---------- *1605*.
Cooke, William---------- *1614*.
Cooking & Heating Appliance Manuturing Industry. 1279, 1280.
Cooley, Representative Harold D---------- *730*, *2130*, 3126, 3165.
Coolidge, President---------- 2999.
Coolidge, Senator Marcus A---------- 1245, 2344, 2400, 2414, 2415.
Cooper, Representative John G---------- 2992.

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Index page

Cooperative Association of Employees (of Leeds & Northrup Co.). *450.*
Coordinator of Railroads. *261, 264.*
Copeland, Senator Royal S. 22, 368, 371, 684, 995, 1244–5, 1267, 1269, 1272, 1276, 1374, 1502, 1618, 2344, 2400, 2415, 3286, 3291, 3294.
Coppage *v.* Kansas, 236 U. S. 1. *82, 2040, 2246, 2257,* 2279, 2325, 2338, 2404, 2405, 2407, 2408, 2410, 2411, *2484, 2496,* 3107.
Corcoran. 1217.
Cordwainer's Case. 2322.
Cork Import Corp. 1264.
Cork Institute of America. 1263.
Cornelius, Sidney E. *675, 2170.*
Coronado Coal Co. *v.* United Mine Workers, 268 U. S. 295. 2282, 2317, 2339, 3009.
See also United Mine Workers of America *v.* Coronado Coal Co., this index. 3010, 3011.
Correll, Fred C. 3296.
Cort, Stewart J. *824.*
Costigan, Senator Edward P. 1179, 1180, 1182, 1209, 1218, 1235, 1241, 1245, 2282, 2343–4, 2397, 2400, 2415.
Cotton Control Act of 1934. 1350.
Cotton Textile Code Authority. *355, 2067, 2068.*
Cotton Textile Industry, Board of Inquiry for. 2916, 2963, 3055.
Cotton Textile Institute. *355, 356, 658, 2066, 2079, 2274.*
Couzens, Senator James. 1245, 2344, 2359, 2360, 2362, 2364, 2370, 2397, 2399, 2415.
Coughlin, Charles E. *481, 482, 489, 584.*
Couhig, William. *2008.*
Council of Shoe Manufacturers. 3285.
Cowenhoven, G. M. 1261, 1278, 1280.
Cowper, John W. *325, 326.*
Cowper Co., John W. *325.*
Cox, Representative E. E. 1154, 3027, 3028, 3029, 3095, 3102, 3152, 3153.
Craig, A. W. *1838.*
Craighill, Charles S. *600, 1909.*
Cranston Print Works. *2191.*
Crawford, Representative Fred L. 3030, 3031, 3178.
Creel, George. *235, 734, 738, 739.*
Creigh, Thomas. *1876.*
Creps, David H. 3294.
Crescent Cotton Oil Co. *v.* Mississippi. 3145.
Crew, Albert. 1220, *1791.*
Cronin, William. *1980.*
Crosby, Alexander. *2115.*
Crosby, Horace C. 3287.
Crockett, A. E. *456.*
Crosser Bill. 1150.

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Index page

Crowe, Representative Eugene B---------- 3094.
Crowell *v.* Benson, 285 U. S. 22---------- *433, 2236.*
Crown Cork & Seal Co---------- 1262, 1263, 1280, 1281.
Crown Manufacturers Association of America. 1268.
Crouse-Hinds Co---------- *586.*
Crouse & Pope Foundry Corp---------- *986.*
Cudahy Packing Co---------- *291, 1876.*
Cudahy Packing Co. *v.* U. S---------- 1369.
Cummings---------- *1586, 1591,* 2991.
Cunningham, J. D---------- *1901, 1906.*
Curtis, Justice---------- *433.*
Cush, E. P---------- *523.*
Cushman's Sons, Inc---------- *214.*
Cutler Mail Chute Co---------- *461.*
Cutting, Senator Bronson---------- 1187, 1245, 1248, 1250–1, 1253.
Dahl---------- *1980.*
Dahne, John J., Co---------- 1261.
Daily Newspaper Code---------- *2118.*
Daily Worker---------- *1966.*
Daly Mining Co---------- *2007.*
Danbury Hat Co. Case---------- *2483,* 3028, 3134.
Danford---------- *774.*
Darrow, Senator George P---------- 3291, 3302.
Daugherty, C. R---------- 2916, 2962, 3055.
Davenport Machine Tool Co---------- *461.*
David Davies---------- *724.*
Davis Coal & Coke Co---------- *337.*
Davis & Catterall---------- *2191.*
Davis, Charles---------- *1807.*
Davis, David J---------- *774, 776, 777, 778, 779.*
Davis, Elmer---------- 3307.
Davis, F. E---------- *1811.*
Davis, J. C---------- *779.*
Davis, Senator James J---------- *28, 31, 58–9, 62–6, 83, 97, 103, 126, 130, 137, 141, 169, 241, 243–4, 252–3, 258, 261–2, 264–9, 283, 289, 293, 298, 309, 311, 329, 358–62, 365–6, 368, 371, 383, 385, 395, 404, 413, 417, 421–2, 435–6, 444–6, 449, 451–2, 477, 511, 514, 517–8, 529–30, 532, 540–2, 551–7, 559–61, 563–5, 568, 587, 592–6, 599–600, 603–9, 611, 614, 617, 620–2, 625, 637, 645–9, 651–2, 654, 656, 667, 669–70, 684, 687–9, 694, 696–709, 711, 757, 760–1, 780–2, 792–3, 803, 807, 809–11, 814–15, 825–6, 833, 839–40, 842, 845–50, 852, 854–5, 857–8, 873, 875–6, 878–9, 881, 883, 885, 887, 891, 897, 899–900, 913, 916–18,*

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	Index page
Davis, Senator James J.—Continued	*920–2, 949, 995, 999, 1001, 1016–17, 1019, 1030–1,* 1245, *1374, 1502, 1618, 1777, 2397, 2399–400, 2414–15.*
Davis Standard Bread Co	*2138.*
Davis, Walter	*1563.*
Davis, William H	*2090.*
Day, Justice	*82, 83, 1410,* 2325.
D & S Processing	*2191.*
Deaton, G. H., Co	*625.*
Debs, In Re, 158 U. S. 564	2317, 2339, 3009.
Dear, Representative Cleveland	3094.
Dederer, Herman M	1260.
Deen, Representative Braswell	3217.
Deffenbaugh, James W	*1886.*
Defiance Bleachery	*2191.*
Delamater, Walter A., Col	*419.*
Delaware, Lackawanna & Western R. R. Co. *v.* Yurkonis.	3144.
Delco Appliance Corp	*461.*
Delco Products Corp	2882.
Delta Finishing Co	*2191.*
Democratic Party	*696.*
Dempsey Bleachery & Dye Works	*2191.*
Dennison, Henry S	*434, 462, 467, 534, 759,* 1209, *2090, 2093.*
Dennison Manufacturing Co	*434, 435, 467, 759, 1544, 2090.*
Dennison, William E	*2541.*
Densmore, John B	3157.
Denver Tramway case	*2679.*
Denzler, Harry L	1260.
Department of Commerce	*54, 63, 113, 267,* 2920, 2935, 2967, 2982, 3061, 3079, 3208, 3211.
Department of Justice	*54, 179, 185, 593, 1562,* 2305, 2330, 2331, 2435, 2911, 2914, 2934, 2957, 2960, 2980, 2991, 3049, 3052, 3078, 3113, 3189, 3207.
Department of Labor	*51, 52, 53, 54, 55, 56, 58, 62, 63, 64, 65, 66, 149, 161, 199, 231, 255, 269, 358, 361, 382, 384, 416, 418, 488, 521, 554, 598, 602, 603, 820,* **1088, 1089,** 1106, 1111, 1122, *1551, 1576, 1586, 1590, 1875, 2273, 2274,* 2307, 2374, 2382, **2419, 2889,** 2918, 2919, 2920, 2921, 2922, 2933, 2934, 2935, 2936, **2947,** 2956, 2964, 2965, 2966, 2967, 2968, 2969, 2979, 2981, 2982, 2995, 2997, **3015, 3016, 3036,** 3047, 3058, 3059, 3061, 3062, 3063, 3077, 3078, 3079, 3080, 3118, 3150, 3205, 3206, 3207, 3208, 3209–3210, 3212–3215, **3242, 3272.**

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Index page

Department of Labor & Industry in Pennsylvania. *979, 980.*
De Rouen, Representative Rene L. 3094.
Desvernine, Raoul E. *1745.*
DeSoto Motor Corp. *324.*
Devlin, Daniel. *648, 649.*
Dewitt, M. C. *2009.*
Diamond Chain & Manufacturing Co. *2207.*
Diamond Detective Agency. *983.*
Diamond Taxicab Co. 3161.
Dickerson, Walter T., Co. *724.*
Dickinson, Senator L. J. 1245, 2344, 2399–400, 2414–15.
Dickstein, Representative Samuel J. 3094.
Die Sinkers Lodge No. 1010. 3284.
Diefendorf Gear Corp. *986.*
Dieterich, Senator William H. 2398, 2400, 2414–15.
Dill, Senator Clarence C. 1104, 1245, *1402.*
Dillon. *1911, 2149, 2204.*
Dillon, Frank J. *2717.*
Dillon, Mary E. 1276.
Dilts Machine Works. *986.*
Dirksen, Representative Everett M. *632,* 3094.
District Agreement. *341.*
Dodge, F. W., Corp. *1049.*
Dodge Bros. Corp. 3235.
Doering. 1257.
Doberty. 2877.
Doll and Toy Workers Union. *290.*
Domestic Laundry. 1276, 1277.
Donahey, Senator Vic. *1374, 1377, 1433, 1477, 1492, 1502, 1618, 1693, 1695,* 2344, 2397, 2400, 2415, *2716.*
Donham, Wallace B. *639, 1606, 1610.*
Donnell, A. D. *1876.*
Donnelly, James L. *599, 635, 1893.*
Donnelly, Thomas J. 3301.
Doragoff, Nathaniel. *981.*
Dorchey *v.* Kansas, 272 U. S. *406.*
Dorsey, Representative Frank J. G. 3299.
Douglas. 2916, 2962, 3055.
Douglas, Paul H. *236.*
Douglass, Col. *2223.*
Doutrich, Representative Isaac H. 3094.
Dower, John L. *2009.*
Downey, C. M. *777, 778.*
Drane & McKee. 1257.
Draper, Ernest. *467,* 1209.
Dravo Contracting Co. *665.*
Dred Scott Decision. *481.*
Dresner, S. & Sons, Inc., Co. *102.*
Drew, Walter. *1042, 2194, 2195.*
Driscoll, Representative D. J. 3301, 3302.

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Index page

Duffy, Senator F. Ryan---------- 1245, 2344, 2361, 2397, 2400, 2415, 3094, 3285.
Dugan Bros---------- 1258, 1259.
Dunbar, Howard W---------- *1863*.
Duncan---------- 3029.
Duncan, Ralph E---------- 3299.
Dunn, Representative Aubert C---------- *2474*.
Dunn, Charles Wesley---------- 2208.
Dunn, Representative Matthew A---------- *2500*, *2505*, *2507–8*, *2513–15*, *2653*, *2656–8*, *2686-7*, *2690–1*, *2734–7*, *2742–4*, *2746–7*, *2749*, *2768–71*, *2773*, *2794–6*, 3001, 3131.
Dunn, Robert---------- *2219*.
Dunne, Wm. F---------- *1010*, *1021*, *1966*.
Dunning & Boschert Press Co---------- *986*.
Duplex Printing Press Co. *v.* Deering, 254 U. S. 443. 2317, 2324, 2339, *2483*, 3009, 3147.
DuPont, Pierre---------- *417*, *439*, *467*, *471*, *594*, 1209, 1216, *1574*.
DuPont, E. I. de Nemours & Co---------- *122*, *467*.
Duquesne & McDonald Steel Co---------- *1487*, *2700*.
Durable Goods Industries Committee---- *780*, *781*, *782*, 1278.
Dutchess Bleachery, Inc---------- *2191*.
Dyer, Dr. Gus W---------- *938*.
Eagle, Representative Joe H---------- *2474*, *2648*, *2656*, *2664–5*, *2667*, *2685–6*, *2695*, *2730*, *2734*, *2737*, *2739*, *2748*, *2788–90*, *2794*, 2884–5, 3184–5.
Eagle & Blue Bell Mining Co---------- *2007*.
Eastern States Retail Lumber Dealers Association *v.* United States. 3142.
Eastman, Senator---------- *104*, *105*, *404*, *1625*, *2266*, *2268*, 2358.
Eastman, Whitney H---------- *933*.
Easy Washing Machine Corp---------- *986*.
Eaton, Representative Charles A---------- 3101, 3102, 3103, 3104, 3105.
Eberhard Faber Pencil Co---------- 1258.
Eckert, Representative Charles R---------- 3094.
"Economic Tendencies in U. S.", Mills, F. C. *1410*.
Economy Act---------- *2773*, 3187.
Eddy, Jonathan---------- *2112*.
Eddystone, Manufacturing Co---------- *2191*.
Edelman, John W---------- *992*, *2010*.
Editor & Publisher---------- *2110*, *2112*, *2114*.
Edmunds, Franklin S---------- *438*.
Edward Ermold Co---------- *2139*.
Edwards, Harold---------- *985*.
Edwards, O. M., Co---------- *586*.
Eggleston---------- 1215.
Eisen, Maxie---------- *680*.
Eisner, Robert N---------- 3301.

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Index page

Ekwall, Representative William A..... 3122, 3154, 3164, 3165, 3172, 3214, 3215.
Electrical Workers Union..... *680.*
Ellard, Harvey G..... *1875.*
Ellenbogen, Representative Henry..... 3123, 3203, 3212, 3221.
Elliott, George W..... *1852.*
Elliott, William S..... *949.*
Ellis, E. W., & Co..... 1257.
Elton, R. W..... *632, 635.*
Ely & Walker Dry Goods Co..... *1484.*
Elyria Central Labor Union..... 3304.
Emergency Railroad Act (1933)..... *105, 2694.*
Emergency Railroad Transportation Act.. *252, 253,* 2309.
Emergency Transportation Act..... *261,* 1351, 1352, 1353, *2132,* 2923, 2925, 2969, 3064, 3066, 3191.
Emerson, Kendall (Mrs.)..... *2215.*
Emery, James A..... *374, 413, 537, 574, 1626, 1651, 2111, 2226, 2244, 2268, 2269.*
Empire State Silk Label Co..... 1262, 1263.
Employees Association of Louisville Gas & Electric Co. *2170.*
Employee Association, the Tri-State Telephone & Telegraph Co., St. Paul, Minn. *2121.*
Employee Representative Association, Louisiana Sales Division, Standard Oil Co. of Louisiana, New Orleans, La. *2140.*
Employees' Association, Fremont Plant Department, Employees of the Northwestern Bell Telephone Co., Fremont, Nebr. *2124.*
Employees' Association of the Lilly Varnish Co., Indianapolis, Ind. *2139.*
Employees' Association, Omaha Plant Department, Northwestern Bell Telephone Co., Omaha, Nebr. *2124.*
Employees' Cooperative Association of the Twin City Lines, Twin City Rapid Transit Co., Minneapolis, Minn. *2141.*
Employees' Representation Association, Inland Steel Co., Indiana Harbor Works, East Chicago, Ind. *2146.*
Employees' Representative Committee, Nebraska-South Dakota area of the Northwestern Bell Telephone Co., Omaha, Nebr. *2122.*
Employers Association of Central Mass.. *655, 1627.*
Employers Association of New Jersey.... *1627.*
Employer's Liability Cases, Second, 223 U. S. 1. *432.*
Employment Exchange Act..... *402.*
Employees' Relief & Beneficial Association. *803, 804.*

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Index page

Employees Representation Plan of Sobol Bros., Inc. *506, 918.*
Engelberg-Huller Co *986.*
Engineers' Bank *1021.*
English Trade Union Dispute Act *559.*
Enright, Michael *1811.*
Enterprise Paint Manufacturing Co *635.*
Entinger, Jake *283, 285.*
Erdman Act *2813.*
Erickson, Senator John E *28, 31, 368, 371, 477, 637, 647, 675, 684, 757, 833, 845, 848, 880,* **1245.**
Erickson, Charles *914.*
Erwin Cotton Mills *2191.*
Erxleben, Walter *1839, 1847.*
Esch-Cummins Act 2997.
Eureka Lilly Mining Co *2007.*
Eureka Standard Mining Co *2007.*
Evans *606, 2008.*
Evans, Lewis E *1598.*
Evans, Representative Marcellus H *2474,* 3094.
Evans, Mrs *1549.*
Ever-Ready Label Corp *213.*
Exeter Manufacturing Co *2191.*
Executive Order No. 6511 2911, 2957, 3049.
Executive Order No. 6580 2911, 2958, 3049.
Executive Order No. 6612–A 2911, 2957, 3049.
Executive Order No. 6763 **2418, 2888,** 2922, **2946, 3015, 3035,** 3062, 3200, **3241, 3272.**
Executive Order No. 7074 3200, **3272.**
Fabricated Metal Products Fed *597.*
Faddis, Representative Charles I 3171.
Fahey *2061.*
Fairchild Sons 3290.
Fair Frost Finishing Co *2191.*
Fair Lawn Fur Dressing Co
Fairmount Creamery Co *724.*
Fakler, Herman *1037, 2214.*
Fall River Bleachery *2191.*
Farley, Representative James I 3094.
Farm Clubs of America 3175.
Farm Credit Administration 2883, 3186.
Farquharson, J. A *1579.*
Farr Alpaca Co *2191.*
Farrell, Edw. B *1891.*
Farrell Birmingham Co *543.*
Farrell Manufacturing Co *625.*
Farwell Bleachery *2151.*
Faulkner, Frace D 3282.
Fauntleroy, I. R *610.*
Fay, W. E *622.*
Fechner 3196.
Federal Arbitration Act 1366.

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Index page

Federal Coordinator of Transportation--- *250*, *252*, 1103, 1104, 1110, *1401*, *1414*, *1416*, *2273*, 2309, 2332, 2333.
Federal Council of Churches---------- *314*, *1601*, *1603*, *1604*, 2413, 2414.
Federal Emergency Relief Administration- *137*, *1585*, *1969*, *1970*.
Federal Factory Act---------- *349*.
Federal Farm Mortgage---------- 3215.
Federal Housing Administration--------- 1348, 2920, 2934, 2967, 2980, 3061, 3077, 3207.
Federal Mediation Service---------- *2094*, *2097*.
Federal Motor Truck Co---------- *324*.
Federal Oil Conservation Board--------- *1638*, *2226*.
Federal Relief Administrator---------- 3197.
Federal Shipbuilding & Dry Dock Co---- *2225*.
Federal Tariff Commission---------- 3007.
Federal Trade Commission---------- *400*, *401*, *403*, *406*, *418*, 1256, 1368, *2232*, *2236*, *2238*, *2239*, *2248*, *2270*, *2275*, 2284, 2314, 2318, 2332, 2911, 2914, 2915, 2920, 2931, 2932, 2933, 2935, 2938, 2957, 2958, 2960, 2962, 2967, 2977, 2978, 2980, 2982, 3054, 2984, 3007, 3008, 3049, 3050, 3053, 3061, 3062, 3074, 3075, 3077, 3079, 3082, 3120, 3205, 3206, 3207, 3208, 3210, 3211, 3212, 3224, 3255, 3257, 3263, 3264.
Federal Trade Commission *v.* American Tobacco Co. 1369, *2233*.
Federal Trade Commission *v.* Klesner, 280 U. S. 19. *2238*.
Federal Unemployment Agency--------- *799*.
Federal Varnish Co---------- *635*.
Federal Industries of Washington-------- *374*, *1026*.
Federation of Building Trades Workmen of America. *575*, *578*, *579*, *586*.
Feldman, Abraham G---------- *1975*, *1977*.
Fenton, Francis---------- *2007*.
Fenton United Cleaning & Dyeing Co---- *569*.
Feola, John---------- *2049*.
Berback, Leonard H---------- 3300.
Ferguson, Representative Phil---------- 3135.
Fern, M. B. W---------- *740*.
Fess, Senator Simeon D---------- 1245.
Fewkes---------- *1811*.
Fifth Avenue Coach Co---------- *213*, *214*, *216*, *217*.
Filene, Lincoln---------- *1537*.
Filene, Edward---------- *2090*.
Filene Store---------- *440*, *1544*.
Finch, Austin---------- *70*.
Firestone---------- 2877.
Firestone and Goodrich Case---------- 2914, 2960, 2961, 3053, 3189.
Firestone Tire & Rubber Co---------- *1487*, *1952*, *1956*, *2700*.
Fish, Representative Hamilton, Jr------- 1274, 2999, 3074.

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Index page

Fish Dealers Union ---- *680.*
Fisher ---- *338.*
Fisher Body Corp ---- *118, 129, 178.*
Fisher Grocery Co ---- *631.*
Fisher, Leon ---- *631.*
Fisher, Wagner ---- *727, 728, 2149, 2152.*
Fiske, Jr., Edward R ---- *449.*
Fitch ---- 2916, 2962, 3055.
Fitzhugh, William W ---- 1281.
Fleming ---- *1587, 1588, 1589.*
Fletcher, Representative Brooks ---- 3115, 3116.
Fletcher, Senator Duncan U ---- 1245, 2344, 2397, 2400, 2415.
Fletcher-Rayburn Securities Bill ---- 1263, 1264.
Florida, Associated Industries of ---- *374, 1626.*
Focht, Representative Benjamin K ---- 1284, 3110.
Foggett, Tom ---- *913.*
Foght, Edison ---- 3294.
Folmer Graflex Corp ---- *461.*
Food & Grocery Chain Stores of America ---- *631.*
Ford, Representative A. L ---- 1274.
Ford, Henry ---- *471, 747.*
Ford Motor Co ---- *312, 1979, 1980.*
Fordham University ---- *2219.*
Foster Bros. & Chatillon Co ---- *987.*
Foster, Ralph ---- *563.*
Foundry Equipment Manufacturers Association. ---- 1270.
Fowler, William H ---- *665.*
Fox River Valley Manufacturers Association. ---- *610, 1011.*
Frank, Paul A ---- *2170.*
Frankenberry, W. H ---- 3301.
Franklin, H. H., Mg. Co ---- *324.*
Franklin, J. A ---- *70.*
Frazer & Jones Co ---- *986.*
Frazier, Senator Lynn J ---- 1245, 2344, 2397, 2400, 2415.
Friends, Society of ---- *440.*
Fremming ---- *2056.*
Fresch, H. P ---- *1838.*
French, R. T., Co ---- *461.*
Freundlich, Ralph A., Inc ---- 1355, *1480.*
Frey, John P ---- *70, 195, 196, 1580.*
Frey, Representative Oliver W ---- 3094.
Freyschlag, A ---- *231.*
Friant ---- 3196.
Frick, H. C., Coke & Coal Co ---- *366, 969, 973.*
Frigidaire Employees Committee ---- 3298.
Frisbie *v.* U. S. 157 U. S., 160 ---- *432.*
Froeb, Augustus C ---- 1262, 1263.
Full Crew Bill ---- *227.*
Fuller, Eva A ---- 3287.
Fuller, Representative Claude A ---- 3001, 3149.

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Index page

Full Fashioned Hosiery Association..... *462.*
Fullmer, G. L..... *713.*
Fulton Bag & Cotton Mill..... *2191.*
Fulton Hosiery Mills..... *2207.*
Gadsden, Phillip H..... *438.*
Gailis, Joe A..... *2009.*
Gair Realty Corp..... 1261, 1262.
Gallagher, Michael V..... *491.*
Gallup American Coal Co..... *2005.*
Galvin, Jack..... *637.*
Garner..... 1154.
Gardner, Leland R..... *707.*
Garrison, Lloyd K..... *1451, 1505, 1562, 1567, 1881, 1907, 2202,* 2337, 2912, 2959, 3051.
Gary Steel Mill..... *2007.*
Gasque, Representative Allard H..... 3094.
Gassway, Representative P. L..... 3094.
Gasser, E. J..... 3290.
Gaylord Bros. Inc..... *986.*
Gaws, Judge..... *2032.*
Geer..... *661, 662.*
Gender..... *742.*
General Aviation Manufacturing Corp... 1218.
General Cable Corp..... *102, 122, 986,* 3299.
General Cigar Co..... *2152.*
General Electric Co..... *134, 465, 467, 471,* 1151, *1614, 1615,* 3119, 3120.
General Motors..... *102, 174, 175, 178, 1545, 1910, 1980, 1986,* 2882, 3235.
General Motors Corp., Fisher Body Division. *324, 1478.*
General Motors Truck Corp..... *324, 471.*
General Railway Signal Co..... *461.*
George, Lloyd..... *1528.*
George, Senator Walter F..... 1245, *1799, 2071,* 2344, 2397, 2400, 2415, 3176, 3237.
Georgia Federation of Labor..... *2220.*
Georgia Manufacturers Association..... *374, 1626.*
Gerlach, Barklow Co..... *625.*
Germer..... *589.*
Gerry, Senator Peter G..... 2344, 2397, 2400, 2415.
Geschelin, J..... *123.*
Gibbons *v.* Ogden..... 2380, *2811,* 3137, 3144, 3146.
Gibson, Senator Ernest W..... 1245, 2344, 2397, 2399, 2415.
Gifford, Albert J..... *508, 655.*
Gildea, Representative James H..... *2474, 2694–5, 2728, 2739–41, 2745–8,* 3179, 3229.
Gilger, Ida M..... 3293.
Gillespie, Ben B..... *918.*
Gillespie, J. M..... 2883.
Gillespie *v.* People..... 2408.
Gingery, Representative Don..... 3298.

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Index page

Giozza *v.* Tiernan, 148 U. S. 657 ..... *434.*
Girdler, Thomas M ..... *810, 814.*
Gladstone, William E ..... 3185.
Glasgo Finishing Co ..... *2191.*
Glass, Senator Carter ..... 1244–5, 2344, 2397, 2399, 2414.
Gleason-Tiebout Glass Co ..... 1258, 1277, 1278, 3290.
Gleasons Works ..... *461.*
Gligor, D ..... *2008.*
Goberly, J. D ..... 3303.
Godman, H. C., Co ..... *724.*
Godley, Philip ..... *445.*
Goldfield Consolidated Mines Co. *v.* Goldfield Miners' Union No. 220 et al. 2407.
Goldsborough, Senator Philips Lee ..... 1245.
Goldstein, Sidney E ..... *1601*, 2413.
Gompers, Samuel ..... *69, 159, 192, 377, 378, 423, 563, 1012, 2087, 2088.*
Gompers *v.* Buck Stove & Range, 221 U. S. 418, (1911.) 2324.
Goodman, Howard ..... *678.*
Goodman Manufacturing Co ..... *678, 679.*
Goodrich Co ..... *933, 1923, 1925, 1933, 1956, 1959*, 2926, 2972, 3067.
Goodrich Cooperative Plan ..... *1923, 1957.*
Goodyear Industrial Assembly Plan ..... *1928, 2052.*
Goodyear Tire & Rubber Co ..... *122, 131, 1487, 1545, 1855, 1927, 1931, 1937, 1951, 1952, 2700.*
Goodwin, Representative Philip A ..... 1264, 1266, 1268, 1280, 3094, 3295.
Googe, George L ..... 1217.
Gordon, Neil ..... *846.*
Gore, Senator Thomas P ..... 1244–5, 2344, 2368, 2397, 2399, 2414–15.
Gorman, Francis J ..... *301.*
Grace ..... 2880.
Grace, E. G ..... *119.*
Graham, Robert C ..... *1979.*
Graham-Paige Motors Corp ..... *324, 1979.*
Grain Futures Act ..... 1340, 1347, 1359, 1361, 1368, 2378.
Grammar ..... *339.*
Grant, Luke ..... *1045.*
Graniteville Mills ..... *2068.*
Graphic Arts Industry ..... *611.*
Gratz *v.* Federal Trade Commission ..... *401.*
Gray, Representative Joseph ..... 3103, 3104.
Gray, Chester H ..... *507.*
Gray, John H ..... *336.*
Great Falls Bleachery & Dye Works ..... *2191.*
Great Lakes Forge Co ..... *617, 618.*
Great Lakes Steel Corp ..... *468.*
Great Northern Railroad Co. *v.* Merchants Elevator Co., 259 U. S. 285. *2238.*

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Index page

Greater East Side Democratic Association_ 1275, 1276.
Greater New York Council of Building Service Employees International Union of America. *2209.*
Gregg, William_____ *2068.*
Green Bay Drop Forge Co_____ *122.*
Green, William_____ *62, 70, 97, 151, 153, 163, 167, 169, 198, 227, 323, 417, 437, 465, 466, 467, 469, 471, 474, 570, 586, 593, 595, 603, 604, 688, 782, 786, 787, 788, 798, 799, 800, 805, 815, 817, 907, 908, 961, 1012, 1017, 1018, 1021, 1023, 1025, 1049,* 1209, *1451, 1476, 1477, 1576, 2197, 2250, 2671,* **2991, 2992, 2993, 2994, 2995, 2999,** 3000, 3001, 3002, 3105, 3126, 3127, 3129, 3187.
Greenhill & Daniel Inc_____ 1266, 1267.
Greenpoint Metallic Bed Co_____ 1264.
Greenwich Bleachery_____ *2191.*
Greenwood, Representative Arthur H____ 3111.
Greenwood, Charles_____ *283,* 3113.
Greenville Finishing Co_____ *2151.*
Gregory, Representative William V_____ 3094.
Greyhound Bus Line_____ *225, 738.*
Grier_____ *573.*
Griffith, F. W_____ 3288.
Grimm, John_____ *909.*
Griswold, Representative Glenn_____ *2474, 2692–8,* 3109–10, 3124, 3141, 3218, **3251,** 3254, 3258–9, 3262, 3264
Grogan, Thomas A_____ *1838.*
Grubb_____ *1631.*
Gruening, Ernest_____ *2014.*
Grundy_____ 3181.
Gude_____ 3160, 3161.
Guffey, Senator Joseph F_____ 2344, 2397, 2400, 2415, 3269.
Guffey Bill_____ 3126, 3290, 3292, 3293, 3294, 3298, 3301, 3302, 3303, 3304.
Guide Employees' Association_____ 2929, 2976, 3072.
Guide Lamp Corporation_____ 2929, 2976, 3072.
Guthrie, Watson A_____ *2139.*
Haake, A. P_____ *626, 627, 1732.*
Haas, Francis J_____ *57, 70, 130, 143, 467, 468, 472, 473, 495, 591, 594, 1023,* 1209, 2432.
Hadden, William B_____ *1841.*
Hadder, William B_____ *913.*
Haht, Louis E_____ *1847.*
Hale_____ *165, 707.*
Hale, Senator Frederick_____ 1245, 2344, 2397, 2399, 2415.
Hale, Robert L_____ *80.*
Hall & McChesney Inc_____ *986.*
Hall, Roy F_____ *587.*

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Index page

Hall, W. F. Printing Co---------- *611.*
Halleck---------- 3122, 3123, 3133, 3223, 3224.
Hallman, Allison C---------- *1548, 1549.*
Haloid Co---------- *461.*
Halsey, Edwin A---------- **2897, 2955, 3024, 3045,** 3052.
Haltigan---------- 3268.
Hamilton---------- *725.*
Hamilton National Bank---------- 3164.
Hamlin, Representative Simon M---------- 3118, 3119.
Hammer *v.* Dagenhart, 247 U. S. 251---- *431,* 3143, 3145.
Hammersmith, George J---------- 3288.
Hammond, Gen. Thomas---------- *1906.*
Hammonds & Jenks---------- 2916, 2962, 3055.
Hampton Co---------- *2191.*
Hancock Savings & Loan Co---------- 2876.
Handler, Milton---------- *57, 94, 455, 456, 589, 591, 592, 593, 594, 595, 596,* 1209, *1606, 1611.*
Hanes Dye & Finishing Works---------- *2191.*
Hanson, Elisha---------- *2014, 2017.*
Harbaugh, M. D---------- *2006.*
Hardesty Manufacturing Co. Local 19085- 3280.
Hardgrave---------- 3026, 3027.
Hardin County, Ohio---------- 3081.
Harding, President---------- 2999.
Hardrubber Workers' Local Union 18395-- 3303.
Harlan, John Marshall, Justice---------- *2129,* 2403.
Harnischfeger Corp---------- *1623.*
Harnischfeger, Walter---------- *1623.*
Harodite Finishing Co---------- *2191.*
Harper, F. C---------- *446.*
Harper, J. C---------- *913.*
Harrigan, E. L---------- *740.*
Harriman, Henry I---------- *70, 529, 1848.*
Harriman Hosiery Co---------- *136, 137.*
Harriman Knitting Mills---------- *468.*
Harrington, Guy L---------- *493, 1662.*
Harrison, Senator Pat---------- 1238, 1245, 2344, 2397, 2400, 2415.
Hart, Representative Edward J---------- 3094.
Hart, Robert L---------- *1923.*
Harte, Richard---------- *1549, 1550.*
Hartford County Manufacturers Association. *2170.*
Hartford Manufacturers Association----- *675.*
Hartley, Representative Fred A., Jr------ *2474, 2653–4, 2658, 2666,* 3122, 3227–8.
Hartsville Print & Dye Works---------- *2191.*
Harvard Business School---------- *639.*
Harvard Graduate School of Business Administration. *1606.*
Harvard University---------- *156, 639.*
Harvey---------- *747.*
Haskell *v.* Kansas Natural Gas Co------- 3148.

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Index page

Hastings, Senator Daniel O---------- 2361, 2364, 2370, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2400, 2401, 2402, 2403, 3265, 3266, **3270**, 2415.
Hatch, Senator Carl A---------- 1245, 2344, 2397, 2400, 2415.
Hatfield, Senator Henry D---------- 1245.
Hauck Manufacturing Co---------- 1260.
Haumessor, E. J---------- 3294.
Hayden, Senator Carl---------- 1245, 2344, 2397, 2399, 2414.
Hayes, Anna---------- *1564*.
Hearn, J. C. Machine Works---------- *724*.
Hearst Press---------- *1021*.
Hearst, William R---------- *2113*, *2114*, *2115*, *2117*.
Hebert, Senator Felix---------- 1244-5.
Hecla Mining Co---------- *2004*.
Heggie, James G. & Sons---------- *625*.
Heimann, Henry H---------- *70*.
Heinl, Bernard W---------- 3290.
Heinger, Herman H---------- 3303.
Heisler *v.* Thomas Collieries Co., 260 U. S. 245. *431*.
Helck, Edwin J---------- *1592*.
Heller, Preston B---------- *605*.
Henderson-Lubin Report---------- 3234, 3235.
Hendricks, A. R---------- 3288.
Hercules Powder Co---------- *2083*.
Herrick, Elinore M---------- *206*, *470*.
Hickor Manufacturing Co---------- *461*.
Hiemlich, Elza---------- 3283.
Higgins, C. A---------- *2082*.
Higgins, Justice---------- *439*, *557*, *655*.
Higgins, John W---------- *446*.
High Commission of London---------- *558*.
Hill, T. Arnold---------- *1058*.
Hills Co---------- *467*.
Hills, W. T---------- 3303.
Hill *v.* Wallace, 259 U. S. 44---------- *434*.
Hillman, Sidney---------- *70*, *130*, *150*, *155*, *156*, *160*, *196*.
Hines---------- 2997.
Hirschhorn, Fred---------- *2152*.
Hitchman Case---------- 2376, 2406.
Hitchman Coal & Coke Co. *v.* Mitchell---------- *2492*, 3142.
Hoben, T. J---------- 1266.
Hobbs, Representative Sam---------- 3094.
Hocking Glass Co---------- *1886*, *1887*, *1888*.
Hod Carriers, Building & Common Laborers Union of America. *764-765*.
Hodrer Committee---------- *1410*.
Hodges Finishing Co---------- *2191*.
Hodgson, Bert---------- 3301.
Hodgson, G. C---------- *617*.
Hoeppel---------- 3096, 3195.

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Index page

Hoeppel, Representative John N---------- 3096, 3195.
Hogland---------- *597.*
Hogue, Richard W---------- *329.*
Hohokus Bleachery---------- *2191.*
Holland Laundry, Inc,---------- 1279.
Hollister, Representative John B---------- 3106, 3109.
Holmes, Justice---------- *409, 424, 821, 1410, 1641, 2131, 2233, 2241, 2244, 2250,* 2325.
Home Owners Loan Corporation---------- 2883, 3186, 3213.
Homestead Laundry Corp---------- 1258.
Homestead Works---------- *913, 917.*
Hopkins, Harry---------- *2074,* 3197, 3198.
Hoode Co---------- *122.*
Hook, Charles R---------- *767, 775, 776, 777, 778, 1066.*
Hook, Representative Frank E---------- 3094.
Hoover Commission---------- *321.*
Hoover, Mrs---------- *576.*
Hoover, Herbert---------- *465, 486, 576.*
Hope, Representative Clifford R---------- *2474.*
Hope Natural Gas Co. *v.* Hall, 274 U. S. 284. ---------- *426.*
Hopkinson---------- *402.*
Hopson, William---------- *913.*
Horne---------- 1254.
Hotchkiss, Willard E---------- *154, 161, 164, 715.*
Hotel & Restaurant Employers and Beverage Dispensers International Alliance. ---------- *765.*
Houde Engineering Corp---------- 1215, *1419, 1420, 1455, 1472,* 2336, *2490, 2491, 2650, 2651, 2679, 2722, 2723,* 2928, 2974, 3070.
Houde Welfare & Athletic Association---------- *1521.*
House, John---------- *1938, 2052.*
Houston, E. & W. T. Ry. Co. *v.* U. S., 234 U. S. 342. ---------- *432.*
Howard *v.* Illinois Central Railway Co---------- *2812.*
Hubbard---------- *659.*
Hudson Motor Co---------- *130, 175, 178, 324.*
Huetactra Oil Co---------- *2234.*
Hughes, Justice---------- *82, 83, 1410, 1429, 1632, 1639, 1642, 2236, 2249, 2250, 2252, 2253, 2262,* 2319, 2325, 2338, 2340, 2926, 2972, 3068, 3192.
Hughes Brothers *v.* Minnesota---------- 3147.
Hughes *v.* F. T. C---------- 1369.
Humphreys Case---------- 3062, 3108, 3109.
Humphreys, Commissioner---------- 3205, 3263.
Humphrey & Sons---------- *625.*
Hunter Arms Co---------- *987.*
Hunter Fan & Motor Co ---------- *987.*
Hunterspoint Lumber & Supply Co---------- 1281.
Huntington, W. D---------- 1277.
Hupp Motor Car Corp---------- *324.*

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Index page

Hushing, W. C---------- *2050.*
Hutching, Robert---------- *135, 224.*
ICC *v.* Brimson---------- 1360.
Ickes, Harold---------- *970,* 3195, 3196.
Illinois Central R. R. Co. *v.* Louisiana R. R. Comm. 3148.
Illinois Clay Products---------- *625.*
Illinois Dept. of Labor---------- *1917.*
Illinois Manufacturing Association---------- *374, 596, 599, 626, 635, 1626, 1893, 1909, 1910.*
Illinois Steel Co---------- *114, 117, 122, 757, 762, 913.*
Il Progresso---------- *2116.*
Imperial Printing & Finishing Co---------- *2191.*
Imperial Valley---------- 3081.
India Rubber Workers Local No. 18346--- 3286.
India Tire & Rubber Co---------- *1951.*
Indiana Manufacturing Association---------- *374, 1626.*
Indianapolis Drop Forging Co---------- *2207.*
Industrial Advisory Board---------- *496, 1569, 2090.*
Industrial Association & Lower Naugatuck Valley. *543, 545.*
Industrial Assoc. *v.* U. S., 268 U. S. 64---------- *426, 432,* 3099.
Industrial Courts Act---------- *349.*
Industrial Management Council of Rochester. *457, 458.*
Industrial Relations Counselors, Inc---------- *757.*
Industrial Works Council---------- *956.*
Inland Employees' Association---------- 3294.
Inland Steel Co---------- *122.*
Institute of American Meat Packers---------- *1840, 1875, 1876, 1879.*
Interchurch World Movement---------- 2324.
Intercoastal Lumber Distributors---------- 3304.
Interlake Iron Corp---------- *909, 910, 913.*
Interlake Iron Corp. Workers Association. *910.*
Internal Revenue, Bureau of---------- *693, 2031.*
International Alliance of Theatrical & Stage Hand Employees of U. S. and Canada. *982, 984, 985,* 1274.
International Arbitration Board---------- *1552, 2022, 2024.*
International Association of Bridge and Structural Iron Workers. *764, 783, 784, 786, 789,* 3300.
International Association of Machinists-- *765, 1059, 1482, 2009, 2010,* 3281, 3282, 3283, 3284, 3285, 3299.
International Association of Oil Field, Gas Well and Refinery Workers of America. *2055.*
International Association of Sheet Metal Workers. *765.*
International Brotherhood of Blacksmiths, Drop Forgers and Helpers. 3305.

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	Index page
International Brotherhood of Boiler Makers, Iron Ship Builders & Helpers.	*764, 1059, 2213,* 3282.
International Brotherhood of Electrical Workers of America.	*764, 783, 1566,* 3284.
International Brotherhood of Electrical Workers, Vancouver, B. C.	*1019, 1020, 1048.*
International Brotherhood of Firemen & Oilers.	*764.*
International Brotherhood of Foundry Employees.	*764.*
International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers.	*765, 784, 788, 2022,* 3279.
International Business Machine Co	3179.
International Coopers Union of North America.	*764.*
International Excavating Co	*784, 789.*
International Federation of Technical Engineers, Architects, & Draftsmen's Union.	*764.*
International Fur Workers Union	*247, 248.*
International Harvester Co	*324, 757, 950, 956–57, 958, 962, 981.*
International Hod Carriers' Building & Common Laborers' Union of America.	3295.
International Jewelry Workers Union	*289, 290, 291, 295,* 3281.
International Juridical Association	*336, 337.*
International Molders Union of North America.	*765,* 3289.
International Nutyp Tool Corp	*986.*
International Oil Workers Association	*2056, 2057.*
International Organization *v.* Red Jacket C. C. & C. Co. (18 Fed. (2d) 839, cert. den. 275 U. S. 536).	2317, 3009.
International Photo Engravers Union	1283.
International Pocketbook Workers Union	1343.
International Pressman's Association	*467.*
International Pressman's Union	*2068.*
International Printing Pressmen & Assistants Union.	*1552.*
International Seamen's Union	*1517, 1518.*
International Typographical Union	3304.
International Union of Blacksmiths, Drop Forgers & Helpers.	*764.*
International Union of Bricklayers, Masons & Plasterers.	*764.*
International Union of Building Service Operators.	*764.*
International Union of Metal Polishers	*765.*
International Union of Mine, Mill & Smelter Workers.	*765.*
International Union of Operating Engineers.	*764, 785, 788, 2153, 2154,* 3279, 3300, 3301.
International Union of Seamen	*765.*

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Index page

International Union of Quarry Workers.. *765.*
International Union of United Brewery, Flour, Cereal & Soft Drink Workers of America. 3288.
Interstate Commerce Act..... *86, 403,* 1110, 1362, 1363, 1367, 1368, 1369, *1833, 2063, 2234, 2235,* 2323, 2332, 3075.
Interstate Commerce Commission..... *63, 86, 94, 160, 196, 604, 699,* 1100, 1120, 1348, 1360, 1362, *1425, 1890, 2234, 2236, 2239, 2275,* 2284, 2920, 2934, 2967, 2980, 3007, 3061, 3077, 3207, 3211, 3224.
Iowa Manufacturers Association..... *374, 637, 1626.*
Iron Molders Union No. 96..... 3286, 3287.
Iron & Steel Institute..... *171, 176, 524.*
Iroquois China Co..... *986.*
I. W. W..... 3218.
J & J Cash Inc..... 1264.
Jackson, Justice..... 3144.
Jackson Bros..... 1257.
Jacobs Bros. Co..... 1277, 1278.
Jacobs *v.* Cohen..... 2409.
Jaeger Machine Works..... *724.*
Jefferson..... 3140, 3185.
Jeffery Manufacturing Co..... *724.*
Jenckes, Representative Virginia E..... 3094.
Jenkins, Representative Thomas A..... 1231.
Jenkins, Earl W..... *1846.*
Jennings, Dean..... *2115.*
Jewel Tea Co..... *1912, 1914.*
Jewish Bakers Union..... *423.*
Jog Foundation for Economic Research... 1286, 1289.
Johnson Chair Co..... *609.*
Johnson, Senator Hiram W..... 1245, 2344, 2397–8, 2400, 2415.
Johnson, Representative Luther A..... 1257, 1260, 1265, 3293, 3295.
Johnson, Arthur L..... *609.*
Johnson, S. C., Co..... *999.*
Johnson, Gen. Hugh..... *19, 22, 202, 204, 207, 216, 217, 231, 245, 317, 356, 430, 431, 465, 469, 524, 531, 532, 534, 568, 569, 586, 598, 612, 661, 679, 739, 782, 933, 962, 965, 968, 969, 970, 971, 977, 1007, 1013, 1014, 1018, 1019, 1022, 1030, 1494, 1495, 1567, 1569, 1571, 1573, 1574, 2067, 2219,* 2328, 3188.
Johnston..... 1143, 2398.
Joint Council of Teamsters No. 44..... 3291.
Joint Council of Women's Auxiliaries.... 3293.
Joint Resolution No. 44..... *2807.*
Joliet Macaroni Co..... *625.*
Joliet Wall Paper Co..... *625.*
Jones, L. D..... *230.*

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Index page

Jones, Warren ... *1906.*
Jones & Laughlin Steel Corp ... *120, 812, 1530, 1545, 1838, 1843, 2049, 2050.*
Jones, F. C ... *2193.*
Jones, W. E ... 3282.
Jorden ... 1284.
Journal of Electrical Workers ... *787.*
Judd, H. L., Co ... 1263.
Jung ... *759, 760.*
Kalashian Bros., Inc ... 3289.
Kane & Roach, Inc ... *986.*
Kansas, Associated Industries of ... *374, 1626.*
Kansas City Protective Council ... 3027.
Kansas-Nebraska Act ... *481.*
Karlin, William ... *289.*
Kaplan *v.* Elliott ... *985.*
Kean, Senator Hamilton F ... *326,* 1245.
Kean, Joseph A ... *727, 2152.*
Keefer ... *1811.*
Keller, Representative Kent E ... *2474, 2505–6, 2745, 2761–2,* 3094, 3218.
Keller, Mike ... *2049.*
Kelly, H. J ... *2014, 2016, 2018, 2110, 2111, 2112, 2116, 2117.*
Kelly, John T ... *1036.*
Kelsay ... *725.*
Kelsey-Hayes Wheel Corp ... *129.*
Kemp, Alva ... 3304.
Kennecott Copper Corp ... *2158.*
Kennedy, Representative Ambrose J ... 2445, 3094.
Kenney, Representative Edward A ... 2870, 2871, 3205, 3299.
Kent, Frank ... *381.*
Kentucky, Associated Industries of ... *374, 1626.*
Kenyon, C., Co., Inc ... 1261, 1263.
Kephart, Edward E. S ... *1599, 2710, 2812.*
Kerensky ... *698.*
Kerr Bleaching & Dye Works ... *2191.*
Kerr, Representative John H ... 3094.
Kerwin ... *63, 161, 1514.*
Keyes, Senator Henry W ... 1244–5, 2344, 2397, 2399, 2415.
Keyserling ... *2102.*
Keystone Steel & Wire ... *633, 634, 882.*
Kidd *v.* Pearson ... 3142, 3145.
Kilian Manufacturing Corp ... *986.*
Killion ... *1483, 1484.*
Kimball, D. W ... *607.*
Kimberly-Clark Corp. Mills ... *118.*
King, Harry T ... *545.*
King, McKenzie ... *341.*
King, N. F ... 3300.
King, Senator William H ... 1245, 2344, 2399, 2400, 2414, 3260.

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Index page

King, Stanley ... *156.*
King, Dr. Wilfred I ... *197*, 2916, 2962, 3055.
Kings County Hospital ... *984.*
Kingam & Co ... *1876.*
Kingston, C. C ... 2277.
Kinney Co., G. R ... 1264.
Kinney, H. C ... *2132.*
Kinsella ... *2008.*
Kiplinger Service ... *1014.*
Kirk, C. S ... *2122.*
Kirstein, Lewis S ... *439*, *467.*
Kirstein, Louis E ... *70*, *134*, 1209.
Kiwanis Club ... *886.*
Kizenberger, P ... 3300.
Kloever, Raymond ... *331.*
Knapp Bros ... *625.*
Knight, Richard ... 1283.
Knights of Labor ... 3106.
Knox, Col. Frank ... *605.*
Knudsen, William S ... 3235.
Knutson, Representative Harold ... *338*, *472*, 3001, 3203.
Kocialkowski, Representative Leo ... 3094.
Kohler ... *1547*, *1624*, *2251.*
Kohler Workers Association ... *1547.*
Kohnken ... 1280, 1281.
Kohnstamn, H., & Co ... 1260.
Kontnier, Frank ... *777*, *778.*
Kopplemann, Representative Herman P ... 3094.
Kramer, Representative Charles ... 1275.
Kramer, Claude R ... 3293.
Kroehler ... *471*, *633.*
Kroebler Manufacturing Co ... *632.*
Kroger Grocery & Baking Co ... 1279.
Krug ... *233.*
Krupp Works (Germany) ... *931.*
Ku Klux Klan ... *331.*
Kuehne ... *574*, *575*, *576*, *578*, *579*, *581*, *586.*
Kuhn-Loeb ... 2873.
Kuhn, Swen ... *576.*
Kuttig, E ... *342.*
Kyle, Clyde ... *2007.*
Labor Advisory Board ... *1569*, *1571*, *1573*, *1576*, *2236*, *2237*, *2238*, *2239*, *2244*, 2349, 2432, *2536.*
Labor Age ... *787.*
"Labor Relations in the Bituminous Coal Industry," U. S. Coal Commission. 2916, 2962, 3055.
Labor Mediation Board ... 3214.
Labor Report for 1932 ... 2281.
Ladies Garment Workers ... *224*, 3302.
Lake Superior Iron Ore Association ... *2010.*

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Index page

La Follette, Senator Robert M., Jr------ *28*, *31*, *41–4*, *46–8*, *169*, *187*, *195–7*, *201–2*, *368*, *371*, *684*, 1157, **1163**, 1180, 1193–4, 1201, 1208–9, 1233, 1242–5, 1251, *1374*, *1433*, *1440*, *1458–9*, *1461*, *1463*, *1466–7*, *1472–3*, *1475*, *1477*, *1488*, *1502*, *1505*, *1507–10*, *1512–13*, *1517–19*, *1535*, *1543*, *1546–7*, *1618*, *1881*, *2129*, 2344, 2397–8, 2400, 2412, 2414–15, 3237, 3254, 3259, 3262.

Lambertson, Representative William P--- *2474*, *2743*, *2748–9*, 3251, 3254, 3258–9, 3262, 3264, 3296, 3302.

Lamneck, Representative Arthur P------ 3094.

Lamont---------- *171*.

Lamson Co---------- *986*.

"Lancashire Under the Hammer"-------- *2079*.

Lancaster Glass Co---------- *1886*.

Landis Award Employers' Association---- *1007*, *1008*, *1010*.

Landis, Kenesaw M. (Judge)---------- *1008*.

Lanett Bleachery & Dye Works--------- *2191*.

Langhein, Paul---------- 3303.

Lanham, Representative Fritz G-------- 3266.

Lanham, D. H---------- 1276.

Lape & Adler Co---------- *724*.

Lapp, Dr. John A---------- *219*, *220*, *225*, *589*, *590*, *591*.

Larkin, J. M---------- *818*, *1752*.

Larkin, John---------- *802*, *1796*.

Latta---------- 3268.

Lattimer-Stevens Co---------- *724*.

Lauderback, D. B---------- *773*, *777*, *778*.

Lawrence, David---------- *107*.

League of Nations---------- *252*.

Leautt, Joseph---------- 3282.

Le Blond, Richard---------- *567*.

LeBlond, R. K., Machine Tool Co------- *567*.

Lederer, Dr. E. R---------- *2777*.

Lederer, E. R---------- *2053*.

Lee, Clayton R---------- 3284.

Lee, A. P---------- 3302.

Lee, Robert E---------- 3139.

Leeds---------- *435*.

Leeds & Northrup---------- *435*, *440*, *449*, *2158*.

Leffler, R. L---------- *913*.

Lehlback, Representative Frederick R---- 1230, 1231, 3098, 3099, 3100.

Lehman, A---------- *707*.

Lehman, Herbert H---------- *458*.

Leiserson, William M---------- *261*, 1327, *1473*, *2090*, *2093*, *2252*, *2255*, *2271*, *2272*, 2917, 2963, 3056.

Leland-Gifford Co---------- *508*.

Leland, Henry M---------- *2068*.

Lemieux Act (Canada)---------- *1018*, *1019*, *1020*.

Lemke, Representative William--------- 3094.

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Index page

Lennon, Maurice ... *741.*
Lennon Wall Paper Co ... *625.*
Lennox Furnace Co ... *986.*
Leo, Pope XIII ... 3183.
Leonard ... *524.*
Lesinski, Representative John ... 1141, *2474, 2500–1, 2534, 2539–41, 2543, 2552, 2557, 2560, 2566–8, 2575, 2577–8, 2584–6, 2590, 2593, 2596, 2608, 2616, 2619–20, 2624, 2629, 2631–2, 2640–1, 2643, 2645, 2654, 2657, 2668, 2687–8, 2726, 2729, 2731–4, 2736–7, 2739, 2765–6, 2768,* 3094, 3204, 3234, 3293, 3295.
Levy & Dretchko ... *2160.*
Levy, Jerome ... *1049.*
Levy, Sam J ... *2162.*
Lewis, Senator J. Hamilton ... 1182, 1245, 1249–50, 1271, 1284, 2344–5, 2397–8, 2400, 2414–15.
Lewis, T. I ... *283, 285.*
Lewis, Harry J ... *679, 680.*
Lewis, John L ... *62, 70, 169, 190, 259, 365, 366, 465, 467, 469, 471, 474, 812, 815, 1018,* 1209, 1317, *1451, 1568.*
Lewiston Bleachery & Dye Works ... *2191.*
Lewiston Peak Mining Co ... *2007.*
Lilly & Co., Eli ... *2207.*
Lincoln, Abraham ... 3029, 3183.
Lincoln Bleachery & Dye Works ... *2191.*
Lincoln Electric Co ... *671.*
Lincoln, James F ... *761.*
Lindsay, Representative George W ... 1256, 1257, 1258, 1259, 1261, 1262, 1264, 1265, 1266, 1268, 1270, 1271, 1272, 1273, 1275, 1276, 1277, 1278, 1279, 1280, 1283, 1284.
Link-Belt Co ... *108.*
Linoleum & Felt Base Manufacturing Association. *2162, 2169.*
Liondale Bleach & Dye & Printing Works ... *2191.*
Lipe, Co., W. C ... *986.*
Lippman, Walter ... *2243, 2251, 2252,* 3128.
Litchfield ... *1855, 1962, 1964.*
Livingstone, David ... *2068.*
Lloyd, Representative Wesley ... 3094, 3217, 3218.
Lobley Machine Works ... 1259.
Local 167 *v.* United States, 291 U. S. 293 ... 2282.
Lochner *v.* New York ... 2405.
Lockhart Iron & Steel Co ... 2883.
Lockwood Investigating Committee ... *377, 1045, 1047.*
Loeser, Frederick & Co ... 1260.
Loewe *v.* Lawlor, 208 U. S. 274, 1908 ... 2324, 3142, 3147.
Logan ... *637,* 2277.
Logan, Senator M. M ... 1245, 2344, 2399–2400, 2414–15.

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Index page

L & N Railroad *v.* Bitterman *2240*
Lonergan, Senator Augustine ..... 1245, 2344, 2397, 2400, 2415, 3286.
Long, Senator Huey P ..... 1192–3, 1233, 1245, 1250, 1253, 2344, 2361–2, 2399–2400, 2415.
Long, William J ..... *274*, *576*, *895*, *896*, *905*, *906*, *907*, 1192, 1193, 1233, 2361, 2362.
Long, Chief Justice ..... *2264*.
Long Island Daily Press ..... *2115*.
Long Island Railroad Co. Case ..... 3028.
Londoner *v.* Denver, 210 U. S. 373 ..... *433*.
Lonergan ..... 3286.
Longshoremen's & Harbor Workers Compensation Act. ..... *2237*.
Loomis, A. M ..... *2127*.
Lorain Steel Co ..... *762*, *913*.
Lord, Representative Bert ..... 3094, 3179, 3180, 3203.
Louisiana Mfg. Association ..... *374*, *1626*.
Louisville Gas & Electric Co ..... *2170*.
Louisville & Nashville Ry. *v.* Schmidt, 177 U. S. 230. ..... *433*.
Lottery case, 188 U. S. 321 ..... *2811*.
Lowell Bleachery ..... *2191*.
Lowell Bleachery South ..... *2191*.
Loyal Legion of Lumbermen & Loggers ..... *1486*, 3217.
Lucas ..... *231*.
Lucky Strike ..... 2885, 3184.
Ludlow, Representative Louis ..... 2871.
Lund, R. L ..... *70*, *601*, *938*.
Lundeen, Representative Ernest ..... 1275, *2474*.
Lynch Corp ..... *724*.
Lynn ..... *1962*, *1963*.
Lyons ..... *558*.
Lyon Metal Products Co ..... *122*.
Lystak, A ..... 3294.
M & R Diatetic Laboratories, Inc ..... *724*.
Macauley, Alvan ..... *1980*.
MacDonough, Mike ..... *469*, *474*, *1018*, *1590*, *1591*.
MacDonald, Ramsay ..... *334*, *1591*.
MacGregor, Roy A ..... *2138*.
Machinery Builders Association ..... *650*.
Machine Tool Builders' Code ..... *509*.
Machinists Union ..... *668*.
Mack Bros. Motor Car Co ..... *324*.
Mack, Miller Candle Co ..... *986*.
Mack Trucks, Inc ..... *1980*.
MacKenzie, A. G ..... *943*.
MacLean, J. D ..... *546*.
MacMillan Book Co ..... *986*.
MacNaughton ..... *2003*.
Macy, Warren ..... *231*.
Madeira, Louis C ..... *2006*.
Madison Square Garden ..... 2994, 3062.

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	Index page
Madison, President	3137, 3140.
Madden, Jacob F	*900.*
Maezer, Pauline	3302.
Magnerson Products Corp	3287.
Magruder	*2102.*
Mahon	*162, 719.*
Mahoney, Jeremiah T.	*1606, 1616.*
Mailers' Union No. 6	3303, 3304.
Maine, Associated Industries of	*374, 1626.*
Malleable Foundry Industry	*610.*
Mallison, H	*913.*
Mallory, R. R., Co	*2207.*
Maloney, Francis C	*711.*
Malony	3286.
Maloy, Tom	*680.*
Malt-Diastase Co	3283.
Manning Gold Mines Co	*2007.*
Mansfield Bleachery	*2191.*
Manufacturers' Association of Connecticut.	*1626, 2174.*
Manufacturing Association, Hartford County.	*2170.*
Manufacturers' Association of New Jersey	*374, 1626.*
Manufacturers' & Employers' Association of South Dakota.	*374, 1626, 2172.*
Manufacturers Association of Wilmington	*374, 1626.*
Manufacturing Association of Racine, Wis.	*998.*
Manufacturing Chemists Association	*546, 2053, 2082, 2179,* 3302.
Manufacturers & Merchants Association of Oregon.	*374.*
Manufacturers Trust Co.	1278.
Mapes, Representative Carl E	1227, 1229, 1230, 3296.
Marble Cliff Quarries Co	*724.*
Marcantonio, Representative Vito	*2474, 2505, 2508, 2514–15, 2523, 2554, 2656, 2691–3, 2709, 2736–45, 2771, 2773–4,* 2870, 2937, 2984, 3028, 3082, 3123, 3141, 3149, 3151–3, 3167, 3180, 3201, 3203, 3206, 3210, 3212.
Marine Engineers Beneficial Association	1261, 1274.
Marine Paint & Varnish Co	*649.*
Marine Workers Industrial Union	*765.*
Markon Garment Co	1261.
Marsellus, John, Casket Co	*986.*
Marsh, James	*596.*
Marshall, Justice	*432, 434,* 1261, 1263, *2253,* 3012, 3108, 3137, 3140, 3143, 3144.
Marshall, Dr. L. C	1209.
Marshall, Leon	*467.*
Marshall, Representative L. T	3094.
Martin, Representative Joseph W	1226, 1227, 1254, 3093, 3094.
Martin, Representative Charles H	1230.

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	Index page
Martin, Clarence E	3290.
Martin Dye & Finishing Co	*2191.*
Martin, J. C	*1811.*
Marx, Karl	*441.*
Mason, George	3140.
Massachusetts, Associated Industries of	*374, 650, 1626.*
Massachusetts Press Association	1270.
Massey	*741.*
Massillon Trades & Labor Assembly	3298.
Mast, J. B., Co	1261, 1263.
Matthews, William J	*2169.*
Maverick, Representative Maury	*466*, 2427, 2430, 3090.
May, Representative Andrew J	2844, 3161.
May, Charles B	3302.
Mayflower Hotel	*782.*
McAbee, H. L	*2010.*
McAdoo, Senator William Gibbs	1244, 2344, 2399–2400, 2415; 2997.
McAuliffe, David J	2994.
McAuliffe, Eugene	*2012.*
McCade, H. E	1264.
McCarran, Senator Pat	1245, *1745, 1841*, 2343, 2344, *2397, 2400, 2415, 2692.*
McCarthy	*2004.*
McClanahan, R. E	3293.
McClellan, Representative John L	3094.
McCluskey *v.* Marysville & Northern Ry	3145.
McConnaughy, W. S	2881.
McCormack, Representative John W	3000, 3001, 3002.
McCormick, Robert R	*2112, 2115.*
McCormick Works	*956, 957, 958.*
McCoy, K. N	3300.
McDermott, William G	*840.*
McCracken, E. W	*777.*
McCullough *v.* Maryland, 4 Wheat. 316	*434.*
McCullough, E. C	1276.
McDonald Mills	*1599.*
McElroy	3302.
McFarlene, Representative W. D	2999.
McGill, Senator George	1245, 2344, 2397, 2400, 2415.
McGill, Julian T	*2146.*
McGrady	*465, 466, 469, 471, 474.*
McGuire, O. R	2277.
McHenry Milhouse	*987.*
McIntosh, William	*777, 778.*
McKellar, Senator Kenneth	1245, 2344, 2397, 2399, 2411, 2414.
McKenna, Justice	*1410*, 2323, 2325.
McLaughlin, Representative C. F	*2122, 2124.*
McLean, Representative Donald H	3094.
McMahon	*301.*
McNabb, W. S	*913.*

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	Index page
McNary, Senator Charles L	1157, 1158, 1178, 1232, 1243, 1245, 1251, 2344, 2350, 2357, 2397, 2399, 2415.
McQuade, W. E	1268.
McReynolds, Representative Sam D	3287, 3288, 3289, 3290.
Mead, Representative James M	1149, 1257, 2992, 3180, 3266, 3299, 3302.
Meagher, Richard	3297.
Mechanics Educational Society	*263.*
Medalie, George Z	*788.*
Meeker *v.* Lehigh Valley Railroad Co	*2235.*
Mellon	2877, 3179.
Mentzer, E. M	*284.*
Merrill Bradford	*2114, 2115.*
Merritt, Representative Matthew J	3288, 3297.
Merritt, Walter G	*1056, 1695.*
Metakloth Co	*2191.*
Metal Hose & Tubing Co	1261, 1262.
Metal Manufacturers Association of Philadelphia.	*747.*
Metal Polishers', Buffers &Electro Platers' Union.	*725*, 1275.
Metcalf, Senator Jesse H	*28, 31, 103, 329, 368, 371, 684, 929, 947, 949, 964, 995*, 1245, *1374, 1502, 1573, 1618, 1623, 2053, 2217*, 2344, 2397, 2399, 2415.
Metropolitan Builders Association	1262, 1263, 1265.
Mexia Motor Car Co	1257.
Mexican Constitution	*2234.*
Mexican Labor Board	*2234.*
Meyer *v.* Nebraska	2406.
Meyer, William	*992.*
Michaels Bros	1284.
Michaelson *v.* United States, 291 Fed. 940.	2306.
Michigan Limestone & Chemical Co	*114, 122.*
Michigan Manufacturers Association	*374, 1626.*
Middlesex Bleach, Dyer & Printing Works	*2191.*
Midwest Wall Paper Co	*625.*
Mieninger	*233.*
Miles, Herbert	*707.*
Milhoan, Ralph R	3284.
Military Affairs Committee	2843.
Milk Drivers & Dairy Employees	3292.
Milk & Ice Cream Drivers & Dairy Employees Local Union 497.	3281.
Millard, Representative Charles D	1266.
Millbank Finishing Corp	*2191.*
Miller	*117, 724, 775, 776, 777, 778, 779.*
Miller, B. C	*365, 366.*
Miller Foundry Co	*724.*
Miller Machine Division	*724.*

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	Index page
Miller, Mary A	*2174.*
Miller, Nathan L	*921.*
Miller, R. M	*1811.*
Millers' National Federation	*1037, 2214.*
Millinery Workers Union No. 44	3304.
Millis, Harry A	*1450, 1552, 1576, 1873, 1956, 2203,* 2912, 2959, 3051.
Mills, Frederick C	*1410, 1538.*
Millville Manufacturing Co	*2191.*
Milstead, William	*283, 285.*
Milwaukee Association of Commerce	*933, 934, 935, 937, 1625.*
Mine, Mill & Smelter Workers	1215, 1217.
Mine, Oil & Smelter Workers Industrial Union.	*765.*
Minimum Wage Act for D. C	*2240.*
Mink	*1588.*
Minneapolis Central Labor Union	1275.
Minnesota Case	2378.
Minnesota Employers' Association	*374, 1626, 1627.*
Minnis, Laurence	3292.
Minton, Senator Sherman	2344, 2397, 2400, 2415.
Missouri, Associated Industries of	*374,* 1268, *1626.*
Missouri Compromise	*481.*
Missouri Pacific Railroad Co	3282.
Mitchell	3117, 3118, 3195.
Mitchell, George T	*707.*
Mitchell, Guy E	*870, 1800.*
Mitchell, John	*930.*
Mitchell, Representative John R	3117–18.
Mitchell, Roscoe C	*2114, 2115.*
Mobile, County of *v.* Kimball	3142, 3143.
Modern Tool Die & Machine Co	*724.*
Moffett, Clarence W	*228, 734, 736, 738, 739, 745.*
Moffett, James A	*70.*
Mohler, Wm	*1846.*
Monaghan, Representative Joseph P	3003.
Monroe Doctrine	3140.
Monroe, James	3140.
Montana, Associated Industries of	*374, 1626.*
Montana Bingham Consolidated Mining Co.	*2007.*
Montet, Representative Numa F	3094.
Montgomery et al. *v.* Pacific Electric Ry	2408.
Monthly Labor Review, June 1932	2916, 2962, 3055.
Monthly Labor Review, June 1933	2916, 2962, 3055.
Monthly Labor Review, July 1934	2916, 2962, 3055.
Monthly Labor Review, March 1935	2916, 2962, 3055.
Monticello Chamber of Commerce	3295.
Moore, B. O	3284.
Moore Drop Forging *v.* McCarthy	2410.

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Index page

Moore, James ... *879, 1785.*
Moore, Lee C., Co ... *723.*
Moore, Mel ... *895.*
Moores & Ross ... *724.*
Moreland Motor Truck Co ... *324.*
Morgan Construction Co ... *650.*
Morgan, J. P ... *469, 471, 667, 668, 740, 975,* 2877.
Morgan Machine Co ... *461.*
Morgan, Philip M ... 650.
Morganthau, H ... *489.*
Moritz, Representative Theodore L ... 3166.
Morris Machine Works ... *986.*
Morrison ... *561.*
Morrissey, H. S ... *2125.*
Morrow ... *2008.*
Moses, Horace ... *2005.*
Motion Picture Operators ... *783, 786, 981, 982, 1048.*
Motor Bus Industry ... *746.*
Motor Code ... 3230.
Motor Vehicle Retail Code ... *2228.*
Motor Wheel Corp ... *129.*
Mott, Representative James W ... 1155, 2843, 3123, 3218.
Moulton ... *1556,* 2327.
Mountain City Copper Co ... *2007.*
Mount Hope Finishing Co ... *2191.*
Moving Picture Machine Operators ... 3289.
Mowitz, A. P ... *461, 1689.*
Moyer ... *632,* 3301.
Muench-Kreuzer Candle Co ... *986.*
Muir, Robert W ... *1912.*
Mullenbach, James ... *218, 223, 589, 590, 591.*
Muller *v.* Oregon ... 2405.
Mulligan, Edward J ... *1787.*
Mundet Cork Corp ... 1267.
Murchison, J. S ... 1257.
Muriel Garment Co ... *967.*
Murphy, Martin ... *880.*
Murphy, Senator Louis ... *28, 368, 371, 413, 442, 447–9, 451, 454, 456, 462–4, 477, 518, 527, 529, 531–2, 543, 637, 642, 684, 995,* 1117, 1245, *1374, 1477, 1489–92, 1494, 1502, 1573, 1594, 1618, 1745, 1772, 1782, 1785, 1790, 1893, 1921, 1977, 2000, 2053, 2067, 2069, 2071–5, 2114,* 2344, 2397, 2400, 2415, 3237, 3254, 3259, 3262.
Murphy, Mark ... *1772.*
Murphy, R. J., Co ... *785.*

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Index page

Murray, Senator James E---------- *1374, 1377, 1421, 1433, 1456, 1461, 1477, 1502, 1505, 1515, 1535, 1573, 1618, 1623, 1651, 1673–4, 1695, 1712–13, 1736, 1745, 1799, 1893, 1977, 2015, 2053, 2075–6, 2082–3, 2217,* 2343–4, 2397, 2399–2400, 2415, 3237, 3254, 3259, 3262.
Murray *v.* Hoboken Land & Improvement Co., 18 Howard 272). *433, 2257.*
Murtha, Thomas---------- 1283.
Muskegon Employers Association---------- *2179.*
Musselwhite, Representative Harry W--- 1261.
Myers, James---------- *1601, 1603, 1605,* 2413.
Myers *v.* United States---------- 3211, 3212.
Myles, James M---------- *1584.*
Namm Store---------- 1276, 1277.
Nance, Steve A---------- *2220.*
Narragansett Finishing Co---------- *2191.*
Nash---------- *126.*
Nash Motors Co., The---------- *324.*
National Association of Cotton Manufacturers. *665.*
National Association of Finishers of Textile Fabrics. *2182.*
National Association of Furniture Manufacturers. *627.*
National Association of Manufacturers--- *98, 171, 200, 537, 553, 626, 728, 1019,* 1276, 1318, *1495, 1551, 1581, 1922, 2078, 2111,* 2337, 2916, 2962, 3055.
National Association of Pattern Manufacturers. 1279, 1280.
National Automobile Chamber of Commerce. *175, 747, 753.*
National Battery Co---------- *1483.*
National Beneficial Association of Marine Engineers. *765.*
National Bituminous Coal Labor Board-- *220, 221.*
National Brotherhood of Operative Potters. 3294.
National Bureau of Economic Research Bulletin 48, October 31, 1933. *444.*
National Carton Co---------- *625.*
National Catholic Welfare Conference---- *1601, 1602.*
National Child Labor Committee-------- 2936, 2983, 3081, 3201.
National City Bank---------- *466, 470.*
National Civic Federation---------- *1025.*
National Conference Board---------- *193.*
National Convention of Code Authorities *383.*
National Council of American Shipbuilders *1039.*

---

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Index page

National Editorial Association---------- *2035, 2037.*
National Electrical Manufacturers Association. *679, 2191, 2193.*
National Emergency Council---------- 1284, 2282.
National Erectors' Association---------- *1042, 1626, 2194.*
National Executive Council---------- *2117.*
National Federation of Technicians & Labor. *1036.*
National Founders Association---------- *1626.*
National Furniture Workers Industrial Union of the United States. *464.*
National Gauge Corp---------- 1261, 1262, 1278.
National Grange---------- *1038.*
National Guard---------- 2843, 3116.
National Industrial Arbitration Board---- 1205.
National Industrial Conference Board---- *113, 173, 188, 243, 365, 445, 466, 470, 544, 603, 653, 1545, 1911, 2019,* 2334, 2436.
National Industrial Federation of Clothing Manufacturers. *155.*
National Industrial Recovery Act. *See* National Recovery Act and Administration, this index.
National Labor Board---------- 57–61, 64–67, 70–80, 93–4, 100, 108–9, 114, 132–8, 140, 144, 160, 173, 199, 210, 238, 258, 260, 399, 466–70.
National Labor Relations Act. *See* Topical and Sectional indexes generally.
National Labor Relations Board. *See* Topical and Sectional indexes generally.
National Labor Mediation Board-------- *2255.*
National League of Unaffiliated Printers-- *614.*
National Lock Co---------- *137, 587, 589, 590, 596, 598.*
National Longshoremen's Labor Board--- *2274.*
National Machine Tool Association------ *1869.*
National Manufacturing Association----- *371, 373, 374, 380, 409, 1422.*
National Mediation Board for Railroad Industry. *2090, 2093.*
National Mediation Board---------- 1322, 1327, 1329, 1348, 2920, 2921, 2934, 2963, 2967, 2980, 3061, 3077, 3207, 3214.
National Metal Trades Association------ *200, 1581, 1623, 1626.*
National Organization of Employers----- *262.*
National Organization of Masters, Mates & Pilots of America. *765, 1059.*
National Packing Box Factory---------- 1276.
National Protective Association *v.* Cumming. 2409.
National Publishers Association--------- *493, 494.*

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Index page

National Recovery Act & Administration_ *15, 16, 20, 21, 23, 25, 38, 39, 50–51, 68, 100, 110, 133–135, 152, 157–158, 179, 216–217, 222, 227, 237, 253, 288, 319, 372–373, 397, 523, 530, 621–622, 965–972*, 1101, 1123, 1143, 1181, 1186, 1189, 1202, 1246, 1252, **1256,** *1412, 1423–1425, 1469, 1470, 1506, 1529, 2220, 2246, 2256, 2273, 2274*, 2300, 2303, 2304, 2308, 2310, 2311, 2317, 2327, 2328, 2330, 2332, 2334, 2335, 2339, 2340, 2343, 2344, 2348, 2356, 2369, 2377–2379, 2387, 2394, **2420, 2426**–2432, 2435, 2436, *2477, 2482, 2487–2490, 2532, 2535, 2546, 2547, 2549, 2556, 2558, 2559, 2562–2566, 2568, 2569, 2577, 2584, 2585, 2617, 2621, 2632, 2643, 2645, 2647, 2655, 2659, 2669, 2672, 2673–2675, 2677, 2685, 2686, 2689, 2690, 2691, 2698, 2713, 2714, 2718, 2721, 2723, 2725, 2737–2739, 2741–2745, 2751–2753, 2760, 2766, 2767, 2779, 2781, 2802–2804, 2806, 2807–2809, 2812–2814, 2816*, 2876, 2884, **2890,** 2910, 2911, 2915, 2916, 2923–2925, 2929, 2934, 2938, 2942, **2949, 2955,** 2957, 2959, 2961, 2963, 2969, 2971, 2984, 2988, 3003–3007, **3024,** 3027, **3038, 3044,** 3048, 3049, 3051, 3052, 3054, 3055, 3064, 3066, 3078, 3082, 3083, 3087, 3090, 3091, 3097, 3101, 3113, 3114, 3133, 3162, 3163, 3165, 3166, 3168, 3175, 3177, 3184, 3186–3188, 3191, 3200, 3209–3211, 3216, 3226, 3228, 3230, 3236, **3241, 3244, 3250,** 3255, 3256, 3263, **3272, 3273, 3278,** 3280, 3282, 3285, 3287–3289, 3290, 3293, 3294–3296, 3298, 3299, 3301.

Nation Seal Co., Inc_____ 3292.

National Silk Hosiery Mills, Inc_____ *2207*.

National Steel Corp_____ *274, 284, 795, 796*.

National Steel Labor Relations Board____ 2930, 2976, 3072.

National Textile Labor Relations Board__ 2930, 2976, 3072.

National Textile Workers Union_____ *1024*.

National Tube Co_____ *172, 762, 1061*.

National War Labor Board_____ *162, 193, 513, 1422*, 2963, 2976, 3011, 3056, 3072.

Nebraska Manufacturers' Association____ *374, 1626*.

Needle Workers' Industrial Union_____ *789*.

Needle Trades Workers Industrial Union_ *247, 248, 249*.

Neely, Senator Matthew M_____ 1245, 2344, 2397, 2400, 2415.

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Index page

Nelson ... *2008.*
Neslandek, Anthony ... *2124.*
Nettleton Co., A. E ... *986.*
Nevin (Judge) ... *2032.*
New England Telephone & Telegraph Co. ... *1564*, 3118.
New Hampshire Manufacturers' Association. ... *374*, *1626.*
New Haven Labor College ... *1563.*
Newlon Act ... *2257.*
New Jersey Manufacturers' Association ... *374*, *1626.*
New Orleans Association of Commerce ... *644*, *645*, *648.*
New Republic ... *466.*
New York American ... *2114.*
New York Building Congress ... *311.*
New York Central R. R. Co. *v.* Mahony ... 3145.
New York Clothing Cutters Union ... 1259, 3296.
New York Edison Co ... *783.*
New York Employing Printers Association. ... 1281.
New York Herald Tribune ... 2992.
New York Life Insurance Co. *v.* Dodge ... 2405.
New York Photo Engravers Union No. 1 ... 2305.
New York Post ... *2110.*
New York Power Authority ... *187.*
New York Progressive Club ... 3303, 3304.
New York State, Associated Industries of ... *374*, *1626.*
New York Telephone Co ... *711*, 1264.
New York Times ... *163*, *322*, *323*, *440*, *466*, *469*, *1045*, 1184, *1453*, *1532*, *2254*, 2992, 2994.
New York Typographical Union No. 6 ... 3292.
New York Towboat Exchange ... 1279, 1280.
Newark Leader ... *2116.*
Newhouse ... *2115.*
Newport Rolling Mills Co ... *122.*
Newspaper Industrial Board ... *2111*, *2115*, *2116*, *2118.*
Niagara Mining Co ... *2007.*
Nicholson, W. S ... *363.*
Nields, Judge ... *1431*, *1533*, *1879*, *1885*, *1997*, 2340.
Nolan, Joe R ... *2116.*
Norbeck, Senator Peter ... 1245, 2400, 2415.
Norman, Alan ... *2007.*
Norris, Senator ... *696*, 1180–1, 1188, 1190, 1193–4, 1202, 1245, 2344, 2380–2, 2385–6, 2397, 2400, 2415, *2564.*
Norris-LaGuardia Act ... *83*, *104*, *169*, *183*, *200*, *382*, *401*, *537*, *539*, *816*, 1103, 1109, 1154, 1348, 1351, *1401*, *1404*, *1414*, *1456*, *1478*, *1558*, *1612*, *1826*, *2098*, *2229*, *2233*, *2239*, *2242*, *2243*, *2254*, 2283, 2302, 2307, 2316, 2332, 2335, 2386–2389, 2400–2431, 2439, *2487*, *2488*, *2784*, 2923, 2924, 2969, 2970, 3011, 3064, 3065, 3122, 3168, 3234.

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Index page

Norton Co---------- *1864.*
Norton, Representative Mary T---------- *2474*, 3094, 3178.
North---------- 545.
North American Co---------- *1570.*
North Carolina Finishing Co---------- *2191.*
North End Paper Co---------- *987.*
North Lily Mining Co----------
Northern Illinois Cereal Co---------- *625.*
North Western Bell Telephone Co---------- *2009, 2122.*
Nullirt, A. F---------- 1264.
Nye, Senator Gerald T---------- 1208, 1241, 1245, 1247–50, *2007*, 2344, 2397, 2400, 2415.
Oakland Tribune---------- *2116.*
O'Conner, Representative John J---------- 1154, 1227, 1229, 3002, 3028, 3030, *3092*, 3093, 3095, 3096, 3105, 3109, 3114.
O'Donnell, Raymond---------- *913.*
O'Dowd, Elmer C---------- 3286.
Offenhauer, G. A---------- *777, 778.*
Ogburn, Charlton---------- *160, 1526, 2809.*
Oglebay, Norton & Co---------- *2010.*
Ogren, W. E---------- *1857.*
O'Hara, Tom---------- *680.*
Ohio Chamber of Commerce---------- 1262, 1263.
Ohio Elevator & Machine Co---------- *724.*
Ohio Falls Dye & Finishing Co---------- *2191.*
Ohio Manufacturers' Association---------- *374, 723, 1626.*
Ohio State Federation of Labor---------- 3299.
Ohio Unemployment Insurance Commission. *261.*
Oil Field Gas Well & Refinery Workers of America. *765.*
Oil Well Supply Co---------- *762.*
Oklahoma Associated Industries of---------- *374, 1626.*
Oklahoma Iron Works---------- 3029.
Oklahoma *v.* Kansas Natural Gas Co---- 3146.
Oklahoma Pipeline Co---------- *2015, 2038, 2039. 2044.*
Olds Motor Works---------- *324.*
Olds, N., The High Cost of Strikes---------- 2916, 2962, 3055.
Oliff, Charles---------- *611.*
Oliver Chevrolet Co---------- 1257.
Oliver Iron Mining Co---------- *762, 913, 2010.*
Oliver Iron Mining Co. *v.* Lord, 262 U. S. 172. *426.*
Oliver, Frank---------- *956.*
Oliver, L. D---------- 1257.
Oliver, Representative William B---------- 3094.
Ollvier, Ralph---------- 3298.
Olympic Silk Mills---------- *987.*
Omaha Manufacturers Association---------- *1627.*
O'Malley, Representative Thomas---------- 3197, 3212, 3213, 3231.
O'Neal, Representative Emmet---------- 3094.

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Index page

Oneida Bleachery ---------- *2191.*
Oneida Community, Ltd ---------- *986.*
Onondaga Pottery Co ---------- *986.*
Ontario Silver Mining Co ---------- *2007.*
Open Hearth Lodge No. 148 ---------- 2306.
Operative Plasterers & Cement Finishers International Association. *1584.*
Opinion of the Justices, Massachusetts Supreme Judicial Court, 171 N. E. 234. 2410.
Optical Workers ---------- *299.*
Order of Railroad Telegraphers ---------- *765, 1059.*
Order of Sleeping Car Conductors ---------- *1059.*
Oregon, Manufacturers and Merchants Association of. *374.*
Organization of Street Railway & Motor Coach Employees, Local No. 788. 3287.
Oswego Candy Works ---------- *986.*
Oswego Falls & Sealright ---------- *987.*
Overton, Senator John H ---------- 1245, 2344, 2397, 2400, 2415.
Pacific Grey Hound Bus Line ---------- *227, 230, 231, 232, 233, 234, 734, 736, 745, 746.*
Pacific Mills ---------- *2191.*
Packard Motor Co ---------- *127, 324, 1980.*
Packers & Wrappers Union ---------- 3293.
Packers & Stockyards Act ---------- 1347, 1350, 1359, 1360, 1361, 1362, 1364, 1368, 1369, 1370, *2235, 2236, 2239, 2275.*
Painters, Decorators & Paperhangers of America, Local No. 7. 3283.
Palmer, Arthur ---------- *545.*
Palmer, Fred ---------- *772, 777, 778.*
Palmisano, Representative Vincent L ---- *2554, 2557, 2663,* 3094,
Pang, O. R ---------- 3302.
Panken, Judge Jacob ---------- *84, 164.*
Paper & Corrugated Box Workers ---------- 3302.
Paper Makers Chemical Corp ---------- *2083.*
Paragon Plaster Co ---------- *986.*
Paramount Publix Corp ---------- *984, 985.*
Park City Utah Mines Co ---------- *2007.*
Park Utah Consolidated Mines Co ---------- *2007.*
Parker, Judge ---------- 2991, 2992, 2995, 3001.
Parsons *v.* Bedford, 3 Peters 433, 7 L. ed. 732. *2233.*
Pass & Seymour, Inc ---------- *986.*
Passaic Print Works ---------- *2191.*
Paterson Chamber of Commerce ---------- *537.*
Patman Bill ---------- 2999.
Patman, Representative Wright ---------- 3094.
Patrick, J. B ---------- *913.*
Patrick, Inc ---------- *1482.*
Patriotic Committee ---------- *827.*

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Index page

Pattern Makers League of North America. *765.*
Patterson, Senator Roscoe C. 1245.
Paul Ales, Inc. *625.*
P. B. X. Installation Plant Chapter of Southwestern Bell Telephone Employee Association. 3297.
Peavey, Representative Hubert H. 1144.
Peck, L. A. *625.*
Penal Code of California. 2408.
"Pen and Hammer," Labor Research Association. *465.*
Pennsylvania Coal Co. *v.* Mahon, 260 U. S. 416. *424.*
Pennsylvania & Lake Erie Dock Co. *762.*
Pennsylvania Manufacturers' Association. *374.*
Pennsylvania Railroad. *415.*
Peoples National Bank. 1279, 1280.
Peoples Petroleum Producers *v.* Smith, 1 Fed. Supp. 363. *434.*
People *v.* Marcus. 2408.
Perishable Commodities Act. 1364, 1369, 1370.
Perkins. *2073.*
Perkins, Frances. *48, 357, 457, 458, 465, 576, 664, 1433, 2202, 2273, 2751,* 2920, 2966, 3060, 3187.
Permatex Co., Inc. 3289.
Peterson. *1980.*
Peter Cailler Kohler Swiss Chocolates Co. *586, 987.*
Petroleum Administrative Board. *2055.*
Petroleum Control Act of 1935. 2932, 2979, 3076.
Petroleum Labor Policy Board. *261,* 1204, *1507, 1522, 2055, 2255.*
Peiper, Representative Theodore. 3094.
Pfaudler Co. *461.*
Pfeifer, Representative Joseph L. 3283–85, 3287, 3289–92, 3295-97, 3299, 3303, 3304.
Pflaum, Charles. 3300.
Philadelphia Board of Trade. *444, 445,* 3291, 3302.
Philadelphia Chamber of Commerce. *438,* 1259, *1853.*
Philadelphia Inquirer. 2992, 2994.
Philadelphia Record. *2110,* 2992, 2994.
Philadelphia Textile Manufacturing Association. *2196.*
Philipps Packing Co. *122.*
Phillips, Harry. *2049, 2052.*
Phillips, John A. *286, 287.*
Phillips Petroleum Co. *v.* Phillips Pipe Line Co. *954.*
Phoenix Manufacturing Co. *625.*
Pickering, N. W. *543.*
Pickett *v.* Walsh. *1044.*
Piedmont & N. R. Co. *v.* U. S. *1051.*
Piedmont Print Works. *2191.*

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Index page

Pierce, Representative Walter M---------- 3025, 3027, 3029.
Pierce, Robert I---------- *1915.*
Pierce Arrow---------- *175, 324.*
Pierce, Butler & Pierce Manufacturing Corp. *986.*
Pierce, Charles P---------- *1007.*
Pierce *v.* Stablemen's Union, 156 Calif. 70, (1909.) 2324, *2484.*
Pilgrim Laundry, Inc---------- 1260, 1261, 1262, 1283, 3287.
Pinchot, Mrs. Cornelia Brice---------- *897, 962.*
Pipe Line Cases---------- 3146.
Pitney, Justice---------- *83, 84, 1409,* 2324, 2325, 2404, 2407.
Pittman, Senator Key---------- 1245, 2344, 2399–2400, 2414–15.
Pittsburgh Chamber of Commerce---------- *446.*
Pittsburgh & Conneaut Dock Co---------- *762.*
Pittsburgh Limestone Co---------- *762.*
Pittsburgh Plate Glass Co---------- *122.*
Pittsburgh Steel Co---------- *882.*
Pittsburg Tube Co---------- 1260.
Pittsfield Chamber of Commerce---------- 3289.
Plumbers & Steam Fitters of the United States & Canada. *765.*
Plutus Mining Co---------- *2007.*
Plymouth Motor Corp---------- *324.*
Policy Holders Bureau---------- *113.*
Polier, Isadore---------- *1050.*
Polish Workmen's Aid Fund, Branch No. 215. 3280.
Polk, Representative James J---------- 3280.
Polk Sanitary Milk Co---------- *2207.*
Pond Lily Co---------- *2191.*
Pontiac Finishing Co---------- *2191.*
Pontiac Motor Co---------- *324.*
Poole, E. J---------- *1758.*
Pope Tin Plate Co---------- *276.*
Portable Cable Machine Co---------- *986.*
"Postponing Strikes" by Selekman, B. M.. *1020.*
Post & McCord---------- 1283.
Postal Telegraph of Ohio---------- 2873.
Potter, Reuben---------- *596, 598.*
Powell---------- 2885.
Powers, George H---------- *519, 823, 824.*
Pratt, William E., Manufacturing Co---- *625.*
Precision Castings Co---------- *986.*
Princeton University---------- *265.*
Pringle, W. J---------- 3307.
Pringle, Henry F---------- *2250.*
Printers of Chicago, Unaffiliated---------- *614.*
Printing Press Case---------- 3134.
Problems of Conciliation & Arbitration: A Study in Comparative Law by E. Kuttig. *342, 343, 344–355.*

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Index page

Proctor & Gamble Co. *v.* U. S. ... *1051.*
Progress Shoe Co ... 1281.
Prosperity Co., Inc ... *986.*
Providence D. B. & C. Co ... *2191.*
Proximity Print Works ... *2191.*
Public Resolution No. 44 ... **1298,** 1348, 1349, *1625,* 2300, 2303, 2305, 2312, 2315, 2328, 2331, 2346, 2347, 2356, 2369, 2370, **2418, 2419, 2426,** *2482, 2491, 2649, 2672, 2721, 2753, 2754, 2760, 2764,* **2888, 2889, 2897,** 2912, 2914–2916, 2922, 2930, 2933, **2946, 2947, 2955,** 2958, 2960, 2961, 2963, 2968, 2976, 2977, 2979, **3015, 3016, 3024, 3035, 3037, 3044,** 3050, 3052, 3054, 3055, 3062, 3072, 3073, 3076, 3115, 3189, 3200, 3215, 3236, **3241, 3243,** 3255, 3262, **3272, 3278.**

See also Bills and resolutions in Topical Index.

Public Works Administration ... *420, 1585, 1586, 1589, 1590,* 3030.
Purifoy, R. A ... 1257.
Purnell, Frank ... *826.*
Quadragesimo Anno ... *481.*
Quarry Workers' International Union ... 3296.
Quality Motor Co ... 1257.
Queen Dyeing Co ... *2191.*
"The *Racket*" by Moley, Raymond ... *1045.*
Racine, Manufacturers Association of ... *998.*
Radio Commission ... 3007.
Radio Workers Federal Workers Union ... 1258, 1269.
Radom & Neidorff, Inc ... 3287.
Railroad Labor Board ... 3213.
Railroad Labor Relations Act ... 3197, 3198.
Railroad Retirement Act ... *2265.*
Railroad Telegraphers, Order of ... *765, 1059.*
Railroad Yardmasters of America ... *765.*
Railway Clerks Union *v.* The Texas and New Orleans Railroad. *389.*
Railway Co. *v.* ICC, 221 U. S. 612 ... 1368.
Railway Coordination Act ... *404.*
Railway Labor Act ... *161, 391, 395, 403–405, 415, 416, 513, 55[illegible], 567, 946, 948, 959, 961, 1035,* 1258, 1378, *1401, 1402, 1404, 1405, 1414, 1416, 1422, 1429, 1431, 1457, 1479, 1485, 1515, 2040, 2084, 2102, 2104, 2245, 2246, 2255, 2256, 2257, 2258, 2259, 2263, 2266, 2267, 2269, 2271, 2273, 2274,* 2301, 2308, 2309, 2312, 2317, 2332, 2333, 2337, 2338, 2340, 2346, 2358, 2389, 2390, 2391, 2400, **2417,** 2431, 2439, *2487–2488,*

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	Index page
Railway Labor Act—Continued	*2491*, *2495*, *2496*, *2649*, *2751*, *2753*, **2887**, 2910, 2923, 2925, 2926, 2930, **2945**, 2956, 2969, 2971, 2972, 2976, 3008, 3010, **3014**, **3034**, 3048, 3064, 3066, 3068, 3072, 3100, 3107, 3190, 3192, **3240**, 3255, 3263, **3271**.
Railway Labor Board	1369, *1422*, *1462*, *1524*, 2312, **2337**, 2930, 2976, 3072, 3214.
Railway Labor Transportation Act	*541*.
Railway Mail Association	*1059*.
Railway Pension Case	2340.
Railway Retirement Act	3106.
Railway Retirement Case	3006, 3010.
Raleigh Hotel	3160.
Ralston Steel Car Co	*724*.
Ramapo Finishing Co	*2191*.
Ramsay, Representative Robert L	3094.
Ramspeck, Representative Robert L	2528, 2532–4, 2546, 2549–50, 2553–4, 2557, 2652–3, 2655, 2668–9, 2701–10, 2715, 2726–8, 2739, 2742, 2759–61, 2767, 3205, 3210, 3214, 3216, 3220–1, 3251, 3254, 3258–9, 3261–2, 3264–7.
Rand McNally & Co	1271, 1273.
Randall, Frank J	3291.
Randolph, Representative Jennings	2474, 3177, 3193.
Rankin	3095.
Ransley, Representative Harry C	3093, 3095, 3098, 3100, 3101, 3106.
Ransom, Lloyd H	*851*.
Rath Packing Co	*1876*.
Rathhun	3012, 3108, 3210.
Rathhun *v.* U. S	3255, 3263.
Rayburn-Wheeler Bill	2880.
Rayburn, Representative Sam	3094.
Raycob, John	*707*.
Raymond, E. A	*231*.
Raymond, Phil	*468*.
Rausch, Adrian	3301.
Raushenbush, Stephen	*285*.
Real Silk Hosiery Mill	*1988*, *2207*.
Realty Advisory Board on Labor Relations, Inc.	*2197*.
Rearick *v.* Pennsylvania	3146.
"Recent Social Trends"—Hodrer Committee.	*1410*.
Reciprocal Tariff Act	3004.
Reclassification Act	3155.
Reconstruction Finance Corp	*151*, 1288, 1348, *1404*, 2920, **2934**, 2967, 2980, 3061, 3077, 3207, **3213**.
Reece, Representative Carroll D	3094.
Reed, Senator David A	*992*, 1244–5.
Reese, Jack	*283*, *285*.

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Index page

Reeves---------- 3161.
Reiger, David---------- 3281.
Reilly, Representative Michael K---------- 3094.
Renfrew Bleachery---------- *2191.*
Renken M. H. Dairy Co---------- 1271.
Reo Motor Car Co---------- *324.*
Report on the Steel Strike of 1919---------- 2916, 2962, 3055.
Republic Flow Meters Co---------- *1901.*
Republic Iron & Steel Co---------- *113.*
Republic Steel & Iron Co---------- *811.*
Republic Steel Corp---------- *810, 811, 817, 876, 877, 878, 880, 881,* 1215, 1220, *1545.*
Republican National Convention---------- 3183.
Republican Party---------- *696.*
Resnick Bros---------- 1343.
Retail Clerks' Local Union No. 262---------- 3162.
Retail Clerks International Protective Association. *764,* 3163.
Revere Copper & Brass---------- *586.*
Reymond, M. H---------- *1031.*
Rhode Island, Associated Industries of---------- *374.*
Rhode Island Warp Stop Equipment Co---------- *2156.*
Riccitelli, Tony---------- *2049, 2051.*
Rice, Barton & Fales Machine & Iron Foundry Co. *v.* Willard. 2410.
Rich, Representative Robert F---------- 2843, 3124, 3131, 3132, 3196, 3197, 3199, 3201, 3204, 3205, 3216, 3266,
Richards, G. A---------- 3293.
Richardson Corp---------- *461.*
Richberg, Donald---------- *430, 431, 739, 752,* 1284, *1494, 1495, 1567, 1570, 1571, 1572, 1573, 1574, 1575, 1576, 1634, 1835, 2117, 2197, 2246,* 2282, 2379, 2870, 2885, 3188, 3192, 3230.
Richey Brown & Donald---------- 1275.
Richman Bros---------- 3103.
Richman, Henry C---------- 3103.
Rilev, Joseph J---------- *708.*
Riley Boyd Motor Co---------- 1257.
Riley, Woodford---------- 3300.
Ritchie *v.* People---------- 2408.
Ritter Dental Manufacturing Co---------- *461.*
Ritters Bacher---------- 1260.
Rittgus, Ruby---------- 3289.
Riverside & Dan River Cotton Mills---------- *2191.*
Riviere, Horace A---------- 3304.
Roberts, Justice---------- 2340.
Roberts, Richard R---------- 1260.
Roberts, Scott---------- *2080.*
Robertson Bleachery & Dye Works---------- *2191.*
Robertson, H. M---------- *1597.*
Robertson *v.* Railway Labor Board---------- 1369.

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Index page

Robeson Rochester Corp ... *461.*
Robinson, Robert Lee ... *874.*
Robinson, Senator Joseph T ... **1113,** 1156, 1157, 1158, 1159, **1177,** 1178, 1179, 1180, 1201, 1226, **1232,** 1233, 1254, 2319, **2320, 2342, 2343,** 2372, 2374, 2400, 2414.
Roche, Josephine ... *341,* 2435.
Rochester, Chamber of Commerce ... *409, 456, 457.*
Rochester Gas & Electric Corp ... *461.*
Rochester Telephone Corp ... *461.*
Rockefeller, John D., and Mrs ... *341, 471, 757,* **2429.**
Rockefeller Union ... *337.*
Rockhill Printing & Finishing Co ... *2191.*
Rockland Bleach & Dye Works ... *2191.*
Rockwood & Co ... 3290.
Rocky Mountain Fuel Co ... *317, 341.*
Roderick, Eugene R ... *878.*
Rodgers ... *598.*
Roebling's Sons Co., John A ... *2148, 2203.*
Roga, A & Co ... *223,* 1215.
Roga ... *224.*
Rollway Bearing Co., Inc ... *986.*
Rome Manufacturing Co ... *986.*
Rooney, James ... *1876.*
Roosevelt, F. D ... *20, 69, 78, 79, 80, 133, 145, 207, 216, 241, 372, 574, 576, 585, 658, 662, 664, 721, 822, 883,* 1111, 1145, 1149, *1967, 2067, 2080,* 2883, 3055, 3124, 3176, 3187, 3193, 3269.
Roosevelt, Theodore ... 3183.
Roper, Harold ... 3294.
Roper ... *576.*
Rorty, James ... *2501.*
Rose *v.* Himely, 4 Cranch 241 ... *432.*
Rosedale Knitting Mills ... *468.*
Rosenblatt ... 1155.
Rosenkovitz ... *680.*
Rossfeld, Charles E ... *772, 777, 778.*
Roth ... *219.*
Rother ... *699.*
Ryan, John A ... *1601.*
Rountree Cocoa Works ... *334.*
Rubber Manufacturers Association ... *1855.*
Rubber Manufacturers Industry Code ... *1956.*
Rudd, Representative Stephen A ... 1256, 1257, 1259, 1260, 1261, 1263, 1264, 1265, 1266, 1267, 1268, 1270, 1271, 1272, 1273, 1276, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 3283, 3286, 3295–3297, 3299, 3300, 3304.
Rusboldt ... 1279.
Russell, Lucius T ... *2116.*
Ryan, Anna ... *1564.*

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Index page

Ryan, James J---------- *573, 574.*
Ryan, John J---------- 2412.
Sabath, Representative J---------- 1228, 3101, 3105.
Sadowski, Representative George G---------- 3094.
Saffron, Oscar---------- 3290.
Saltz Bros---------- 3161, 3162, 3163, 3164.
Samples, Leo H---------- 3303.
Sanders, Representative Jared Y. Jr---------- 3094.
Sanders, Joseph---------- *1846.*
Sandlin, Representative John N---------- 3094.
San-Equip, Inc---------- *986.*
San Francisco Examiner---------- *2115.*
Sarchet, M. E---------- *772, 777, 778.*
Sayles Finishing Plants---------- *2191.*
Scharfer---------- 3292.
Schall---------- 1222, 1223, 1245, 2344, 2400, 2415.
Schaefer, Representative Edwin M---------- 3292.
Schamel, Samuel C---------- *707.*
Schechter Case---------- 3006, 3008, 3009, 3010, 3011, 3012, 3056, 3058, 3101, 3108, 3115, 3125, 3126, 3133, 3134, 3136, 3150, 3173, 3184, 3205, 3210, 3255, 3256, 3263.
Schlegel, Irwin---------- *707.*
Schletz---------- *741.*
Schliz, P. N---------- *231.*
Schmidt, Packing Co---------- *724.*
Schneider, Representative George J---------- *2474, 2500, 2513, 2516–19, 2523, 2534–5, 2656–7, 2660, 2664–6, 2687, 2689–90, 2707, 2714–15, 2743, 2748–9, 2770, 2772, 2775, 2796–2802,* 3030, 3090, 3228.
Schneiderman, Rose---------- *70.*
Schoedinger Co., F. O---------- *724.*
School of Foreign Service---------- *1025.*
Schranfl, Herbert---------- 3293.
Schraeder, F. J---------- 3296.
Schuetz, Representative Leonard W---------- 3094.
Schuck, William---------- *1811.*
Schulte, Representative William T---------- 3094, 3218.
Schultz, Carl N., Corp---------- 1276.
Schwartz, Benjamin---------- 3285.
Schwellenbach, Senator Lewis B---------- 2344, 2397, 2400, 2415.
Scott, Albert L---------- *2182.*
Scott, Robert---------- *913.*
Scranton *v.* Lehigh Coal Co---------- 1278, 1279.
Scripps-Howard Syndicates---------- *2115.*
Scrugham, Representative James G---------- 3094.
Seabrook Bedding Co---------- 1278.
Seager, Prof. Henry---------- *719.*
Seagrave Corp---------- *724.*
Seaman Body Corp---------- *130.*
Secretary of Agriculture---------- *2235, 2236, 2275.*

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	Index page
Secretary of Commerce	3195.
Secretary of Labor	2871, 2918, 2919, 2920, 2921, **2933**, 2934, 2964, 2966, 2967, 3058, 3059, 3062, 3077, 3078, 3205, 3206, **3207**, 3208, 3212, 3269.
Secretary of War	3288, 3289, 3297.
Securities Exchange Act	1267, 1349, 1359, 1360, 1362, **1368**, 1369, *1462*, 2932, 2979, 3076.
Securities & Exchange Commission Act	1325, 1348, 1361, *2275*, 2920, **2934**, 2967, 3061, 3077, 3207.
Seidman, Harold	*782*, *783*, *787*.
Selekman, B. M	*1020*.
Senate Committee on Education & Labor	*1067*, *1099*, 1156, 1158, 1162.
Senate Finance Committee	*790*
Senate Joint Resolution 113	3090.
Senate Joint Resolution 133	**3241, 3272.**
Senate Joint Resolution 143	1232.
Senate Munitions Investigating Committee.	2958.
Service Station Attendants Unions	*2056*.
Sessions, L. H	*2182*.
Settle, W. Booth	*614*.
Seyler, George A	*571*.
Shapiro, Harold R	*2085*.
Shaubell, Harry	3282.
Shaw, Chief Justice	2322.
Shearer, H. T	*2009*.
Sheet & Metal Workers Int. Assn	*1048*.
Sheet & Metal Workers Industrial Union	*823*, 3281.
Sheffield Brick & Tile Co	*637*, *638*.
Sheffield Lodge No. 13	3304.
Sheffield Steel Corporation Employees Congress.	3298.
Sheldon Foster Supply Co	1276, 1277
Shell Co	*2044*.
Sheppard, Senator Morris	1245, 2344, 2397, 2400, 2415.
Sheridan, Irene	*1564*.
Sherman Antitrust Act	1329, 1360, 1362, 1364, *.2186*, **2323**, 2383, *2483*, *2484*, *2525*, *2784*, *2794*, 3010, 3099, 3134, 3141, 3146.
Sherman, Harry	*582*, *983*, *984*.
Sherwin, Donald G	*1918*.
Shields, John P	*913*, *917*.
Shidle, Norman	*123*.
Shields	*1483*, *1484*.
Shipbuilding Labor Adjustment Board	*155*.
Shipstead, Senator Henrik	1157, 1240–1, 1245, 1251, 1244, 2397 2400, 2415.
Shirt Workers Union	3300.
Shoe & Leather Workers Industrial Union	*470*.
Shoe Manufacturers Board of Trade	1271, 1273.
Shop Crafts Association	*235*.

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Index page

Short, Representative Dewey---------- 3094.
Shreveport Case---------- 2378, 2379.
Siffrin, Robert J---------- 3281, 3298.
Silk Textile Code Authority---------- *1969.*
Silver King Coalition Mines Co---------- *2007.*
Simms, Leonard---------- *2527.*
Simpson (Administrator of Steel Code)--- *780.*
Sinclair, Ewing---------- *1876.*
Sisson, Representative Fred J---------- 3094.
Skelly---------- 1280.
Skinner, Arnold---------- *779, 853.*
Skinner, Clarence O---------- *2208.*
Slaughter House Cases---------- *2240, 2243.*
Slatersville Finishing Co---------- *2191.*
Slichter, Sumner H---------- *80, 88, 111, 144, 156, 247, 2090, 2093.*
Sleeping Car Conductors, Order of------- *1059.*
Sloan, Alfred P---------- *1910, 1980.*
Sloan, George A---------- *355, 658, 660.*
Slusser---------- *1962.*
Small Co., A. B. *v.* American Sugar Refining Co., 267 U. S. 233. *434.*
Smith, Al---------- 1148, 3171.
Smith Bros. Publishers, Inc---------- 3284.
Smith, Edwin C---------- *2157.*
Smith, Ellwood H---------- *833.*
Smith, Ernest C---------- *2661.*
Smith, E. S---------- *1450, 1537, 1956, 2203,* 2912, 2959, 3051.
Smith, H. Garrish---------- *1039.*
Smith, Hal H---------- *747.*
Smith, H. N---------- 3300.
Smith Co., J. Hungerford---------- *461.*
Smith Printing Co., John P---------- *461.*
Smith, John Thomas---------- *1980, 1984.*
Smith, L. C., & Corona Typewriters, Inc_ *986.*
Smith---------- 1264, *1576,* 3135, 3136, 3141, 3154.
Smith, Sir Alan---------- *335.*
Smith & Tomlinson---------- 3293.
Snell, Representative Bertrand H-------- 1264, **3019,** 3091.
Snyder, Joseph---------- 3304.
Snyder, W. E. & Sons---------- *2007.*
Sobol Bros---------- *502, 503, 504.*
Social Security Program---------- *1970.*
Society of Friends---------- *440.*
Sohio Plan---------- *1486.*
Sokolsky, George---------- *2219.*
Soloman, Jacob S---------- *783.*
Soloman, N---------- 3302.
Somerce & Corzen Coal Corp---------- 1283.
Sons of Vulcan---------- *524.*
Southbridge Finishing Co---------- *2191.*

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Index page

South Carolina Federation of Textile Workers. 1273.
South Dakota, Manufacturers & Employers' Association of. *374, 1626, 2172.*
Southeastern Greyhound Lines *742.*
"Southern Agriculturalist" *938.*
Southern Bleachery, Inc *2191.*
Southern Brighton Mills *2224.*
Southern New England Telephone Co 3286.
Southern Pacific Railroad *227, 232, 237, 736.*
Southern Tenant Farmers Union 2937, 2983, 3081, 3201.
Southwestern Bell Telephone Co 3297, 3298.
Spang Chalfant & Co *1806, 1807.*
Sperry Products 1259, 1260.
Spielman Motor Sales Co 1262.
Spinneweber, M. L *1811.*
Springdale Finishing Co *2191.*
Springe, Dr. Curtis Howe *955.*
Springfield Chamber of Commerce 3292.
Springfield Township Relief Association 3284.
Springer-Cocalis Theaters *784.*
Stack, Representative Michael J 3179.
Stacey, Judge *2223.*
Stafford *v.* Wallace *432,* 2318, 3147, 3149.
Stag Laundry, Inc 1259.
Stahl, Nicholas *777.*
Stamp Act of Great Britain 3179.
Standard Bleachery & Printing Co *2191.*
Standard Chemical Co *637.*
Standard Glass Co *1886.*
Standard Oil *65, 113, 122, 134, 467, 502, 503, 505, 1023, 1408, 1486, 1570, 2141.*
Standard Oil Co. of New Jersey *v.* United States, 221 U. S. 1. 2322, 2323.
Standard Sanitary Manufacturing Co *122.*
Standard, E. T *2158.*
State Building Trades Council 2427.
State *v.* Daniels 2410.
State *v.* Kreutzberg 2411.
Stater Island Advance 2115.
Steagall, Representative Henry B 3094.
Stearns, A. T., Lumber Co. *v.* Howlett 2410.
Steel Founders' Society of America *203, 204, 205.*
Steel Labor Relations Board 1356, 1367, *2274.*
Steel and Metal Workers Industry Union *520, 523, 525.*
Steel Strike of 1919, Report on 2916, 2962, 3055.
Steel & Textile Labor Relations Board *1454, 2274.*
Steel & Tubes, Inc 1257.
Steiwer, Senator Frederick 1245, 2344, 2378, 2397, 2399, 2415.
Stephens, Judge Harold M 1359.
Stephens, Senator Hubert D 1245.
Sterling Die Casting Co 1283.

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Index page

Sterling Motor Truck Co---------- *324.*
Stern, David J---------- *2110, 2111.*
Steuben Knitting Co---------- 1266, 1267.
Stewart, P. W---------- 3296.
Stewart Motor Corp---------- *324.*
Stifel, J. L. & Sons---------- *2191.*
Stocking, Dr---------- *2061.*
Stokeley, Judge---------- *2080.*
Stone Masons Union---------- 1272, 1284.
Stone, Warren, S---------- *699.*
Storkline Furniture Corp---------- *1975, 1977.*
Stove Mounters' Local No. 16---------- 3301.
Straight Line Engine Co---------- *986.*
Strang, William H., Warehouses---------- 1276, 1277.
Stranquist---------- *597, 598.*
Strauss, Oscar---------- *155.*
Straw Board Workers Union No. 19367-- 3284.
Strehler, William---------- *913.*
Stretcher Traung Lithograph Corp------ *461.*
Stringham, William---------- *774, 775, 777, 778.*
Stromberg Carlson Telephone Manufacturing. *461.*
Studebaker Corp., The---------- *130, 324.*
Stutz Motor Car Co. of America, Inc---- *324.*
Suffern, Arthur E---------- *314.*
Sullivan, Daniel J---------- *959.*
Summerdale Dyeing & Finishing Works-- *2191.*
Sumners, Representative Hatton W------ 3094.
Sun Oil Co---------- *117.*
Superior Die Tool & Machine Co-------- *724.*
Superior Wall---------- *625.*
Suron Optical Co---------- *461.*
Sutherland, Justice---------- 2405, 3108, 3109, 3148.
Sutherland, W. C---------- *1763.*
Swansea Print Works---------- *2191.*
Swanson, F. O---------- 1277.
Swayne, A. H---------- *1980.*
Sweeney, Representative Martin L------ 3094, 3168.
Swift & Co---------- *122, 291, 293, 1876.*
Swift & Co. *v.* United States---------- 3148.
Swisher & Shafer Auto Co---------- 2879.
Switchmen's Union of North America---- *965, 1059.*
Swope---------- *62, 70, 134, 439, 467, 471, 474, 1451, 1574.*
Symington Gas---------- *461.*
Syracuse Chilled Plow Co---------- *986.*
Syracuse Lighting Co---------- *986.*
Syracuse Stamping Co---------- *986.*
Taber, Representative John---------- 3094, 3151, 3166, 3167, 3180, 3216, 3217, 3219, 3224, 3225, 3228, 3261, 3265, 3267.

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Index page

Taft, William Howard ..... *161, 427,* 1111, *1405, 1430, 1506, 2185,* 2322, 2323, 2339, 2406, 2917, 2963, 3011, 3057, 3108, 3109, 3148, 3168, 3190.
Tamaqua Employees Union ..... *1548, 1549.*
Tamaqua Underwear Co ..... *1548.*
Tariff Act of 1930 ..... 1362.
Tarver, Representative Malcolm C ..... 3113, 3115, 3172.
Taylor, Representative Edward T ..... 3095.
Taylor, Representative J. Will ..... 3094, 3110.
Taylor, Representative John C ..... 3119–21.
Taylor Instrument Co ..... *461.*
Taylor, William E ..... *1035.*
Tead ..... *103.*
Teagle, Walter ..... *70, 113, 134, 439, 467, 471, 474, 1023,* 1209, *1451, 1574.*
Teague Motor Co ..... 1257.
Telegraphers Union of North America ..... *765.*
Telephone Employees Association ..... 3286.
Telephone Operators Committee Organization. *1563.*
Tempest ..... *2006.*
Tennessee Coal & Iron Co ..... *183, 413, 762, 914, 918, 919, 926.*
Tennessee Manufacturers' Association ..... *374, 1626.*
Tennessee Valley Authority ..... *325,* 3213.
Ternstedt Manufacturing Co ..... *129.*
Terry, William B ..... *326.*
Texas Case ..... *2249, 2362, 2496.*
Texas & Pacific Coal & Oil Co ..... *2053.*
Texas & N. Orleans R. R ..... 1319, *2245, 2257,* 2439, *2495, 2498.*
Texas–New Orleans R. R. *v.* Brotherhood of Clerks. *82,* 2317, 2318, 2338, 2432, 2917, 2926, 2963, 2972, 3008, 3010, 3056, 3068, 3107.
Texas & New Orleans Railroad Co. *v.* United States. *2240.*
Texas State Federation of Labor ..... 2427.
Texas State Manufacturers Association ..... *374, 1626.*
Textile Board ..... 1343, 1346, 1356.
Textile Code Authority ..... *1030.*
Textile Labor Board ..... *2221, 2223, 2274.*
Textile Industry Board ..... *2223.*
Textile Printing & Finishing Works ..... *2191.*
Theatrical Stage Employees ..... 1283.
Thighs, M. J ..... *905.*
Thoma, Ernest F ..... 3282.
Thomas, C. E ..... 3283.
Thomas, Senator Elbert D ..... *28, 31, 47, 97, 241, 289, 359, 368, 371, 413, 529, 587, 684, 833, 852, 929, 995,* 1245, *1374, 1433, 1502, 1505, 1618, 1745, 1766–7, 1977, 2217,* 2344, 2397, 2400, 2415.
Thomas, Senator Elmer ..... 1245, 2344, 2397, 2400, 2415.

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Index page

Thomason, Representative R. Ewing---- 1271.
Thomaston Bleachery & Dye Works---- *2191.*
Thompson, A. F---- *998.*
Thorp, C. G---- *117.*
Thorton, Sir Henry---- 3183.
"The Threat of the Labor Movement" by William F. Dunne. *1021.*
Tiedeman, T. H. A---- *113.*
Tighe---- *774, 775, 776, 1845.*
Tile Layers' Local No. 36---- 3301.
"Time" Magazine---- *1024.*
Timken Roller Bearing Co---- *724.*
Tinnerman Stove & Range Co---- 2873.
Tintic Standard Mining Co---- *2007.*
Titus, Louis---- *2015.*
Tobacco Workers International Union---- *1592, 1593, 1594, 1595, 1598.*
Todd Co---- *461.*
Todd Shipyards---- *199.*
Tolan, Representative John H---- 3094.
Toledo Central Labor Union---- 3283.
Toledo Dye Works---- *2191.*
Toledo Federation of Teachers, Local 250- 3288.
Toledo Photo Engravers' Union---- 3298.
Toledo Typographical Union ---- 3293.
Toledo Women's Trade Union League---- 3294.
Toledo Mailers Union No. 35---- 3290.
Tompkins Bros. Co---- *986.*
Tonietti, Alphonse---- *2116.*
Tonry, Representative Richard J---- 3287, 3297.
Topics Publishing Co---- 3283.
Torrey, Arthur Morris---- *512.*
Torrington Co---- 1262, 1263, 1279, 1280.
Townsend, Senator John G., Jr---- 1245, 2344, 2397, 2399, 2415.
Toy, F. L---- *913.*
Tracewell---- *724.*
Trade Disputes Act of Great Britain (1927). *413.*
Trade Union Community League---- *327.*
Trade Union Unity League---- *195, 1010, 1013, 1015, 1026, 1030.*
Traer, Charles S---- *1767.*
Trainmen's Cooperative & Protective Association. *2142.*
Transportation Act---- *405, 416, 417,* 2312, *2793.*
Transportation Act of 1920---- *1422, 1524.*
Travis---- *209, 230, 231, 232, 233, 734, 737, 745.*
Treadway, Representative Allen T---- 3001, 3216.
Treasury Department---- 2920, 2967, 3000, 3061.
Trembley, A. B---- *1916,* 1927.
Trenton Chamber of Commerce---- *537.*
Triangle Ink & Color Co---- 1277, 1280.
Tri-City Central Trades Council Case---- *2484,* 3168, 3169.
Trimble, South---- **3250.**

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Index page

Tri-State Telephone & Telegraph Co..... *2121.*
Tri-State Zinc & Lead Ore Producers Association. *2006.*
Truax, Representative Charles V..... 2474, 2656, 2686, 2767, 2770, 2871–6, 2878–83, 3185, 3279–81, 3283–94, 3296, 3298–305.
Truax *v.* Corrigan, 257 U. S. 312, (1912).. 2325.
Truck Drivers, Chauffeurs-Helpers Union. *679.*
True, Matthew..... 3287.
Truman, Senator Harry S..... 2344, 2397, 2400, 2415.
Tucker, Henry St. George..... 3154.
Tugwell, Rexford Guy..... 2998, 3000, 3176.
Twin City Rapid Transit Co..... *2146.*
Twentieth Century Fund, Inc..... *2090, 2091, 2254, 2255, 2263, 2264,* 2333.
Tydings, Senator Millard E..... 1208–9, 1219–20, 1222–3, 1234–9, 1245, 1271, 1745, 1792–3, 1795–6, 2344, 2348–50, 2357–68, 2381–2, 2385–7, 2389, 2397–2400, 2402, 2411, 2415.
Tyler, Fred..... *2080.*
Typographical Pressmen's Union..... *661, 1044.*
Tytus, John B..... *775, 776, 777.*
Udell Works..... *2207.*
Unaffiliated Printers of Chicago..... *614.*
Uncas Finishing Corp..... *2191.*
Underwood, Representative Mell G..... 3094.
Underwood & Underwood..... 2992.
Union Bleachery..... *2191.*
Union Labor Insurance Co..... *789.*
Union Machinery Co..... *625.*
Union Pacific Coal Co..... *2012.*
Union Taxicab Co..... 3161
United Appliance Union, Local 18652.... 3289
United Association of Journeymen Plumbers & Steam Fitters. 3293, 3303
United Automobile Workers Federal Labor Union. 3295.
United Automobile Workers..... *134, 1521.*
United Brick & Clay Workers of America.. *764,* 3281, 3301, 3303.
United Brotherhood of Carpenters and Joiners of America. *764,* 1268, 1272, 3293, 3300.
United Charities..... *618.*
United Garment Workers Union..... *87.*
United Hatters, Cap & Millinery Workers International Union No. 29, No. 11. 3286.
United Leather Workers *v.* Herkert, 265 U. S. 457. *427, 428, 431, 432.*
United Merchants & Manufacturers, Inc.. *2191.*

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Index page

United Mine Workers ... *155, 169, 177, 181, 182, 183, 317, 365, 467, 765, 969, 1568, 1595, 1635, 2013, 2016, 2029,* 3111, 3125, 3220, 3281, 3289, 3290, 3292, 3294.

United Mine Workers of America *v.* Coronado Coal Co., 259 U. S. 344. 426, 427, 431, 432, 2318, 2497, 3101, 3110, 3111, 3115, 3117, 3136, 3142, 3143, 3144.

United Mine Workers Journal ... *1969.*

United Motors ... *130.*

United Railways & Electric Co ... *708, 709.*

United Railways Employees Association ... *703, 704, 705, 710.*

United Rubber Workers Council ... 1283, *1955, 1956, 1958, 1960.*

United Rubber Workers, Federal Union ... *952,* 3281, 3283, 3301.

United Shoe Machinery Corp. *v.* United States, 258 U. S. 451 (1922). 2323, 2325, *2484.*

United States Arbitration Act ... 1366.

United States Board of Mediation ... *161, 162, 193, 259, 2249.*

United States Bureau of Labor Statistics ... *1878, 2019, 2047.*

United States Bureau of Mediation ... *286.*

United States Chamber of Commerce ... *529, 790.*

United States Coal Commission of 1923 ... *1854.*

United States Coal Commission, Labor Relations in the Bituminous Coal Industry. 2916, 2962, 3055.

United States Commission on Industrial Relations. *241, 1045.*

United States Commissioner of Labor, Twenty-first Annual Report. 2962, 3055.

United States Department of Commerce ... *1917.*

United States Employees' Compensation Comm. 1100, 1120.

United States Employment Service ... 3157.

United States Finishing Co ... *2191.*

United States Industrial Relations Comm ... 2343.

United States Pipe & Foundry Co ... *122.*

United States Steel Corp ... *85, 171, 172, 176, 177, 183, 184, 327, 759 760, 767, 796, 810, 813, 882, 915, 921, 1478, 1486, 1533, 1846, 2010, 2225, 2484,* 2884.

U. S. *v.* Brims, 272 U. S. 549 ... 2282.

U. S. *v.* Cohen Grocery Co., 255 U. S. 81 ... *433.*

U. S. *v.* E. C. Knight & Co., 156 U. S. 1, (1894). 2322, 3145, 3149.

U. S. *v.* Fuger, 250 U. S. 199 ... 2318.

U. S. *v.* International Harvester Co., 74 U. S. 693, (1926). 2323.

U. S. *v.* L. & N Railway Co ... 1369.

U. S. *v.* Local No. 167 et al., 291 U. S. 293 ... 2316, 2924, 2970, 3065.

U. S. *v.* Patten ... 3142.

U. S. *v.* Penns. Ry. Co., 242 U. S. 208 ... *433.*

U. S. *v.* United States Steel Corp. 251 U. S. 417, (1920). 2323, 2325.

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Index page

U. S. *v.* Weirton Steel Co---------- *2242.*
United Textile Workers of America------ *301, 660, 1024,* 1284, 3282, 3289, 3291, 3306.
United Umbrella Workers Union-------- 1272.
United Upholsterers Union of New York-- 1270, 1271, 3299, 3300.
United Workers Federal Labor Union---- *1952, 1965.*
Universal Atlas Cement Co------------ *762.*
Universal Exploration Co------------- *762.*
Universal Screen Printing Co---------- *2191.*
University of Chicago---------- *224, 236.*
University of Michigan---------- *730.*
University of Pennsylvania---------- *694, 695.*
Untermeyer, Samuel---------- *377, 378, 423.*
Upholsterers, Carpet, & Linoleum Mechanics International Union of North America. 1271, 1272.
Upholsterers' Journal---------- *469.*
Utah Associated Industries---------- *374.*
Utah Chapter of American Mining Congress. *2007.*
Utah Copper Co---------- *2007.*
Utah, Delaware Mining Co---------- *2007.*
Utah Power & Light Co. *v.* Pfost, 286 U. S. 165. *426, 431.*
Utica-Willowvale Bleaching Co---------- *2191.*
Valves & Fitting Industry Code---------- *572.*
Vance, J. L---------- *913.*
Vancouver Trades & Labor Council------ *1019.*
Vandenberg, Senator Arthur H---------- 1067, 1245, 2344, 2371–2, 2397, 2399, 2415.
Vanderbilt University---------- *938.*
Van Devanter, Justice---------- 2406.
Vandergrift Works---------- *1838, 1841.*
Van Duyne, Philip R---------- *536.*
Van Nuys, Senator Frederick---------- 1244–5, 2344, 2397, 2400, 2415.
Veach---------- 1216.
Valvet Tissue Corp---------- *987.*
Vereen, W. F---------- *70.*
Verity, C. W---------- *778.*
Vermont, Associated Industries of------ *374, 1626.*
Versailles Treaty---------- *1528.*
Veteran's Voters League of America----- *573.*
Vickers, Leslie---------- *716.*
Victoria Paper Mills---------- *987.*
Viles, A. L---------- *1855.*
Vinson, Bill---------- 2999, 3000.
Virginia Manufacturers' Association----- *374, 1626.*
Viscose Co---------- *123.*
Volz, Ed. J---------- 1283.
Von Damm, F. H---------- 1258, 3295.
Vonloosberg, V. F---------- 1284.
Vulcan Proofing Co---------- 1266, 1267.

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Index page

Wagenet, R. G. ... *311.*

Wagner, Senator Robert F. ... **1,** 15, 18, 22, *29, 37–9, 41–4, 46–7, 52–3, 55–9, 64, 66, 70–4, 78, 81, 83–4, 97, 104, 108, 110–12, 114–15, 118, 125, 133, 135–8, 141, 143, 152, 155, 157–60, 163, 164–70, 175–6, 179–81, 186, 194, 200, 202–3, 206, 211–12, 217, 220, 235, 237–9, 241, 246, 248–9, 251–3, 256–8, 260–1, 263–5, 269, 272, 275, 277–8, 281–3, 325, 329, 338–42, 375, 377, 380–2, 386, 388–9, 391–405, 407–11, 413, 429–30, 435, 438–41, 443, 477–8, 481, 491–2, 494–503, 505–6, 509–17, 527, 529–30, 554, 592, 797–8, 806, 815, 922, 1006–7, 1010–12, 1016, 1024, 1027–8,* **1070, 1113–15,** 1119, 1122, 1181–3, 1185, 1188–9, 1191, 1201, 1209, 1211, 1219–20, 1233–41, 1245, 1251, 1275, **1295,** 1311, 1314, *1375, 1377, 1391, 1406–8, 1412–15, 1417–29, 1432–3, 1451, 1463, 1477, 1486–9, 1491–2, 1495, 1535, 1551, 1564, 1569, 1572–3, 1582, 1586, 1588–91, 1594, 1616, 1623, 1628, 1634–42, 1644–6, 1649, 1651–2, 1660–1, 1670, 1672–84, 1690–3, 1707, 1715, 1720, 1725, 1745, 1777–87, 1789–90, 1793–6, 1799, 1802–3, 1805–6, 1808–10, 1813–21, 1823–38, 1841, 1863, 1866–74, 1878–91, 1893, 1900, 1903–4, 1906–8, 1916–17, 1919–20, 1922–3, 1971–2, 2015, 2017, 2021, 2023–35, 2039–44, 2051, 2053, 2060–7, 2069, 2074–82, 2084–5, 2091, 2093, 2095–8, 2100–5, 2111, 2211, 2217, 2225, 2247–54, 2257, 2264, 2266, 2268, 2271–2,* 2282, **2285,** 2321, 2342–4, 2348–9, 2357–60, 2365–9, 2371–2, 2375, 2386, 2389, 2394–5, 2397, 2400–3, 2415, *2475, 2482, 2500–1, 2536, 2564,* 2911, 3231, 3279, 3285.

See also Remarks of Senator Wagner in the Topical Index under the various headings.

Wagner-Lewis Unemployment Insurance Bill. ... 1150, *2773,* 3283.

Waitkus, Stanley ... 1260.

Walcott, Senator ... *28, 97, 109, 110, 111, 112, 114, 115, 130, 167, 168, 169, 235, 371, 391, 952, 954, 955, 965, 971, 972, 973, 974, 976, 977, 978,* 1244, 1264.

Walker, Hiram ... *634.*

Walker, J. L. ... *611.*

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Index page

Walker, Jimmy ..... 1149.
Walker, Joseph ..... 3292.
Walker Mining Co ..... *2007*.
Walker, William E ..... *707*.
Wall, J. I ..... 2882.
Wall, J. M., Machine Co ..... *986*.
Wall Street Journal ..... *300*.
Wallace ..... *576*, *577*, 3175, 3176.
Wallace, Keith ..... 1279.
Wallick, Arthur E ..... 3303.
Walsh, Senator David I *31*, *37–9*, *41–4*, *46–8*, *51–61*, *63–6*, *68*, *80–4*, *87–92*, *94–5*, *97*, *107–12*, *114–15*, *118*, *126*, *130*, *134*, *138*, *140–4*, *147–8*, *150–2*, *154–8*, *160–1*, *164–5*, *169*, *171*, *179–81*, *185–8*, *196–7*, *199*, *202–3*, *206*, *210*, *218–20*, *223*, *226–8*, *233–6*, *240–1*, *243–4*, *248–58*, *260–1*, *264*, *269–70*, *272–83*, *285–6*, *288–99*, *301–14*, *316–17*, *322*, *325–7*, *329*, *335–8*, *340–2*, *355–60*, *362–6*, *371*, *373–5*, *377*, *379–95*, *397*, *399–400*, *402–4*, *409*, *411*, *413*, *415–24*, *426*, *428–31*, *434–6*, *438–40*, *443–4*, *446–53*, *455–7*, *461–4*, *475*, *477*, *481–2*, *489–93*, *496–7*, *502–9*, *511–12*, *516–24*, *527*, *529–30*, *536–7*, *542–3*, *545–6*, *553*, *555–6*, *559*, *561*, *567–8*, *571*, *573–4*, *586–94*, *610–11*, *617*, *619*, *622–3*, *625–7*, *630–7*, *639*, *644–5*, *647*, *649–50*, *654–7*, *659–63*, *665–71*, *673–6*, *678*, *682*, *687*, *689*, *694–8*, *710–11*, *713*, *715–16*, *723–5*, *727*, *732–4*, *736–7*, *739–40*, *745*, *747–53*, *755*, *757*, *759–62*, *767–71*, *781–3*, *791–2*, *794–6*, *802–11*, *813*, *818*, *821–2*, *825–7*, *831*, *833–42*, *844–56*, *858–9*, *861*, *863*, *870–6*, *878–83*, *887*, *891–2*, *894–904*, *906–15*, *917–22*, *925*, *927*, *929*, *932–3*, *938*, *943–4*, *949–50*, *954*, *956–9*, *962–4*, *968–76*, *978–9*, *981–90*, *992–5*, *998–1002*, *1006–7*, *1010–11*, *1019*, *1022–3*, *1025–6*, *1028–30*, *1038*, *1049*, *1060*, *1064–6*, **1070**, 1099, 1117, 1122, 1157, 1159–60, 1162, 1185, 1187–91, 1193, 1201, 1222–3, 1234, 1236, 1239–40, 1243, 1245, 1270, 1327, *1374*, *1377*, *1391–2*, *1398*, *1406–8*, *1412–13*, *1415*, *1417–21*, *1423–8*, *1432–3*, *1437–8*, *1441–2*, *1449–51*, *1453–60*, *1462–3*, *1465*, *1467–9*, *1473–5*, *1477*, *1480–1*, *1484*, *1491–2*, *1495*, *1499*, *1505*,

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	Index page
Walsh, Senator David I.—Continued	*1508–11, 1513–16, 1518–19, 1525–7, 1532, 1534–7, 1543, 1545–6, 1551–2, 1563, 1567–8, 1571–5, 1578–80, 1584–92, 1594, 1596–1603, 1605–6, 1610, 1616, 1618, 1623, 1626–7, 1631, 1634, 1638–44, 1646, 1650–4 1656, 1659–60, 1662–3, 1669–85, 1689–91, 1693–6, 1698–9, 1704–12, 1716–25, 1727–33, 1735–41, 1743–5, 1752–3, 1756–9, 1761–3, 1765–9, 1771–83, 1785–7, 1790–2, 1796, 1799–1808, 1810–11, 1818, 1820, 1822–7, 1830–1, 1838–9, 1841–50, 1852, 1855, 1857–60, 1863–4, 1869–70, 1875–6, 1878, 1883, 1886, 1888–9, 1891, 1893, 1900–6, 1908–9, 1912–13, 1915, 1917–18, 1923–4, 1926–34, 1936–52, 1961–7, 1972, 1977–80, 1982–9, 1992, 1999–2000, 2004, 2007–15, 2017–18, 2023–4, 2030, 2035, 2038, 2042–5, 2048–53, 2063, 2065–6, 2069–72, 2074–5, 2083, 2085–6, 2088, 2090–2, 2094–7, 2099–2102, 2105, 2109–12, 2119–24, 2137–41, 2153, 2156–8, 2160, 2170, 2182, 2191, 2194, 2196, 2201, 2209–11, 2213, 2215, 2217, 2219–26, 2244–5, 2247, 2253, 2255, 2258, 2260–9, 2271–3,* **2285**, 2300, 2344–5, 2350, 2365, 2369–72, 2374–5, 2380, 2382, 2385–6, 2390–3, 2395–7, 2400, 2415, *2564*, 3237, 3254, 3258–60, 3262, 3280–2, 3286, 3289, 3291, 3300.
Walsh, Frank P	*187, 1506, 1523, 1525.*
Walsh, John J	*293, 294.*
Walter Motor Truck Co	*324.*
Waltham Watch Co	3280.
Walters, David J	3281.
War Conference Board	*193.*
War Labor Board	2301, 2302, 2342, 2930.
War Labor Conference Board	*193, 194, 2274.*
War Labor Policies Board	*193.*
Ward, Louis B	*478, 505.*
Ward Theater	*784.*
Ware Shoals Manufacturing Co	*2191.*
Ware & Leland *v.* Mobile County	3142.
Warner Publications, Inc	3283.
Warren, Charles B	1261, *2187.*
Warren Nash Co	*130.*
Warwick Print Works	*2191.*
Washington Daily News	3233.
Washington, George	3140.

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Index page

Washington Herald ..... 2991, 2992, 3001.
Washington Post ..... 3269.
Washington Star ..... *175.*
Washington Union Coal Co ..... *2013.*
Waterbury Clock Co ..... *290, 291.*
Waterside Workers' Federation of Australia *v.* Alexander, Ltd., 25 C. L. R. 434. 2278, 2281.
Watson ..... *2008.*
Watson, Warren N ..... *1721, 2179.*
"The Watson-Parker Law" by Foster, Wm. *1019.*
Watson-Parker Railway Act ..... *1018.*
Waynesboro Manufacturing Association .. *1627.*
Weaver, Charles H ..... 1220.
Webster ..... 3176.
Weckler, Herman ..... *1980.*
Weed, Hugh H. C ..... *989.*
"Weekly News Letter" ..... *1044.*
Webb, Sidney & Beatrice ..... *1433.*
Weidner F. Printing & Publishing Co .... 1259, 1284.
Weiman, Arthur ..... 1261.
Weinman Pump Manufacturing Co ..... *724.*
Weinstock, Louis ..... *2197.*
Weir, Ernest T ..... *132, 133, 134, 136, 177, 471, 795, 805, 886, 909,* 1240, *1489.*
Weirton Steel Co ..... *114, 122, 132, 133, 177, 274, 284, 796, 798, 800, 801, 806, 882, 887, 893, 895, 898, 900, 901, 903, 907, 909, 925, 1431, 1885.*
Weirton Steel Case ..... *522,* 2340, *2498, 2650, 2651, 2685, 2810,* 2914, 2960, 3052, 3189.
Welch, Representative Richard J ..... *2474, 2578, 2584, 2761,* 3091, 3112, 3124, 3131, 3133, 3149, 3164, 3166, 3177, 3178, 3179, 3182, 3251.
Welders' Local 1357 ..... 3301.
Werner, Representative Theodore B ..... 3094.
West Hudson Chamber of Commerce .... *537.*
West Tire Setter Co ..... *461.*
West Virginia Attachment Law ..... *883.*
West Virginia Manufacturers' Association . *374, 1626.*
West Virginia Rail Co ..... *1530.*
Western Clock Co ..... *619.*
Western Federation of Miners ..... 2407.
Western Greyhound Lines ..... *740, 741, 743.*
Western Oil Refining Co. *v.* Lipscomb ..... 3148.
Western Sheet & Tin Plate Manufacturers . *776, 905.*
Western Union Tel. Co. *v.* Foster ..... 3148.
Western Union Telegraph Co ..... 2873.
Westlake, William ..... *1843.*
Whalen, Grover ..... *217.*
Wheat, Judge ..... *2265, 2266.*

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Index page

Wheeler, Senator Burton K---- 1245, 1247, 2344, 2399–2400, 2415.
Wheeler-Rayburn Bill---- 3187, 3282.
Wheeling Steel Co---- *174, 276, 277, 284, 870, 872, 874.*
Whipp, Wendell E---- *1870.*
Whisler, J. E---- *2159.*
Whitaker-Glesner Co---- *276.*
White---- 1283, 3102.
White, Representative Compton I---- 3102.
White, Senator Wallace H., Jr---- 1245, 2344, 2397, 2399, 2415.
White Co---- *1980.*
White, Ed. D---- *2131*, 3303.
White, James A---- 3290.
Whitehead---- *2015.*
Whitehead, Harold H---- *2048.*
Whitestone Association---- 1273, 1274.
Whitmarsh---- *1564.*
Whybrow's Case, 10 CLR 266---- 2280.
Wilcox Rich Plant---- *130.*
Wiley, Admiral---- *2223.*
Williams, S. Clay---- 1209, *1574.*
Williams, David L---- *913.*
Williams, J. C---- *276, 468, 796, 884, 893, 909.*
Williams, Whiting---- *929.*
Willard---- *317.*
Willard, Daniel E---- 3183.
Willison, Agnes---- 3304.
Willis, H. W---- *444, 445.*
Willys-Overland Co---- *324.*
Wilmington, Manufacturers' Association of. *374, 1626.*
Wilner---- *680.*
Wilson, Arnold---- *619.*
Wilson, Woodrow---- *155, 332, 462, 622, 819, 1528*, 2337, 2343, 2431, 2997, 3125, 3126, 3183.
Wilson & Co---- *291, 1876.*
Wilson *v.* New, 243 U. S. 322---- 2318.
Winant, John---- *2090, 2093.*
Winant Report---- *2090.*
Window Cleaner Protective Union (Local No. 2). *290.*
Window Washers Union---- *680.*
Windsor Print Works---- *2191.*
Winnall, Norman---- 1278, 1280.
Wire Workers' Union No. 19859---- 3291.
Wisconsin Manufacturers' Association---- *374, 1626.*
Wisconsin Steel Works---- *956, 959, 961, 962, 975.*
Withrow, Representative Gardner R---- 3131, 3132.
Witte, Edwin E---- *270, 288.*
Wolf, Earl S---- *2010.*
Wolf, George E---- *710.*
Wolff, Chas., Packing Co. *v.* Court of Industrial Relations. *2241*, 2406.

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Index page

Woll, Matthew ... *1025.*
Wolman, Leo ... *70, 156, 383, 467, 586, 661, 748, 789, 1002,* 1209.
Women's Non-Partisan Club ... 3285.
Wood, Representative Reuben T ... *216, 2474, 2500–1, 2507, 2512, 2514–23, 2544, 2550–1, 2565–70, 2574, 2577–8, 2584–5, 2587, 2590, 2647, 2654–6, 2662, 2666–9, 2684–5, 2692, 2695, 2697–2702, 2707, 2710, 2712–15, 2727–32, 2737, 2741–5, 2747, 2749, 2762, 2764, 2768, 2770, 2773–4, 2789–94, 2799, 2802–3, 2806,* 2992, 3025–31, 3094, 3117, 3121, 3177, 3199, 3220–1.
Woods, Col. Arthur ... *576.*
Woods, William W ... *1040.*
Woodbury, J. F ... *2005.*
Woolford, Edgar ... *703.*
Woolford, Ray G ... 3295.
Worcester Manufacturers Mutual Insurance Co. ... 3284.
Worcester Pressed Steel Co ... *447.*
Workmen's Compensation Law ... *408,* 3168, 3224.
World-Telegram ... *467, 470.*
Wright, Christopher ... *1738.*
Wright, William ... 1215.
Wright Case ... 3028.
Wuerdeman, Walter H ... *568.*
Wynhever, Peter (Father) ... *466.*
Yates Bleachery ... *2191.*
Yawman & Erbe Manufacturing Co ... *461.*
Yick Wo *v.* Hopkins, 118 U. S. 373 ... *434.*
York Motor Co ... 1257.
Young, Arthur H ... *757, 1533, 2225.*
Young, Clarence R ... 3283.
Young, George W ... *995, 2137.*
Young, James T ... *695.*
Young, Owen D ... *794, 796.*
Young, William W ... *1838.*
Youngstown Pressed Steel Co ... *2008.*
YWCA ... *2215.*
Youngstown Sheet & Tube Co ... *122, 818, 826, 828, 845, 846, 850, 851, 882.*
Yurkonis *v.* Delaware Lackawanna Western, 238 U. S. 439. ... *426, 431.*
Zanesville Federation of Labor ... *330.*
Zeigler, Dennis B ... *2155.*
Zeigler, S. R ... *1811.*
Zenith Radio Corp ... 1355.
Zimmerman, Jacob ... *707.*
Zinc-Lead Co ... *1999.*
Zioncheck, Representative Marion A ... 3000.

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73D CONGRESS
2D SESSION

S. 2926

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28 (calendar day, MARCH 1), 1934

Mr. WAGNER introduced the following bill; which was read twice and referred to the Committee on Education and Labor

A BILL

To equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

SECTION 1. This Act may be cited as the "Labor Disputes Act."

SEC. 2. The tendency of modern economic life toward integration and centralized control has long since destroyed the balance of bargaining power between the individual

employer and the individual employee, and has rendered the individual, unorganized worker helpless to exercise actual liberty of contract, to secure a just reward for his services, and to preserve a decent standard of living, with consequent detriment to the general welfare and the free flow of commerce. Inadequate recognition of the right of employees to bargain collectively through representatives of their own choosing has been one of the causes of strikes, lockouts, and similar manifestations of economic strife, obstructing commerce and imperiling the general welfare. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of commerce, to encourage the establishment of uniform labor standards, and to provide for the general welfare, by removing the obstacles which prevent the organization of labor for the purpose of cooperative action in maintaining its standards of living, by encouraging the equalization of the bargaining power of employers and employees, and by providing agencies for the peaceful settlement of disputes.

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SEC. 3. When used in this Act—

(1) The term "person" includes individual, partnership, association, corporation, and the legal representative, trustee in bankruptcy, receiver, or trustee thereof, or the legal representative of a deceased person.

3

(2) The term "employer" means a person who has one or more employees, except that the term "employer" shall not include the United States, or any State, municipal corporation, or other governmental instrumentality, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization, or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" means any individual employed by an employer under any contract of hire, oral or written, express or implied (including any contract entered into by any helper or assistant of any such individual, whether paid by him or his employer, if such assistant or helper is employed with the knowledge, actual or constructive, of the employer), or any individual formerly so employed whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice: *Provided*, That the term "employee" shall not include an individual who has replaced a striking employee. Wherever the term "employee" is used, it shall not be limited to mean the employee of a particular employer, but shall embrace any employee, unless the Act explicitly states otherwise.

(4) The term "representatives" includes any individual or labor organization.

4

(5) The term "labor organization" means any organization, labor union, association, corporation, or society of any kind in which employees participate to any degree whatsoever, which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, or hours of employment.

(6) The term "commerce" means trade or commerce, or any transportation or communication relating thereto, among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the

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District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "unfair labor practice" means any unfair labor practice listed in section 5.

(8) The term "National Labor Board" means the National Labor Board created by section 201 of this Act.

SEC. 4. Employees shall have the right to organize and join labor organizations, and to engage in concerted activities, either in labor organizations or otherwise, for the purposes of organizing and bargaining collectively through representatives of their own choosing or for other purposes of mutual aid or protection.

5

SEC. 5. It shall be an unfair labor practice for an employer, or anyone acting in his interest, directly or indirectly—

(1) To attempt, by interference, influence, restraint, favor, coercion, or lockout, or by any other means, to impair the right of employees guaranteed in section 4.

(2) To refuse to recognize and/or deal with representatives of his employees, or to fail to exert every reasonable effort to make and maintain agreements with such representatives concerning wages, hours, and other conditions of employment.

(3) To initiate, participate in, supervise, or influence the formation, constitution, bylaws, other governing rules, operations, policies, or elections of any labor organization.

(4) To contribute financial or other material support to any labor organization, by compensating anyone for services performed in behalf of any labor organization, or by any other means whatsoever.

(5) To fail to notify employees in accordance with the provisions of section 304 (b).

(6) To engage in any discriminatory practice as to wage or hour differentials, advancement, demotion, hire, tenure of employment, reinstatement, or any other condition of employment, which encourages membership or nonmembership in any labor organization: *Provided*, That

6

where a contract or agreement of any kind is or shall be in force between an employer and a group of employees, the provisions of such contract or agreement regarding condi-

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tions of employment shall not, because of anything contained in this paragraph, compel an employer to observe similar conditions of employment in his relations with all his employees: *Provided further*, That nothing in this Act shall preclude an employer and a labor organization from agreeing that a person seeking employment shall be required, as a condition of employment, to join such labor organization, if no attempt is made to influence such labor organization by any unfair labor practice, if such labor organization is composed of at least a majority of such employers' employees, and if the said agreement does not cover a period in excess of one year.

SEC. 6. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain any unfair labor practice that burdens or affects commerce or obstructs the free flow of commerce, or has led or tends to lead to a labor dispute that might affect or burden commerce or obstruct the free flow of commerce, and it shall be the duty of the several district attorneys of the United States, but solely at the request of the National Labor Board, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain any such unfair labor practices.

7

TITLE II

SECTION 201. There is hereby created a Board, to be known as the "National Labor Board" (hereinafter referred to as the "Board"), which shall be composed of seven members, to be appointed by the President, by and with the advice and consent of the Senate. Two of such members shall, at the time of nomination, be designated as representatives of employers, two as representatives of employees, and three as representatives of the general public. The members representing the general public shall be appointed for terms of five years each, and the other members shall be appointed for terms of one year each, and all members shall be eligible for reappointment. Any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one of the members representing the general public as chairman of the Board. No member representing the general public shall engage in any other business, vocation, or employment. A vacancy in the Board shall not impair the right of the remaining members to exercise all

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the powers of the Board. The Board shall have an official seal, which shall be judicially noticed.

SEC. 202. (a) Each member representing the general public shall receive a salary of $10,000 a year. The other members shall each receive $25 per diem and necessary

8

traveling and subsistence expenses when attending meetings of the Board. The Board shall appoint and fix the compensation of an executive secretary, and it shall have authority to appoint and fix the compensation of such attorneys, special experts, examiners, mediators, clerks, and other employees, and to establish such regional or local boards, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may make such appointments without regard to the civil service laws or the Classification Act of 1923, as amended. The Board is directed to retain the officers and employees of the National Labor Board created by the President on August 5, 1933, to the fullest extent consistent with the efficient functioning of the Board.

(b) All the expenses of the Board, including all necessary traveling expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 203. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise all its powers at any other place. The Board may, by one or more of its members or by such employees as it may desig-

9

nate, prosecute any inquiry necessary to its duties in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 204. The Board may, either by itself or through its agents, offer its services to the parties to any labor dispute as conciliator or mediator in such dispute, and may act as conciliator or mediator for the parties who accept such offer.

SEC. 205. (a) The Board is empowered to prevent any person from engaging in any unfair labor practice that burdens

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or affects commerce or obstructs the free flow of commerce, or has led or tends to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

(b) Whenever any member of the Board, or the executive secretary, or any person designated for such purpose by the Board, shall have reason to believe, from information acquired from any source whatsoever, that any person has engaged in or is engaging in any such unfair labor practice, he shall in his discretion issue and cause to be served upon such person a complaint stating the general nature of the charges in that respect, and containing a notice of hearing before either an examiner or the Board

10

at a place therein fixed, not less than twenty-four hours after the service of said complaint, but the examiner or the Board shall have discretion to continue or adjourn such hearing from time to time. Any such complaint may be amended by any member of the Board or by any person designated for that purpose by the Board at any time prior to the issuance of an order based thereon; and the original complaint shall not be regarded as limiting the scope of the inquiry. The person so complained of shall have the right to file an answer, to appear and give testimony at the place and time fixed in the complaint, and to avail himself of the compulsory process of the Board in summoning witnesses in his behalf. In the discretion of the examiner or the Board, any other person shall be allowed to appear in the said proceeding by counsel or in person to present testimony. In any such proceeding, the examiner or the Board shall not be bound by the rules of evidence prevailing in courts of law or equity.

(c) The testimony taken by an examiner or the Board shall be reduced to writing and filed in the office of the executive secretary. Thereafter, in its discretion, the Board may itself take further testimony and/or hear argument. If upon all the testimony taken, the Board shall be of the opinion that any person named in the complaint has en-

11

gaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an appropriate order directed to such person. The order may require such person to cease and desist from such

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unfair labor practice, or to take affirmative action, or to pay damages, or to reinstate employees, or to perform any other acts that will achieve substantial justice under the circumstances. Such order may further require such person to make a report from time to time showing the extent to which he has complied with the order. Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(d) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any district court of the United States within any district wherein the labor practice in question was engaged in or wherein such person resides or carries on business, or the Supreme Court of the District of Columbia, for the enforcement of the order of the Board, and shall certify and file in the court a transcript of the record upon which such order was entered, together with a copy of the findings

and the order of the Board. Upon such filing of the petition and transcript, the court shall place such petition upon its motion or equity calendar and shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside in whole or in part the order of the Board. No objection to the order of the Board shall be considered by the court unless such objection shall have been urged before the Board. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, the court may order such additional evidence to be taken before the Board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken, and it shall file such modified or new findings, which, if supported

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13

by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree, affirming, modifying, or setting aside, in whole or in part, any order of the Board, shall be final, except that the same shall be subject to review by the appropriate Circuit Court of Appeals or the Court of Appeals of the District of Columbia, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347). The commencement of proceedings under this subsection shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(e) Any person aggrieved by an order of the Board may obtain a review of such order in any district court of the United States in the district wherein the unfair labor practice in question was engaged in or wherein such person resides or carries on business, or in the Supreme Court of the District of Columbia, by filing in such court, within ten days after the entry of such order, a written petition praying that the order of the Board be modified or be set aside in whole or in part. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the

14

record, certified by the Board, upon which the order complained of was entered, together with a copy of the findings and order of the Board. No objection to the order of the Board shall be considered by the court unless such objections shall have been urged before the Board. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, the court may order such additional evidence to be taken before the Board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such

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modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree, affirming, modifying, or setting aside, in whole or in part, any order of the Board, shall be final, except that the same shall be subject to review by the appropriate Circuit Court of Appeals or the Court

15

of Appeals of the District of Columbia, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347). The commencement of proceedings under this subsection shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(f) No court shall have any jurisdiction to enjoin the Board or an examiner from taking action or holding hearings under a complaint.

(g) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

(h) Complaints, orders, and other process of the Board and its agents may be served by anyone duly authorized by the Board, either (1) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer, or a director of the corporation to be served; or (2) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (3) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business; or (4) by sending a telegraphic copy thereof addressed to

16

such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt or telegraph receipt for said complaint, order, or other process registered and mailed or telegraphed as aforesaid shall be proof of the service of the same.

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SEC. 206. (a) The Board shall have power to act as arbitrator in labor disputes. When any of the parties to a labor dispute agree to submit the whole or any part thereof to the arbitration of the Board, and the Board accepts such submission, the agreement shall be valid, irrevocable, and enforceable as to the submitting parties save upon such grounds as exist at law or in equity for the revocation of any contract. In any case accepted by it for arbitration the Board shall have power to issue an award applicable to the submitting parties.

(b) Unless a party to the arbitration has otherwise stipulated at the time of the submission of the case to the Board, any party to the arbitration, or the Board itself, may within one month after the award is made, apply to the Supreme Court of the District of Columbia for an order confirming the award, and thereupon the court shall grant such an order unless the award is vacated, modified, or

corrected as hereinafter prescribed. Notice of the application shall be served upon the other parties to the arbitration by the marshal of any district within which they may be found, in like manner as any other process of such court, and thereupon such court shall have jurisdiction of such parties as though they had appeared generally in the proceeding.

(c) The court may make an order vacating the award upon the application of any party to the arbitration if the Board exceeded its powers or executed them so imperfectly that a mutual and definite award upon the subject matter was not made. The court may make an order modifying or correcting the award upon the application of any party to the arbitration if (1) the award covers a matter not submitted to the Board (unless the award upon such matter does not affect the merits of the decision upon the matter submitted) or (2) the award is imperfect in matter of form not affecting the merits of the controversy. The order may modify or correct the award so as to effect the intention thereof and promote justice between the parties. A party to the arbitration, claiming to be aggrieved by the award, may apply to the court, within one week after the award is made, for an order vacating, modifying, or correcting the award. Notice of such application shall be served upon

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18

all other parties to the arbitration proceeding or their attorneys, by the marshals of the respective districts within which such parties may be found. For the purposes of the application, any judge who might make an order to stay the proceedings in any action brought in the same court may make an order, to be served with the notice of the application, staying the enforcement of the award.

(d) The party applying for an order confirming, modifying, or correcting an award shall, at the time the application is filed, also file the following papers with the clerk of the court: (1) An agreement to arbitrate; (2) the award of the Board; and (3) each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon any such application. The order shall be docketed as if it were rendered in a suit in equity and shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a decree in a suit in the court in which it is entered; and it may be enforced as if it had been rendered in a suit in the court in which it is entered.

SEC. 207. (a) In any dispute as to who are the representatives of employees, the Board, if the dispute might burden or affect commerce or obstruct the free flow of commerce, may investigate such dispute and certify to

19

the parties, in writing, the name or names of the individuals or labor organizations that have been designated and authorized to represent employees. In any such investigation, the Board shall be authorized to take a secret ballot of employees, or to utilize any other appropriate method to ascertain their representatives. The Board shall decide whether eligibility to participate in elections shall be determined on the basis of employer unit, craft unit, plant unit, or other appropriate grouping.

(b) In any dispute not of the character described in subsection (a), as to who are the representatives of employees, the Board may offer its services to aid in determining who are employees' representatives.

SEC. 208. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by sections 205 and 207 (a)—

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(1) Any member of the Board, or any agent designated by it for such purposes, is empowered to administer oaths and affirmations, take depositions, subpena witnesses, take evidence, and require the production of any books, papers, or other documents which the Board deems relevant or material to the inquiry. Such attendance of witnesses and the production of such documentary evidence may be

20

required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any district court of the United States, the United States courts of any Territory or possession, and the Supreme Court of the District of Columbia, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides, upon application by the Board, shall issue to such person an order requiring such person to appear before the Board, or an examiner designated by it, there to produce documentary evidence if so ordered, or there to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and other documents before the Board, or in obedience to the subpena of the Board or any member thereof or any agent designated by it, or in any cause, proceeding, or investigation instituted by the Board, on the ground that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning

21

which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Witnesses summoned before the Board or any of its examiners shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons

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taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 209. The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

SEC. 210. Any person who shall willfully assault, resist, prevent, impede, or interfere with any member of the Board or any of its agents in the performance of his

duties pursuant to section 205 or section 207(a), shall be punished by a fine of not more than $5,000, or by imprisonment for not more than one year, or both.

TITLE III

SECTION 301. There is hereby created in the Department of Labor the United States Conciliation Service, under the direction of a Director of Conciliation. The Secretary of Labor shall appoint and fix the compensation of such Director, and shall have authority to appoint and fix the compensation of such commissioners of conciliation, clerks, and other officers and employees as he may from time to time find necessary for the proper performance of the duties of the Service, and as may from time to time be appropriated for by Congress. The Secretary of Labor may make such appointments without regard to the provisions of the civil-service laws or the Classification Act of 1923, as amended.

SEC. 302. It shall be the duty of the United States Conciliation Service, whenever the Director deems it desirable, to offer its services to the parties to any labor dispute, and to attempt to adjust such dispute by conciliation or mediation, or by arranging for voluntary arbitration. Nothing in this title shall limit the power given to the Secretary of Labor under section 8 of the Act of March 4, 1913 (U. S. C., title 5, sec. 619).

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23

SEC. 303. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 304. (a) Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act and/or of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U.S.C., title 29, secs. 101–115), conflicts with the application of the provisions of this Act, the provisions of this Act shall prevail: *Provided,* That in any situation where the provisions of this Act cannot be validly enforced, the provisions of section 7 (a) of the National Industrial Recovery Act and/or of such Act of March 23, 1932, shall apply.

(b) Any term of a contract or agreement of any kind which conflicts with the provisions of this Act is hereby abrogated, and every employer who is a party to such contract or agreement shall immediately so notify his employees by appropriate action.

SEC. 305. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application

24

of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

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CONGRESSIONAL RECORD, SENATE—MARCH 1, 1934
(78 Cong. Rec. 3443)

AMENDMENT OF NATIONAL RECOVERY ACT—NATIONAL LABOR BOARD

Mr. WAGNER. Mr. President, I desire to introduce a bill and to make a brief statement in explanation of it.

The bill which I am introducing is designed to clarify and fortify the provisions of section 7 (a) of the National Industrial Recovery Act, and to provide means of administering them through the legislative establishment of a national labor board with adequate enforcement powers.

The keynote of the recovery program is organization and cooperation. Employers are allowed to unite in trade associations in order to pool their information and experience and make a concerted drive upon the problems of modern industrialism. If properly directed, this united strength will result in unalloyed good to the Nation. But it is fraught with great danger to workers and consumers if it is not counterbalanced by the equal organization and equal bargaining power of employees. Such equality is the central need of the economic world today. It is necessary to insure a wise distribution of wealth between management and labor, to maintain a full flow of purchasing power, and to prevent recurrent depressions.

Genuine collective bargaining is the only way to attain equality of bargaining power. By section 7 (a) of the Recovery Act, Congress attempted to open the avenues to collective bargaining by restating the right of employees to act through representatives of their own choosing, free from the influence of employers. But section 7 (a) did not outlaw the specific practices by which some employers set up insuperable obstacles to genuine collective bargaining.

The greatest obstacles to collective bargaining are employer-dominated unions, which have multiplied with amazing rapidity since the enactment of the recovery law. Such a union makes a sham of equal bargaining power by restricting employee cooperation to a single employer unit at a time when business men are allowed to band together in large groups. It deprives workers of the wider cooperation which is necessary, not only to uphold their own end of the labor bargain but to stabilize and standardize wage levels, to cope with the sweatshop and the exploiter, and to exercise their proper voice in economic affairs.

Under the employer-dominated union, the worker, who cannot select an outside representative to bargain for him, suffers two fatal handicaps. In the first place, he has only slight knowledge of the labor market, or of general business conditions. His trade is tending a machine. If forbidden to hire an expert in industrial relationships,

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he is entirely ineffectual in his attempts to take advantage of legitimate opportunities.

No one would suggest that employers should not be allowed to employ outside lawyers, financial experts, or advisers. Secondly, only representatives who are not subservient to the employer with whom they deal can act freely in the interest of employees. Simple, common sense tells us that a man does not possess this freedom when he bargains with those who control his source of livelihood.

For these reasons the very first step toward genuine collective bargaining is the abolition of the employer-dominated union as an agency for dealing with grievances, labor disputes, wages, rules, or hours of employment.

The bill which I am introducing today forbids any employer to foster or participate in or influence any organization which deals with problems that should be covered by a genuine labor union. At the same time it does not prevent employers from forming or assisting associations which exist to promote the health or general welfare of workers, to provide group insurance, or for other similar purposes. Employer-controlled organizations should be allowed to serve their proper function of supplementing trade unionism, but they should not be allowed to supplant or destroy it.

Failure to meet the problem of employer domination over employee organizations has not been the only defect of section 7 (a) of the Recovery Act. This section provides that employees shall be free to choose their own representatives. It has been interpreted repeatedly to mean that any employee at any time may choose his own representative or may elect to deal individually with his employer. Such an interpretation, which illegalizes the closed union shop, strikes a death blow at the practice and theory of collective bargaining. It allows the unscrupulous employer to divide the workers against themselves. No real advocate of collective bargaining would argue that a worker should be free to bargain individually even after the overwhelming majority of his coworkers desire an agreement covering all.

The new legislation which I am proposing does not dictate any policy as to the closed union shop. That is a problem which labor must work out for itself. But the bill does make it clear that section 7 (a) was not intended to ban the closed union shop, and that Congress never intended to place employees in a worse position then they were before the Recovery Act was passed.

The third major defect of section 7 (a) is that it guarantees employees the right to organize, but not the right to recognition. My 6 months' experience as chairman of the National Labor Board has proved conclusively to me that the second guaranty should be firmly established by Congress. Over 70 percent of the disputes coming before the Labor Board have been caused by the refusal of employers to deal with representatives chosen by their workers.

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The new bill, if enacted into law, will remedy this evil. It is modeled upon the successful experience of the Railway Labor Act, which provides that employers shall actually recognize duly chosen representatives and make a reasonable effort to deal with them and to reach satisfactory collective agreements.

The new bill sets up a permanent National Labor Board, with 2 representatives of employers, 2 of employees, and 3 of the general public; and there are provisions for the establishment of regional or local boards. The board will have power to prevent violations of the substantive features of the law by restraining orders, enforced through the courts in the same manner as the orders of the Federal Trade Commission.

In addition, the National Labor Board is given the powers of subpena and investigation necessary for the proper exercise of its various functions.

The National Labor Board, under the new legislation, is not designed to act chiefly as a policeman or a judge. Its [**3444**] chief function will be to mediate and conciliate industrial disputes, and to offer its services as an arbitrator whenever the parties so desire. It will continue to promote peace rather than strife, and to appeal primarily to the better judgment and good intentions of industry and labor. My experience as chairman of the National Labor Board has confirmed my belief that most employers and employees desire to obey the law. But safeguards must be set up against the devastating effects of unfair minorities who force almost all to follow similar tactics.

The recovery program has achieved remarkable results in increasing employment, swelling the volume of industrial activity, and promoting confidence. It has made relatively slow progress in affecting that fair distribution of purchasing power upon which permanent prosperity must rest. Today, despite the minimum-wage provisions of the codes, the purchasing power of the individual employee working full time is less than it was during March of last year. This situation cannot be remedied by new codes or by general exhortations. It can be remedied only when there is genuine cooperation between employers and employees, on a basis of equal bargaining power. The only road to this goal is the free and unhampered development of real employee organizations and their complete recognition. Such development was promised by the Recovery Act. It should be guaranteed by enactment of the new legislation which is being proposed today.

Mr. President, I desire to state that this proposed legislation reflects only my own views. It does not reflect the views of the National Labor Board, because I have not submitted the bill to that Board for consideration, nor does it reflect the views of any other public official.

The VICE PRESIDENT. The bill will be received and appropriately referred.

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The bill (S. 2926) to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes, was read twice by its title, and was referred to the Committee on Education and Labor.

Mr. WAGNER subsequently said: Mr. President, this morning I introduced a bill upon which I made a short statement explanatory of its provisions. I ask unanimous consent that in conjunction with my remarks the bill may be printed in full in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

(The bill is not here reprinted; it appears at pp. 1–14.)

CONGRESSIONAL RECORD, SENATE—MARCH 5, 1934

(78 Cong. Rec. 3678)

N. R. A. CODES—ADDRESS BY SENATOR WAGNER

Mr. BARKLEY. Mr. President, I ask unanimous consent to have printed in the RECORD an address delivered today by the junior Senator from New York [Mr. Wagner] at the conference of code authorities in the city of Washington.

There being no objection, the address was ordered to be printed in the RECORD as follows:

This representative gathering symbolizes the spirit of cooperation and the desire for action that have animated the entire Nation during the past year. The dynamic personality and capacity for leadership of President Roosevelt have struck a responsive chord in the hearts of his countrymen. If I were asked to designate the greatest single accomplishment of the recovery program, I should not refer to revived industrial activity or to reemployment, important though these are. What is new is the philosophy that we are not the helpless victims of natural law, but are able to control our own destinies and provide for our future welfare and prosperity.

You are all familiar with the wealth of statistical evidence that economic recovery is assured. The index of basic industrial output is 30 percent higher than a year ago. During the past 2 months there have been more favorable changes in dividend payments than in any equal period of time since the depression began. Freightcar loadings, residential construction, the automobile industry, electric-power production, and coal and steel operations all tell the same story of rapid progress.

The time has come to ask: Where are we progressing? Are we content to return to the uneven prosperity of the nineteen twenties, with its poverty, its uncertainty, and its seeds of recurrent depressions? Or are we prepared to lay the solid foundations for a saner and happier mode of economic life?

Since the turn of the century this country has been prolific in the production of goods. Wealth has poured forth from factory and mine and field in unequaled abundance. If our social organization had kept pace with our mechanical inventiveness, the paradox of progress and poverty would have vanished completely. Instead, the paradox has become more glaring. No one with a sense of economic realities would attempt to explain this incongruity by a single formula. But

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patient and careful students, working independently of one another, have almost all arrived at a major agreement. This is that the distribution of income among the masses of our people has not been sufficient to absorb industrial output. Purchasing power has been dried up at the source, with inevitable reactions upon business and upon the entire economic structure.

I bring to the forefront the problem of coordinating production and wages because here lies the most significant economic challenge which faces us. Everyone recognizes this, and everyone admits that upon a satisfactory solution depends the welfare of all groups.

To this task, the entire Recovery Administration, under the extraordinary leadership of General Johnson, have devoted themselves with rare understanding. They have blazed a new trail, and the obstacles have been manifold. It is because they have achieved such splendid results that it is now appropriate to consider the program for the future.

The increase in the real income of the entire wage-earning class has been due to reemployment rather than to improved individual standards. The individual worker employed full time is earning less today than he did last March, and his welfare is still further imperiled by the rising of all price levels in response to our monetary policy.

It is therefore essential that most of the code provisions affecting wages should be revised drastically. Some of the minimum standards set by the codes are lower than those actually prevailing in industry. In the upper wage brackets, there have been reductions in hours without corresponding increases in wage rates per hour. As a result, there has been some tendency for the wage [3679] rises in the lower brackets to be counteracted by reductions in the upper ones. This is a serious evil, for prosperity can neither be attained nor preserved by making workers share with workers.

If we intend to achieve the fundamental reforms of the new deal, we must be careful not to stop short even when wages reach a volume that is sufficient to keep factories open. Under a controlled economy, it would be perfectly possible to balance production and consumption, and still keep workers in poverty. Our efforts should be directed, first toward providing the worker with an income sufficient for comfortable living, and then toward assuring him an equitable share in our national wealth. I believe that to accomplish this there must be considerable change of emphasis in connection with the setting of minimum wages under the codes.

The same considerations apply to the regulation of working hours. Most of the scales under the codes are far too high, even by the narrow test of emergency measures. The Recovery Act, by establishing an average week of 38 hours, has destroyed the slavery of the sweatshop, but it has not reduced hours enough to provide for the 10,000,000 people who have not been reabsorbed by industry. Of these people, only 4,000,000 are being employed by public projects; 6,000,000 remain in desperate need.

It is a mistake to regard the shorter-hour movement simply as a means of spreading work or to criticize it as a lowering of productive efficiency which necessarily would tend to reduce all standards of living. Our technological skills have advanced so greatly during the present century that we can produce more than ever before even while lightening the burden upon the back of labor. During 1919–29 our manufacturing output rose 50 percent despite an actual decline in the number of workers engaged. During this so-called "prosperity era" we had over 3,000,000 unemployed, because we tried to appropriate too large a share of progress to a few in the form of profits and not enough to the many in the form of shorter hours. We apologetically referred to technological unemployment, when in truth we were suffering from refusal to confer the benefits of technology upon workers as well as owners. The shorter week should become a permanent part

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of our prosperity program. If not, the dead weight of the unemployed will drag us continually into the mire.

This analysis indicates the need for a constant process of wise adjustments between industry and labor. We have reached the period where there must be a gradual transition from an emergency basis to a permanent basis. Permanent problems cannot be solved simply by reopening codes or by general exhortations, although both of these devices may be necessary at the present time. There must be above all cooperation between employers and employees, dealing with one another on an equal footing. Our great leader, President Roosevelt, has been tireless in his advocacy of this ideal.

The first step involved in cooperation between employers and employees is that they should settle their disputes amicably and profitably, without resort to the bitter and indecisive strife of the past. The National Labor Board, of which I have served as chairman for 6 months, has handled disputes involving over 900,000 workers. Of these, over 650,000 have been put back to work or kept at work with high promise of durable peace. This figure does not include the additional thousands who have been aided by the quiet, unspectacular work of the regional labor boards in all parts of the country. The universal esteem in which the members of the Board are held and the unanimity of most of their decisions have gained the confidence of the Nation.

It is certain that almost everyone interested in economic welfare desires the permanent establishment of this Board by Congress. To that end, I have introduced a bill on March 1, and Representative CONNERY has introduced a similar measure in the House. The bill provides for a board of 7 members, with 2 representing employers, 2 employees, and 3 the general public. Provisions are made for the establishment of regional or local boards.

However, the experience of everyone connected with the National Labor Board has shown that no board alone can promote cooperation and industrial peace unless the basic conditions exist upon which peace and cooperation must rest. Section 7 (a) of the Recovery Act sought to establish these basic conditions. But the ambiguity of some of its terms, and the inadequacy of enforcement power, have enabled a minority to flaunt the law and endanger the entire recovery drive. The appeal for the clarification and fortification of section 7 (a) has intensified recently, and has received response in the new legislation proposed last week.

The primary requirement for cooperation is that employers and employees should possess equality of bargaining power. The only way to accomplish this is by securing for employees the full right to act collectively through representatives of their own choosing. The principle of collective bargaining has been attacked as a violation of the constitutional guaranty of freedom of contract, since it does not preserve for each employer the right to make contracts with each of his employees as individuals. Nothing could be more fallacious. The fathers of our Nation did not regard freedom of contract as an abstract end. They valued it as a means of insuring equal opportunities, which cannot be attained where contracts are dictated by the stronger party.

The law has long refused to recognize contracts secured through physical compulsion or duress. The actualities of present-day life impel us to recognize economic duress as well. We are forced to recognize the futility of pretending that there is equality of freedom when a single workman, with only his job between his family and ruin, sits down to draw a contract of employment with a representative of a tremendous organization having thousands of workers at its call. Thus the right to bargain collectively, guaranteed to labor by section 7 (a) of the Recovery Act, is a veritable charter of freedom of contract; without it there would be slavery by contract.

Since the passage of the Recovery Act, the freedom of workers to engage in genuine collective bargaining has been hampered enormously by the growth of

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the employer-dominated union. The number of employees covered by such unions rose from 432,000 in 1932 to 1,164,000 in 1933, representing a gain of 169 percent. Over 69 percent of the employer-dominated unions now in existence have been inaugurated in the brief period since the passage of the Recovery Act.

I can see no objection to the so-called "company union", if by that term one means simply a union which is not affiliated with any other organization, and whose members all work for the same employer. But I do oppose the domination of such unions by employers who do not permit their workers to become affiliated with outside organizations even when they desire to do so. In many cases such wider cooperation is necessary to stabilize and standardize wage levels, to cope with the sweatshop and the exploiter, and to combat the employer who is unfair and overweening. Moreover, it is an absolute essential to real collective bargaining that employees should have the right to be represented by independent experts who have a knowledge of business conditions and who are not subject to the economic sway of the employer with whom they deal.

Many of the employer-dominated unions, I am well aware, have amended their rules so as to recognize these outside representatives. But the privilege granted to employees is a barren one if, on the whole, they are dominated by the employer-controlled organization. In truth, the very fact that the grant comes through employer consent is a travesty upon workers' rights.

The bill which I have introduced forbids employers to engage in specific practices whereby they exercise undue control over employee organizations. At the same time, it does not prevent employers from participating in schemes to promote the general welfare of their workers. Employer organizations should be encouraged to serve their proper function of supplementing trade unions, but they should not be allowed to supplant or destroy them.

Another defect of section 7 (a) of the Recovery Act is that it guarantees the right of employees to organize, but does not expressly secure to their representatives the right of recognition. Over 70 percent of the cases before the National Labor Board have resulted from the failure of employers to follow the clear intent of the law. The new bill, modeled after the successful experience of the Railway Labor Act, requires fair efforts to bargain collectively and genuine attempts to arrive at satisfactory agreements.

I believe that most fair-minded employers, when they have occasion to study the provisions of the proposed legislation, will be heartily in favor of it. Fair-minded men who are now allowed to band together in large trade associations do not desire to deny analogous rights to their workers. Fair-minded men do not take kindly to the pretense that industry and labor are cooperating if, in fact, one side controls both parties by holding the strings. Most important, far-sighted, broad-minded employers, who see the threat to industrial peace and economic security implicit in the present state of affairs, will enter whole-heartedly into this plan for improvement.

The new bill empowers the Board to issue restraining orders, enforceable in the courts, against the unfair minorities whose devastating tactics force well-intentioned parties to follow the same course. But the most important function of the new Board, as of the present one, would be the peaceful and voluntary conciliation of industrial disputes. The measure does not have the slightest flavor of compulsory arbitration. It relies upon the good will, common sense, and public spirit of the interested parties. It presents, in my opinion, the best solution to the thorniest problem confronting us all at the present time. When enacted it will remove the chief obstacle to economic recovery and industrial peace, and I earnestly hope that it will win the support of everyone.

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CONGRESSIONAL RECORD, SENATE—MARCH 12, 1934

(78 Cong. Rec. 4229)

COMPANY UNIONS—ARTICLE BY SENATOR WAGNER

Mr. COPELAND. Mr. President, I ask unanimous consent that an article by my colleague [Mr. WAGNER] on company unions, appearing in the New York Times of Sunday, March 11, may be included in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Mar. 11, 1934]

COMPANY UNIONS: A VAST INDUSTRIAL ISSUE—SENATOR WAGNER SETS FORTH THE GROWTH OF EMPLOYER-DOMINATED ORGANIZATIONS, TELLS OF THEIR EFFECT ON COLLECTIVE BARGAINING, AND DISCUSSES HIS BILL, WHICH IS DESIGNED TO PREVENT ECONOMIC WARFARE

(The company union has become a focal point in the industrial-relations problem that confronts the Nation. It was under vigorous debate during the N. R. A. hearings last week and it is dealt with in a bill designed to eliminate strife between labor and industry, introduced in Congress by Senator WAGNER, who has served as Chairman of the National Labor Board since that body came into existence. The subject, together with other phases of the problem, is discussed in the following article.)

By ROBERT F. WAGNER, Senator from New York

Despite the emergency language in which it is cloaked, the recovery program embodies principles of reform as well as revival. The statistical indicia of revival are not to be denied, but the need for reform is still acute. And there is substantial agreement as to the path that reform must take if we are to achieve any approximation to social justice and avoid the recurrence of cataclysmic depressions. The fruits of industry must be distributed more bounteously among the masses of wage earners, who create the bulk of consumer demand.

This central problem has been envisaged by the National Recovery Administration, led by General Johnson and ever subject to the dynamic personality and brilliant intelligence of President Roosevelt. But, despite their best efforts, the major portion of the problem remains unsolved. While reemployment has swelled the total volume of wage payments, the real earnings of the individual working full time are slightly less than they were last March.

[4230] Some of the minimum-wage provisions under the codes are lower than the standards actually prevailing in industry and in most of the upper wage brackets there have been reductions in hours without corresponding rises in hourly rates of pay. Despite the ameliorative features of a share-the-work movement, it is hardly the road to prosperity.

NEED OF EQUALITY

The reasons for the present difficulty are not hidden. The constant readjustments necessary to strike a fair balance between industry and labor cannot be accomplished simply by code revisions or by general exhortations. They can be accomplished only by cooperation between employers and employees, which rests upon equality of bargaining power and the freedom of either party from restraints imposed by the other.

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Congress recognized this when it enacted section 7 (a) of the Recovery Act, restating the right of employees to deal collectively through representatives of their own choosing. But ambiguities of language and the absence of enforcement powers have enabled a minority of employers to deviate from the clear intent of the law and to threaten our entire program with destruction. Therefore I have introduced a bill to clarify and fortify the provisions of section 7 (a), and I am sure that it will meet with the support of the vast majority of people interested in economic welfare.

COMPANY UNIONS

At the present time genuine collective bargaining is being thwarted immeasurably by the proliferation of company unions. Let me state at the outset that by the term "company union" I do not refer to all independent labor organizations whose membership lists embrace only the employees of a single employer. I allude rather to the employer-dominated union, generally initiated by the employer, which arbitrarily restricts employee cooperation to a single employer unit, and which habitually allows workers to deal with their employer only through representatives chosen from among his employees.

In the fall of 1933 a thoroughly reliable study was made which covered more than one fourth of the total number of wage earners engaged in mining and manufacturing. An inquiry of this magnitude may be accepted as a fair sample of conditions in industry at large. It showed that only 9.3 percent of employees are dealing with employers through trade-unions, while 45.7 percent are bargaining on an individual basis and 45 percent are enlisted in company unions. Less than 14 percent of the employers embraced by the study are recognized trade-unions.

HAMPERING CONDITIONS

It is worthy of note that company unions are most prevalent in the largest plants. This means that in the very cases where the bargaining power of the employer is strongest the worker is least free to improve his own position by unhampered affiliation with others of his kind.

It is also true that these unions have multiplied most rapidly since the enactment of the law which was intended to guarantee to the worker the fullest freedom of organization. The number of employees covered by company unions rose from 432,000 in 1932 to 1,164,000 in 1933, representing a gain of 169 percent. More than 69 percent of the company-union schemes now in existence have been inaugurated in the brief period since the passage of the Recovery Act.

The company union, as I have defined it, runs antithetical to the very core of the new-deal philosophy. Business men are being allowed to pool their information and experience in vast trade associations in order to make a concerted drive against the evil features of modern industrialism. They have been permitted to recognize the values of unity and the destructive tendencies of discrete activities and to act accordingly. If employees are denied similar privileges, they not only are unable to uphold their end of the labor bargain; in addition they cannot cope with any problems that transcend the boundaries of a single business.

BENEFITS AND FAILINGS

The company union has improved personal relations, group-welfare activities, discipline, and the other matters which may be handled on a local basis. But it has failed dismally to standardize or improve wage levels, for the wage question is a general one whose sweep embraces whole industries, or States, or even the Nation. Without wider areas of cooperation among employees there can be no protection against the nibbling tactics of the unfair employer or of the worker who is willing to degrade standards by serving for a pittance.

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The inability of employees to unite in larger groups has not only limited their efforts to secure a just share of the national wealth. It has interfered with their attempts to provide insurance against sickness and old age and to exert an effective influence upon salutary labor legislation. It has hampered the efforts of labor to preserve order within its own ranks or to restrain the untimely and wayward acts of irresponsible groups. In this latter aspect its unfavorable effect upon employers as well as workers stands clearly forth.

Even when dealing with problems that may without injury be delimited to the single company, the worker under company unionism suffers two fatal handicaps. In the first place, he has only slight knowledge of the labor market or of general business conditions. His trade is tending a machine. If forbidden to hire an expert in industrial relationships, he is entirely ineffectual in his attempts to take advantage of legitimate opportunities.

Secondly, only representatives who are not subservient to the employer with whom they deal can act freely in the interest of employees. Simple common sense tells us that a man does not possess this freedom when he bargains with those who control his source of livelihood.

I am well aware that many employer-dominated organizations now permit their employees to choose outside representatives, and the National Labor Board has affirmed this policy in a recent case. But this right is a mockery when the presence of a company union firmly entrenched in a plant enables an employer to exercise a compelling force over the collective activities of his workers. Freedom must begin with the removal of obstacles to its exercise.

MAJOR QUESTIONS INVOLVED

Major questions of self-expression and democracy are involved. At a time when politics is becoming impersonalized and when the average worker is remote from the processes of government, it is more imperative than ever before that industry should afford him real opportunities to participate in the determination of economic issues.

The company union is generally initiated by the employer; it exists by his sufferance; its decisions are subject to his unimpeachable veto. Most impartial students of industrial problems agree that the highest degree of cooperation between industry and labor is possible only when either side is free to act or to withdraw, and that the best records of mutual respect and mutual accomplishment have been made by employers dealing with independent labor organizations.

THE COMPANY'S CASE

The principal argument advanced by the proponents of company unionism is that it promotes industrial harmony and peace without subjecting the individual company to the intrusion of outside labor groups who have no interest in the company's practices. Of course, in our complicated economy the interests of all employers and all employees are inextricably intertwined, and the assumption that outside workers have no valid interest in the labor standards prevailing within a plant is demonstrably false. Besides, a tranquil relationship between employer and employee, while eminently desirable, is not a sole desideratum. It all depends upon the basis of tranquillity. The slave system of the old South was as tranquil as a summer's day, but that is no reason for perpetuating in modern industry any of the aspects of a master-servant relationship.

As a matter of fact, the company union cannot sustain even the claim that it tends to insure industrial peace. Men versed in the tenets of freedom become restive when not allowed to be free. The sharp outbreaks of economic warfare in various parts of the country at the present time have been caused more by the failure of employers to observe the spirit of section 7 (a) of the Recovery Act than

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by any other single factor. It has been my observation that industrial strife is most violent when company unionism enters into the situation, and that the company union line of organization is least likely to bring forth the restraint of irresponsible employees by others of their own group.

The implications of what I have just said are clear. If the employer-dominated union is not checked, there are only two likely results. One is that the employer will have to maintain his dominance by force, and thus swing us directly into industrial fascism and the destruction of our most-cherished American ideals; the other is that employees will revolt, with wide-spread violence and unpredictable conclusions.

The final argument advanced for company unionism is that it should be allowed to compete against trade unionism in an open field. If by company unionism one means simply the right of employees to confine their activities to a single employer unit when they wish to do so, I do not object to that principle in the slightest, and there is nothing contrary to it in the bill which I have introduced. But if by company unionism one includes the right of employers to obstruct the development of a more widespread employee cooperation, such a policy cannot be allowed to continue if we intend to pursue the philosophy of the new era.

THE NEW BILL

The new bill forbids any employer to influence any organization which deals with problems such as wages, grievances, and hours. They should be covered by a genuine labor union. At the same time, the bill does not prevent employers from forming or assisting associations which exist to promote the health and general welfare of workers or to provide group insurance, or for similar purposes. Employer-controlled organizations should be allowed to serve their proper functions of supplementing trade unionism, but they should not be allowed to supplant or destroy it.

Failure to meet the company-union challenge has not been the only defect of section 7 (a) of the Recovery Act. This section provides that employees shall be free to choose their own representatives. It has been interpreted repeatedly to mean that any employee at any time may elect to deal individually with his employer, even if the overwhelming majority of his coworkers desire a collective agreement covering all. Such an interpretation is detrimental to the practice and contrary to the theory of collective bargaining. It permits an unscrupulous employer to divide his employees against themselves by dealing with innumerable small groups or with individuals.

In my opinion, Congress certainly did not intend that the law should operate to place employees in a more unfavorable position than they were before the Recovery Act was passed.

The proposed legislation does not resolve the question of the closed-union shop. Such issues should be worked out by labor and industry in the course of experience. But the bill, if enacted, would make it clear that Congress has not intended to foreclose **[4231]** the issue by illegalizing the closed-union shop or by placing any other obstacles in the way of making collective bargaining a working reality.

QUESTION OF RECOGNITION

The third major defect of section 7 (a) is that while it guarantees to employees the right to organize, it does not state explicitly the right to receive recognition through their representatives. This explains why company unionism has increased so rapidly despite the fact that other labor organizations have added 2,000,000 to their membership during the past year. Employees have been assured of their right to join whatever unions they prefer, but they have been forced to bargain either individually or through company unions.

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This refusal of employers to deal with properly chosen representatives has been the cause of more than 70 percent of the disputes coming before the National Labor Board. The new bill is designed to remedy this evil. It is modeled upon the successful experience of the Railway Labor Act, which provides that employers shall actually recognize duly chosen representatives and make a reasonable effort to deal with them and to reach satisfactory collective agreements.

ATTITUDE OF EMPLOYERS

When the factual situation that confronts us is analyzed carefully and comprehended fully, I am sure that employers as well as employees will favor the proposed measure. Fair-minded employers who are now allowed to band together in huge trade associations do not desire to deny analogous rights to their workers. Fair-minded employers do not relish the pretense that industry and labor are upon an equal footing, when, in fact, industry controls both sides by dominating the strategic points in the areas of controversy.

Most important of all, far-sighted and broad-visioned employers who recognize the certainty of economic discord and the threat to our entire economic program that is implicit in the present status of labor relations will join whole-heartedly in this proposal for improvement.

There always will be an unfair minority who are amenable only to coercion. For this reason the National Labor Board, under the new bill, would be vested with statutory sanctions and given actual powers of investigation and restraint similar to those exercised by the Federal Trade Commission in cases of unfair competition. It would be composed of 7 members, including 2 representatives of employers, 2 of employees, and 3 of the general public, and it would be empowered to set up regional or local boards.

FUNCTIONS OF THE BOARD

The present National Labor Board, set up by Executive order, has carried on its activities for half a year. In that short time it has helped 650,000 employees, who were engaged in disputes, to return to work or to remain at work, upon terms satisfactory to all interested parties and promising durable peace. The chief function of the new board would not be to act as policeman or judge but to mediate and conciliate industrial disputes and to offer its services as arbitrator when the parties so desired. Aside from its power to prevent the specific unfair practices that would be forbidden by the law, it would not have the slightest flavor of compulsion. It would have no kinship to compulsory arbitration. It would continue to promote peace rather than strife and to appeal to the better judgment and good intentions of industry and labor.

When this board is established and bolstered by adequate sanctions and a clarification of the substantive law, it will help to solve the thorniest problem confronting us today and be one of the chief bulwarks of our future economic prosperity and social justice.

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TO CREATE A NATIONAL LABOR BOARD

HEARINGS

BEFORE THE

COMMITTEE ON EDUCATION AND LABOR
UNITED STATES SENATE

SEVENTY-THIRD CONGRESS

SECOND SESSION

ON

S. 2926

A BILL TO EQUALIZE THE BARGAINING POWER OF EMPLOYERS AND EMPLOYEES, TO ENCOURAGE THE AMICABLE SETTLEMENT OF DISPUTES BETWEEN EMPLOYERS AND EMPLOYEES, TO CREATE A NATIONAL LABOR BOARD, AND FOR OTHER PURPOSES

PART I

MARCH 14, 15, 16, 20, 21, 22, 1934

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CONTENTS

Statement of—	Page
Beyer, Otto	220
Brissenden, Dr. Paul F	211
Carmody, John M	307
Chipman, A. J	196
Douglas, Dr. Paul H	206
Frey, John L	166
Gorman, Francis J	271
Gray, John H	306
Green, William	67
Haas, Dr. Francis J	113
Hale, Robert L	50
Handler, Milton	27
Herrick, Mrs. Elinore Morehouse	176
Hillman, Sidney	120
Hogue, Richard W	299
Hotchkiss, Willard E	124
Karlin, William	259
Lapp, Dr. John A	190
Leiserson, Dr. Wm. M	231
Lewis, John L	139
Long, William J	244
Moffett, Clarence W	198
Mullenbach, James	188, 193
Ogburn, Charlton	130
Panken, Jacob	134
Perkins, Hon. Frances	18
Raushenbush, Stephen	255
Slichter, Dr. Sumner	58
Sloan, George A	325
Suffern, Arthur E	284
Wagenet, R. G	281
Wagner, Senator Robert F	7
Walsh, Frank P	157
Witte, Edwin E	240

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TO CREATE A NATIONAL LABOR BOARD

WEDNESDAY, MARCH 14, 1934

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The committee met, pursuant to call, at 10 a.m., in room 335, Senate Office Building, Senator David I. Walsh presiding.

Present: Senators Walsh (chairman), Thomas, Erickson, Borah, Metcalf, LaFollette, and Davis.

The CHAIRMAN. The committee will come to order. I suggest that the reporter insert the bill S. 2926 at this point in the record.

(The bill referred to is here printed in full as follows:)

A BILL To equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

SECTION 1. This Act may be cited as the "Labor Disputes Act."

SEC. 2. The tendency of modern economic life toward integration and centralized control has long since destroyed the balance of bargaining power between the individual employer and the individual employee, and has rendered the individual, unorganized worker helpless to exercise actual liberty of contract, to secure a just reward for his services, and to preserve a decent standard of living, with consequent detriment to the general welfare and the free flow of commerce. Inadequate recognition of the right of employees to bargain collectively through representatives of their own choosing has been one of the causes of strikes, lockouts, and similar manifestations of economic strife, obstructing commerce and imperiling the general welfare. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of commerce, to encourage the establishment of uniform labor standards, and to provide for the general welfare, by removing the obstacles which prevent the organization of labor for the purpose of cooperative action in maintaining its standards of living, by encouraging the equalization of the bargaining power of employers and employees, and by providing agencies for the peaceful settlement of disputes.

SEC. 3. When used in this Act—

(1) The term "person" includes individual, partnership, association, corporation, and the legal representative, trustee in bankruptcy, receiver, or trustee thereof, or the legal representative of a deceased person.

(2) The term "employer" means a person who has one or more employees, except that the term "employer" shall not include the United States, or any State, municipal corporation, or other governmental instrumentality, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization, or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" means any individual employed by an employer under any contract of hire, oral or written, express or implied (including any contract entered into by any helper or assistant of any such individual, whether paid by him or his employer, if such assistant or helper is employed with the

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knowledge, actual or constructive, of the employer), or any individual formerly so employed whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice: *Provided*, That the term "employee" shall not include an individual who has replaced a striking employee. Wherever the term "employee" is used, it shall not be limited to mean the employee of a particular employer, but shall embrace any employee, unless the Act explicity states otherwise.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization, labor union, association, corporation, or society of any kind in which employees participate to any degree whatsoever, which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, or hours of employment.

(6) The term "commerce" means trade or commerce, or any transportation or cummunication relating thereto, among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State, but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "unfair labor practice" means any unfair labor practice listed in section 5.

(8) The term "National Labor Board" means the National Labor Board created by section 201 of this Act.

SEC. 4. Employees shall have the right to organize and join labor organizations, and to engage in concerted activities, either in labor organizations or otherwise, for the purposes of organizing and bargaining collectively through representatives of their own choosing or for other purposes of mutual aid or protection.

SEC. 5. It shall be an unfair labor practice for an employer, or anyone acting in his interest, directly or indirectly—

(1) To attempt, by interference, influence, restraint, favor, coercion, or lockout, or by any other means, to impair the right of employees guaranteed in section 4.

(2) To refuse to recognize and/or deal with representatives of his employees, or to fail to exert every reasonable effort to make and maintain agreements with such representatives concerning wages, hours, and other conditions of employment.

(3) To initiate, participate in, supervise, or influence the formation, constitution, bylaws, other governing rules, operations, policies, or elections of any labor organization.

(4) To contribute financial or other material support to any labor organization by compensating anyone for services performed in behalf of any labor organization, or by any other means whatsoever.

(5) To fail to notify employees in accordance with the provisions of section 304 (b).

(6) To engage in any discriminatory practice as to wage or hour differentials, advancement, demotion, hire, tenure of employment, reinstatement, or any other condition of employment, which encourages membership or nonmembership in any labor organization: *Provided*, That where a contract or agreement of any kind is or shall be in force between an employer and a group of employees, the provisions of such contract or agreement regarding conditions of employment shall not, because of anything contained in this paragraph, compel an employer to observe similar conditions of employment in his relations with all his employees: *Provided further*, That nothing in this Act shall preclude an employer and a labor organization from agreeing that a person seeking employment shall be required, as a condition of employment, to join such labor organization, if no attempt is made to influence such labor organization by any unfair labor practice, if such labor organization is composed of at least a majority of such employers' employees, and if the said agreement does not cover a period in excess of one year.

SEC. 6. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain any unfair labor practice that burdens or affects commerce or obstructs the free flow of commerce, or has led or tends to lead to a labor dispute that might affect or burden commerce or obstruct the free flow of commerce, and it shall be the duty of the several district attorneys of the United States, but solely at the request of the National Labor Board, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain any such unfair labor practices.

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TITLE II

SEC. 201. There is hereby created a Board, to be known as the "National Labor Board" (hereinafter referred to as the "Board"), which shall be composed of seven members, to be appointed by the President, by and with the advice and consent of the Senate. Two of such members shall, at the time of nomination, be designated as representatives of employers, two as representatives of employees, and three as representatives of the general public. The members representing the general public shall be appointed for terms of five years each, and the other members shall be appointed for terms of one year each, and all members shall be eligible for reappointment. Any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one of the members representing the general public as chairman of the Board. No member representing the general public shall engage in any other business, vocation, or employment. A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board. The Board shall have an official seal, which shall be judicially noticed.

SEC. 202. (a) Each member representing the general public shall receive a salary of $10,000 a year. The other members shall each receive $25 per diem and necessary traveling and subsistence expenses when attending meetings of the Board. The Board shall appoint and fix the compensation of an executive secretary, and it shall have authority to appoint and fix the compensation of such attorneys, special experts, examiners, mediators, clerks, and other employees, and to establish such regional or local boards, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may make such appointments without regard to the civil service laws or the Classification Act of 1923, as amended. The Board is directed to retain the officers and employees of the National Labor Board created by the President on August 5, 1933, to the fullest extent consistent with the efficient functioning of the Board.

(b) All the expenses of the Board, including all necessary traveling expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 203. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise all its powers at any other place. The Board may, by one or more of its members or by such employees as it may designate, prosecute any inquiry necessary to its duties in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 204. The Board may, either by itself or through its agents, offer its services to the parties to any labor dispute as conciliator or mediator in such dispute, and may act as conciliator or mediator for the parties who accept such offer.

SEC. 205. (a) The Board is empowered to prevent any person from engaging in any unfair labor practice that burdens or affects commerce or obstructs the free flow of commerce, or has led or tends to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

(b) Whenever any member of the Board, or the executive secretary, or any person designated for such purpose by the Board, shall have reason to believe, from information acquired from any source whatsoever, that any person has engaged in or is engaging in any such unfair labor practice, he shall in his discretion issue and cause to be served upon such person a complaint stating the general nature of the charges in that respect, and containing a notice of hearing before either an examiner or the Board at a place therein fixed, not less than twenty-four hours after the service of said complaint, but the examiner or the Board shall have discretion to continue or adjourn such hearing from time to time. Any such complaint may be amended by any member of the Board or by any person designated for that purpose by the Board at any time prior to the issuance of an order based thereon; and the original complaint shall not be regarded as limiting the scope of the inquiry. The person so complained of shall have the right to file an answer, to appear and give testimony at the place and time fixed in the complaint, and to avail himself of the compulsory process of the Board in summoning witnesses in his behalf. In the discretion of the examiner or the Board, any other person shall be allowed to appear in the said proceeding

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by counsel or in person to present testimony. In any such proceeding,the examiner or the Board shall not be bound by the rules of evidence prevailing in courts of law or equity.

(c) The testimony taken by an examiner or the Board shall be reduced to writing and filed in the office of the executive secretary. Thereafter, in its discretion, the Board may itself take further testimony and/or hear argument. If upon all the testimony taken, the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an appropriate order directed to such person. The order may require such person to cease and desist from such unfair labor practice, or to take affirmative action, or to pay damages, or to reinstate employees, or to perform any other acts that will achieve substantial justice under the circumstances. Such order may further require such person to make a report from time to time showing the extent to which he has complied with the order. Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(d) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any district court of the United States within any district wherein the labor practice in question was engaged in or wherein such person resides or carries on business, or the Supreme Court of the District of Columbia, for the enforcement of the order of the Board, and shall certify and file in the Court a transcript of the record upon which such order was entered, together with a copy of the findings and the order of the Board. Upon such filing of the petition and transcript. the court shall place such petition upon its motion or equity calendar and shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside in whole or in part the order of the Board. No objection to the order of the Board shall be considered by the court unless such objection shall have been urged before the Board. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, the court may order such additional evidence to be taken before the Board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Board may modify its findings as to the facts, or make new findings, by reason of aditional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree, affirming, modifying, or setting aside, in whole or in part, any order of the Board, shall be final, except that the same shall be subject to review by the appropriate Circuit Court of Appeals or the Court of Appeals of the District of Columbia, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C. title 28, secs. 346 and 347). The commencement of proceedings under this subsection shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(e) Any person aggrieved by an order of the Board may obtain a review of such order in any district court of the United States in the district wherein the unfair labor practice in question was engaged in or wherein such person resides or carries on business, or in the Supreme Court of the District of Columbia, by filing in such court, within ten days after the entry of such order, a written petition praying that the order of the Board be modified or be set aside in whole or in part. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the record, certified by the Board, upon which the order complained of was entered, together with a copy of the findings and order of the Board. No objection to the order of the Board shall be considered by the Court unless such objections shall have been urged before the Board. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for

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the failure to adduce such evidence in the hearing before the Board, the court may order such additional evidence to be taken before the Board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree, affirming, modifying, or setting aside, in whole or in part, any order of the Board, shall be final, except that the same shall be subject to review by the appropriate Circuit Court of Appeals or the Court of Appeals of the District of Columbix, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347). The commencement of proceedings under this subsection shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(f) No court shall have any jurisdiction to enjoin the Board or an examiner from taking action or holding hearings under a complaint.

(g) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

(h) Complaints, orders, and other process of the Board and its agents may be served by anyone duly authorized by the Board, either (1) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer, or a director of the corporation to be served; or (2) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (3) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business; or (4) by sending a telegraphic copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt or telegraph receipt for said complaint, order, or other process registered and mailed or telegraphed as aforesaid shall be proof of the service of the same.

SEC. 206. (a) The Board shall have power to act as arbitrator in labor disputes. When any of the parties to a labor dispute agree to submit the whole or any part thereof to the aribtration of the Board, and the Board accepts such submission, the agreement shall be valid, irrevocable, and enforceable as to the submitting parties save upon such grounds as exist at law or in equity for the revocation of any contract. In any case accepted by it for arbitration the Board shall have power to issue an award applicable to the submitting parties.

(b) Unless a party to the arbitration has otherwise stipulated at the time of the submission of the case to the Board, any party to the arbitration, or the Board itself, may within one month after the award is made, apply to the Supreme Court of the District of Columbia for an order confirming the award, and thereupon the court shall grant such an order unless the award is vacated, modified, or corrected as hereinafter prescribed. Notice of the application shall be served upon the other parties to the arbitration by the marshal of any district within which they may be found, in like manner as any other process of such court, and thereupon such court shall have jurisdiction of such parties as though they had appeared generally in the proceeding.

(c) The court may make an order vacating the award upon the application of any party to the arbitration if the Board exceeded its powers or executed them so imperfectly that a mutual and definite award upon the subject matter was not made. The court may make an order modifying or correcting the award upon the application of any party to the arbitration if (1) the award covers a matter not submitted to the Board (unless the award upon such matter does not affect the merits of the decision upon the matter submitted) or (2) the award is imperfect in matter of form not affecting the merits of the controversy. The order may modify or correct the award so as to effect the intention thereof and promote justice between the parties. A party to the arbitration, claiming to be aggrieved by the award, may apply to the court, within one week after the award is made, for an order vacating, modifying, or correcting the award. Notice of such application shall be served upon all other parties to the arbitration proceeding or their attorneys by the marshals of the respective districts within which such parties may be found. For the purposes of the application any judge who might make an order to stay the proceedings in any action brought in the same court

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may make an order, to be served with the notice of the application, staying the enforcement of the award.

(d) The party applying for an order confirming, modifying, or correcting an award shall, at the time the application is filed, also file the following papers with the clerk of the court: (1) An agreement to arbitrate; (2) the award of the Board; and (3) each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon any such application. The order shall be docketed as if it were rendered in a suit in equity and shall have the same force and effect in all respects as, and be subject to all the provisions of law relating to, a decree in a suit in the court in which it is entered; and it may be enforced as if it had been rendered in a suit in the curt in which it is entered.

SEC. 207. (a) In any dispute as to who are the representatives of employees, the Board, if the dispute might burden or affect commerce or obstruct the free flow of commerce, may investigate such dispute and certify to the parties, in writing, the name or names of the individuals or labor organizations that have been designated and authorized to represent employees. In any such investigation the Board shall be authorized to take a secret ballot of employees or to utilize any other appropriate method to ascertain their representatives. The Board shall decide whether eligibility to participate in elections shall be determined on the basis of employer unit, craft unit, plant unit, or other appropriate grouping.

(b) In any dispute not of the character described in subsection (a) as to who are the representatives of employees the Board may offer its services to aid in determining who are employees' representatives.

SEC. 208. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by sections 205 and 207 (a)—

(1) Any member of the Board, or any agent designated by it for such purposes, is empowered to administer oaths and affirmations, take depositions, subpena witnesses, take evidence, and require the production of any books, papers, or other documents which the Board deems relevant or material to the inquiry. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any district court of the United States, the United States courts, of any Territory or possession, and the Supreme Court of the District of Columbia, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides, upon application by the Board, shall issue to such person an order requiring such person to appear before the Board, or an examiner designated by it, there to produce documentary evidence if so ordered, or there to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and other documents before the Board, or in obedience to the subpena of the Board or any member thereof or any agent designated by it, or in any cause, prodceeing, or investigation instituted by the Board, on the ground that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to a penalty or forfeiture; but no inidvidual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise; except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Witnesses summoned before the Board or any of its examiners shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 209. The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

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SEC. 210. Any person who shall willfully assault, resist, prevent, impede, or interfere with any member of the Board or any of its agents in the performance of his duties pursuant to section 205 or section 207 (a), shall be punished by a fine of not more than $5,000, or by imprisonment for not more than one year, or both.

TITLE III

SEC. 301. There is hereby created in the Department of Labor the United States Conciliation Service, under the direction of a Director of Conciliation. The Secretary of Labor shall appoint and fix the compensation of such Director, and shall have authority to appoint and fix the compensation of such commissioners of conciliation, clerks, and other officers and employees as he may from time to time find necessary for the proper performance of the duties of the Service, and as may from time to time be appropriated for by Congress. The Secretary of Labor may make such appointments without regard to the provisions of the civil-service laws or the Classification Act of 1923, as amended.

SEC. 302. It shall be the duty of the United States Conciliation Service, whenever the Director deems it desirable, to offer its services to the parties to any labor dispute, and to attempt to adjust such dispute by consiliation or mediation, or by arranging for voluntary arbitration. Nothing in this title shall limit the power given to the Secretary of Labor under section 8 of the Act of March 4, 1913 (U.S.C., title 5, sec. 619).

SEC. 303. Nothing in this Act shall be construed so as to interfere with or mpede or diminish in any way the right to strike.

SEC. 304. (a) Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act and/or of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U.S.C., title 29, secs. 101–115), conflicts with the application of the provisions of this Act, the provisions of this Act shall prevail; *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of section 7 (a) of the National Industrial Recovery Act and/or of such Act of March 23, 1932, shall apply.

(b) Any term of a contract or agreement of any kind which conflicts with the provisions of this act is hereby abrogated, and every employers who is a party to such contract or agreement shall immediately so notify his employees by appropriate action.

SEC. 305. If any provision of this act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

The CHAIRMAN. Senator Wagner, you are the author of this bill?

Senator WAGNER. Yes.

The CHAIRMAN. We will be pleased to have you address the committee.

STATEMENT OF HON. ROBERT F. WAGNER, SENATOR FROM NEW YORK

Senator WAGNER. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, the bill that I have introduced projects no novel element into the recovery program nor does it present a fundamentally new matter for the consideration of Congress. It is designed merely to carry out that program according to its original intent, and to bolster it at the only spot where experience has proved that it is lamentable weak.

Section 7 (a) of the Recovery Act was not a mere afterthought or appendage. It was one of the three mainsprings of cooperation among industry, labor, and government. Last June everyone realized that the spirit of united action must replace the blind competition that had lead to economic and social disintegration. But every realistic student of affairs knew that it would be unfair and dangerous to

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encourage one group to cooperate without encouraging others to do likewise. Such uneven development would enable the strong to oppress the weak and throw our entire industrial machinery out of gear. For this reason, Congress projected into economic affairs the essence of true democracy, by outlining a system of checks and balances between industry and labor, crowned by governmental supervision and advice.

Since the passage of the Recovery Act, the development of the practice of united action has been so one sided that there is danger of a worse balance than persisted in the past. Trade associations have been strengthened enormously, and industry has gained practically unchallenged control of the code authority mechanism. During the very same period, genuine cooperation among employees has received one setback after another.

The 40,000,000 working people in this country rightly feel that this is unfair, and their opinion meets with the substantial accord of all who are fair-minded.

The CHAIRMAN. Is this due to the one-sided views of the personnel of these boards?

Senator WAGNER. Well, it is due partly, perhaps, to one-sided views. It is due also to what I regard as misinterpretations of Section 7(a), and to the resistance of employers, as I shall develop.

The CHAIRMAN. Would you tell us later how these boards are constituted?

Senator WAGNER. Yes. Suppose, Mr. Chairman, I finish this and then I will be delighted to answer any questions.

The CHAIRMAN. Certainly.

Senator WAGNER. Without full employee participation in the recovery program, wages are again lagging behind production and profits. This is a very important matter. If this disparity continues, we may expect another collapse. In addition, employees are becoming impatient at the denial of their rights, and strikes and violence are appearing in various parts of the country. I am in a position to know this. The very events are occurring that Congress sought to prevent by section 7 (a). The question is not one of abstract justice; it affects us all.

My 6 months' experience as Chairman of the National Labor Board, and the experience of innumerable other people who have been following conscientiously the course of events, indicate that the weaknesses in section 7 (a) should and can be cured. That is the object of the present bill.

The first defect of 7 (a) is that it restated the right of employees to bargain collectively, but did not impose upon employers the duty to recognize such representatives. Failure to acknowledge this correlative duty has caused more than 70 percent of the disputes coming before the National Labor Board. The new bill, therefore, provides that employers shall recognize those chosen by their workers and shall make reasonable attempts to arrive at satisfactory agreements. This provision does not tread upon new ground, but follows the well-tested experience of the Railway Labor Act.

The second defect in section 7 (a) has turned upon a question of interpretation. The law says that employees shall be allowed to choose their own representatives. This has been read to mean that even after the overwhelming majority in a plant desire a collective

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agreement covering all, the employer shall be free to deal individually with workers who want to make individual agreements. In this manner the closed union shop is illegalized.

The CHAIRMAN. Who made that interpretation?

Senator WAGNER. The N.R.A.

The CHAIRMAN. I wondered whether it was a legal interpretation by the Attorney General or not.

Senator WAGNER. No. The National Labor Board has rendered a decision very recently which takes the contrary view.

The CHAIRMAN. Pardon the interruption, Senator.

Senator WAGNER. I do not believe that Congress intended to illegalize a device which many experts believe necessary, in some situations, to obtain for labor equality of bargaining power and substantial justice. Congress certainly did not intend to impose upon employees restraints that did not exist before the Recovery Act was passed.

The new bill makes it perfectly clear that the closed union shop is not illegal. It leaves this question of policy open to industry and labor. At the same time, it surrounds nonunion members with safeguards by providing that only those seeking employment may be required to join a union, and that closed shop agreements may be made only with unions to which a majority of the employees belong.

The third and most important defect of section 7 (a) is that, while it provides that employees shall be free from interference and restraint in choosing their representatives, it does not prohibit the specific practices which make such freedom impossible. The greatest barrier to freedom is the employer-dominated union, which has grown with amazing rapidity since the passage of the Recovery Act.

The employer-dominated union generally is initiated by the employer. He takes part in the determination of its rules, its procedure, and its policies. He can terminate it at will and he exercises absolute veto power over its suggestions. Certainly there is no real cooperation on an equal footing between employers and employees under such circumstances.

Another feature of such a union is that it arbitrarily restricts employee cooperation to the single employee unit. The standardization and improvement of wage levels is an industrial or State or even national problem, that can hardly be solved if the employees of each plant act separately and are uninformed of what others are doing. No fair-mined employer should want to preserve this disunity among his workers when he is banding with other employers in huge trade associations.

The present bill seeks to prevent employers from dominating labor organizations by influencing their formation, policies, or elections, by subsidizing them, or by discriminating either in favor of or against particular unions by means of wage or hour differentials or other conditions of employment.

Let me make it absolutely clear that the bill does not in any way impair the right of employees to organize on the single employer or company union basis, if that is their desire. It simply forbids employers to force development along such lines alone, and prevents them from dominating their workers when the workers desire a company union.

It is equally important to note that the bill does not prevent employers from setting up societies or organizations to deal with

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problems of group welfare, health, charity, recreation, insurance or benefits. All of these functions can and should be fulfilled by employer-employee organizations. But employers should not dominate organizations which exist for the purposes of collective bargaining in regard to wages, hours, and other conditions of employment.

Now as to the enforcement sections of the bill. The present Labor Board has sought to apply section 7 (a) by relying upon the prestige of its members and by appealing to public sentiment. During the summer these methods met with great success. But in recent months the Board has been confronted by some large employers who ignore public sentiment, who flaunt the clear intent of Congress, and who are a law unto themselves. This is extremely unfair to the vast majority of employers who want to obey the law, and it is disheartening to the millions of working people who see what was held up to them as a new charter being treated as a scrap of paper.

The present bill provides for a permanent Board with adequate enforcement provisions. It defines as unfair labor practices any attempts by employers to dominate labor unions or to fail to recognize the duly chosen representatives of their employees. When complaint is made of an unfair labor practice, the Board is authorized to hold hearings, subpena witnesses and records, and, if the law is violated, issue a restraining order enforceable in the courts.

The Labor Board is empowered to act also as conciliator and mediator. I am confident that this will be its chief function, and that it will continue the good work which has kept over 800,000 people at their jobs during the past 6 months. Most employers, as well as employees, want a peaceful forum and voluntary action.

I have noticed that several criticisms have been levelled against this bill, which I believe are important enough to be answered at the outset.

It has been remarked that the bill is one-sided because it imposes restraints upon employers without attempting to curb unfair or unruly employees. This criticism takes the bill out of the context of the Recovery Act situation. The Recovery Act contains grants and privileges to employers and employees. Employers have not met with any obstacles in their attempts to form trade associations. If they had, I should suggest the removal of these hindrances by legislation. But employees have met with opposition in their attempts at organization, and this should be remedied. It is absurd to characterize this bill as an employee monopoly simply because it seeks to achieve the fairness which the Recovery Act promised.

It has been argued that the unfair labor practices mentioned in this bill are vague, uncertain and unrelated to any practices heretofore characterized as "fraud, deceit and oppression." But this bill is not intended to be merely declaratory of what constituted unfairness in the early English law. It is a direct attempt to meet modern evils with modern remedies. Its specification of unfair practices is much more definite than that of the Federal Trade Commission Act. Nor are the practices to which the bill refers imaginary. They are based upon the studies and disclosures of hundreds of people who have observed the processes by which some employers dominate unions.

It has been urged that the bill places a premium on discord by declaring that none of its provisions shall impair the right to strike.

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On the contrary, nothing would do more to alienate employee cooperation and to promote unrest than a law which did not make it clear that employees could refrain from working if that should become their only redress. But this bill will prevent strikes by the only feasible and just method; that is, by insuring fair treatment to all parties and by establishing a powerful and trustworthy agency for the settlement of disputes.

The same critics have claimed that the bill would prevent friendly relations between employers and employees becaues it prevents employers from influencing the rules or policies of labor organizations. Such an interpretation strains beyond all reason the provisions of this bill. Frank and friendly negotiations depend upon the absence of influence exerted by one party over the other. Only those whose minds are deeply rooted to the master-servant relationship in industry look upon employers' dominance as the only means of securing cooperation.

Most confusing of all are the charges that the National Labor Board under this bill would have powers greater than those of any court. Every competent lawyer understands the difference in functions and proceedings between an administrative agency and a court. The very purpose of an administrative tribunal is to provide an informal, flexible procedure designed to get at the heart of complex economic problems with a minimum of hard-and-fast legal rules. The power of the Board to amend complaints, and to allow some variance between the pleadings and proofs, is strictly similar to the procedure of the Federal Trade Commission. Likewise the provisions that the findings of the Board, if supported by evidence, shall be final as to the facts, and that the court proceedings shall be based on testimony taken before the Board, have become such commonplaces of our administrative law that it is amazing to find them open to sincere question.

Under the new bill, the orders of the Board are enforceable only through the courts, and any aggrieved party has the right of appeal to the courts. The bill does not take a single new step in outlining the respective scope of courts or administrative bodies.

Finally, some feelings have been expressed that the new Board would interfere with the work of the industrial mediation boards operating under the codes. There is no occasion for this fear. Every dictate of wise practice, and the pressure of business, would incline the Board to refrain from hearing cases until every other available remedy had been exhausted. For example, the United States Supreme Court has already worked out a well defined body of rules requiring that parties exhaust all other remedies before appearing before it.

I am confident that, when studied carefully, this bill will impress everyone with its moderation, its reasonableness and its imperative necessity. Ordinary dictates of justice and common sense require its speedy passage, and when it is passed we shall have taken the most important step since the Recovery Act toward improving the opportunities and maintaining the welfare of the American people.

The CHAIRMAN. Senator Wagner, the committee appreciates your clear and able presentation. Have any of the members of the committee any questions?

Senator LA FOLLETTE. I would like to ask Senator Wagner, in view of his intimate knowledge of the situation that has grown up since the

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Industrial Recovery Act was passed, what his opinion is as to the situation that will develop if this legislation, or legislation seeking these objectives, is not passed at this session of Congress?

Senator WAGNER. In my opinion, failure to pass this legislation will certainly jeopardize the whole recovery program, because we have a situation now where employers under the Recovery Act have been encouraged—not only afforded the opportunity, but encouraged—to organize trade organizations. They are better organized today, may I say to the Senator, than they have ever been.

On the other hand, the workers, to whom we supposed we had given equal rights of organization, have had their efforts resisted at every turn, particularly by the large manufacturers, who have refused to recognize the men's representatives and have put every obstacle in the way of organization. Now, such an uneven industrial situation cannot continue without a collapse.

Senator LA FOLLETTE. There has been an increased indication of labor difficulties and strikes. What in your opinion is the chief cause of that manifestation?

Senator WAGNER. The very thing I said, failure to recognize the representatives that the workers had chosen. That has been the controversy in 70 percent of the cases before the Labor Board—an extraordinary thing. I might say also that there is a concerted anti-union effort among at least some employers, for since the Recovery Act there has been an extraordinary growth of company-dominated organizations.

Senator LA FOLLETTE. If legislation of this character is not passed at this session, what is your view as to the probability of increasing or decreasing labor difficulties and strikes during the balance of this year?

Senator WAGNER. I am afraid we shall have tremendous difficulties. I was going to say, almost so much that we shall not be able to cope with them. I do not want to make any such pessimistic prediction, but I sat all day yesterday at a Labor Board hearing which involved the question of recognition, and all that the workers asked in that case, and in a similar case today—perhaps we have today the most important case in the history of the Board—was an opportunity to elect their representatives. There is resistance to that request, and this has threatened to throw 100,000 on strike if the difficulties are not composed.

Senator LA FOLLETTE. Is it a fair deduction, from your answer, Senator, that you view with grave alarm the situation so far as strikes and labor difficulties are concerned in the near future unless legislation of this kind is passed?

Senator WAGNER. I am terribly concerned.

The CHAIRMAN. Senator, there is no provision in this bill that denies the right to organize company unions?

Senator WAGNER. Oh, no.

The CHAIRMAN. The majority of the employees in any industry can organize a company union if they choose to?

Senator WAGNER. Of course, what we are preventing is only domination by employers.

The CHAIRMAN. From your experience, I judge there has been a tendency on the part of employers, particularly large employers, to try to create company unions with the idea that they could dominate them more easily than they could independent labor organizations?

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Senator WAGNER. Exactly, and when I speak of the company union, the objectionable company union, I mean the one dominated or influenced by the employer.

The CHAIRMAN. How are you going to prevent an aggressive, dominating employer from getting control of 51 percent of his employees in order to control his company union?

Senator WAGNER. The only way is to prohibit, as we attempt to do in this legislation, the specific acts which experience has shown are the acts by which they influence the action of an organization.

Senator LA FOLLETTE. Right on that point, Senator, what has been the experience of the Board in plants where employers have contended that there was no sentiment for an independent labor organization and where the Board has been able to provide for a vote on the part of the workers where they felt that their identity was not to be disclosed and they would be protected from any reprisal?

Senator WAGNER. I can give the Senator an instance that happened only last week in a very large factory in a Southern State where there were over 3,000 employees. A substantial number of them requested our board to order an election. They had a so-called "representation plan" under which they became very restive because they felt it was simply an employer-dominated organization. After some efforts we finally persuaded the employer to consent to such an election. We were told at the time that it was a useless procedure, that the workers all wanted this representative plan, and that we were inconveniencing the employers for no good purpose.

An election was held and the company union was defeated by the outside union by a vote of 20 to 1. This is what happened when employees had a free choice, and were able to cast their ballots without any interference, intimidation, or coercion.

The CHAIRMAN. Is this bill the result of the experience of those who have been associated with you on the Labor Board trying to find a solution for the evils or barriers that were experienced in the handling of this problem?

Senator WAGNER. I cannot speak for all members of the board, but it certainly reflects the experience of some of us. It reflects my own experience. As to this legislation, I alone am responsible for it, and I do not want to hold anyone else responsible.

The CHAIRMAN. For the record, Senator, will you tell us just how the Labor Board is constituted and what are its functions?

Senator WAGNER. Well, it is a body of citizens appointed by the President, really not holding any public office at all. We take no oath nor do we receive compensation——

The CHAIRMAN. How many members?

Senator WAGNER. Eleven.

The CHAIRMAN. And what do they represent in the private affairs of life?

Senator WAGNER. Five are representatives of the workers and five represent industry. If you will exclude myself, I think they are very eminent members, all very well known in their respective fields.

The CHAIRMAN. And are you the 11th member?

Senator WAGNER. I am the impartial chairman.

The CHAIRMAN. Just what problems are delegated to you?

Senator WAGNER. Simply to compose labor disputes, for which purpose we have outlined our own procedure.

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The CHAIRMAN. How do they arise? Does someone petition you where there is a labor difficulty, either the employer or the employees?

Senator WAGNER. Yes. One side or the other asks us to intervene, and sometimes we even intrude where we think think a strike is imminent which we may prevent. The Board has not done its work dramatically or spectacularly, but I think has made an extraordinary contribution toward preserving industrial peace.

The CHAIRMAN. It is all voluntary, I assume?

Senator WAGNER. Yes, it is all voluntary.

The CHAIRMAN. And have you worked out your own regulations and methods of procedure?

Senator WAGNER. Yes, we have. We have 20 regional boards through the country, upon which serve the most eminent citizens available in the various communities. They work without compensation and have rendered an effective and patriotic service.

The CHAIRMAN. Are there any statistics available as to the number of strikes that have taken place since the N.R.A. began to operate?

Senator WAGNER. We have available statistics of those of which we are cognizant. We have made reports on that.

The CHAIRMAN. Could we have it?

Senator WAGNER. I shall be delighted to bring them.

The CHAIRMAN. I understood you to say that 75 percent of these strikes that have come to your attention have been due directly or indirectly to the failure of the employer to recognize the rights of the employee to organize as of their own choosing?

Senator WAGNER. Exactly; the disputes were not always strikes, for we have prevented——

The CHAIRMAN. Threatened strikes?

Senator WAGNER. Yes, exactly, where there have been disputes involved.

Senator LA FOLLETTE. I want to suggest, Mr. Chairman, that it might be well to have those statistics that you refer to incorporated at the conclusion of Senator Wagner's testimony so that they will be in the record.

Senator WAGNER. I will present them.

(The statistics referred to by Senator La Follette, presented by Senator Wagner, follow:)

TABLE I.—*Regional labor boards' summary*

	Total cases	Cases settled	Agreements	Decisions	Total workers	Reinstated	Cases pending
Atlanta	42	26	17	7	9,000	100	----------
Boston	82	26	11	8	18,389	0	21
Buffalo	31	10	7	3	4,197	4	14
Chicago	113	45	31	7	44,673	2,098	14
Cleveland	102	46	34	12	17,834	317	56
Detroit	136	114	101	13	19,013	5	22
Indianapolis	95	44	35	3	9,244	1,808	15
Los Angeles	34	19	14	5	28,203	9	3
Minneapolis-St. Paul	35	26	21	5	23,387	205	9
New York	319	285	146	119	97,913	1,793	34
Newark	66	39	23	16	12,338	16	----------
New Orleans	53	22	13	9	65,000	49	31
Philadelphia	97	74	50	10	28,490	115	23
Pittsburgh	60	41	25	15	35,715	52	15
St. Louis	55	17	0	17	43,463	----------	31
San Francisco	283	277	0	0	47,000	200	6
Seattle	25	10	5	5	10,436	81	----------
Total	1,828	1,121	533	254	514,295	6,852	[1] 295

[1] Incomplete.

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TABLE II.—*Regional Labor Board's summary*

	Total strikes	Workers involved	Strikes settled	Workers involved	Strikes averted	Workers involved
Atlanta	10	5,100	5	1,600	7	6,000
Boston	19	2,694	11	2,026	14	7,861
Buffalo	4	430	4	430	7	3,066
Chicago	23	17,667	13	13,966	8	14,848
Cleveland	6	8,300	0	0	10	7,750
Detroit	78	16,259	78	16,259	4	597
Indianapolis	6	1,964	6	1,964	16	4,729
Los Angeles	8	9,241	5	5,515	5	7,200
Minneapolis-St. Paul	13	18,312	13	18,312	3	4,870
New York	224	30,966	181	23,036	35	5,444
Newark	16	4,610	10	1,597	15	2,814
New Orleans	9	1,852	9	1,852	13	10,510
Philadelphia	21	15,083	11	10,940	5	4,143
Pittsburgh	10	5,361	6	3,347	7	8,790
St. Louis	12	16,240	12	14,943	6	1,800
San Francisco	7	16,180	7	16,180	14	15,695
Seattle	1	183			4	159
Total	467	170,442	371	131,967	173	105,565
National Labor Board	132	325,000	107	213,000	24	33,500
Grand total	599	495,442	478	344,967	197	139,065

TABLE III.—*Regional Labor Board's summary*

	Total cases	Section 7-a	Wage demands	Reduced earnings	Elections	Joint arbitration
Atlanta	42	34	2	2	30	4
Boston	82	43	26	4	7	3
Buffalo	31	30	1		0	1
Chicago	113	57	21			
Cleveland	102				1	2
Detroit	136	41	95	0		
Indianapolis	95	92	2	1	0	2
Los Angeles	34				3	2
Minneapolis-St. Paul	35	30	5	0		
New York	319	251	16	10	7	10
Newark	66	60	8		2	10
New Orleans	53	28	25		0	11
Philadelphia	97	46	24		5	
Pittsburgh	60	50	2	1	1	0
St. Louis	55		7	1	0	2
San Francisco	283	9		24	1	8
Seattle	25	6	7		1	4
Total	1,628	[1] 777	[1] 241	43	58	59

[1] Incomplete.

TABLE IV.—*National and regional labor boards' summary*

	Total cases	Cases settled	Agreements	Decisions	Total workers	Cases pending
National Labor Board	190	132	103	29	400,000	27
17 regional labor boards	1,628	1,121	533	254	514,295	295
Grand total	1,818	1,253	636	283	914,295	[1] 322

	Total strikes	Strikes settled	Strikes averted	Sec. 7-a	Wage demands	Elections	Arbitration
National Labor Board	132	107	24	145	37	39	11
17 regional labor boards	467	371	173	777	241	58	59
Grand total	599	478	197	[1] 922	[1] 278	97	70

[1] Incomplete.

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SUMMARY OF TABLES OF NATIONAL AND REGIONAL LABOR BOARDS

Total cases: National, 190; regional, 1,628; total, 1,818.

Cases settled: National, 132; regional, 1,121; total, 1,253. Of these, cases settled by agreements were: National, 103; regional, 533; total, 636. Settled by decisions: National, 29; regional, 254; total, 283.

Total workers involved: National, 400,000; regional, 514,000; total, 914,000.

Strikes: National, 132, involving 325,000; regional, 467, involving 170,000; total, 599, involving 495,000.

Strikes settled: National, 107, involving 213,000; regional, 371, involving 131,000; total, 478, involving 344,000 (strikers returned to work).

Strikes averted: National, 24, involving 33,500; regional, 173, involving 105,500; total, 197, involving 139,000 (kept at work).

Workers reinstated (exclusive of strike figures) after charges of discrimination, unjust layoffs, etc.: Regional, 6,852.

Cases pending: National, 27; regional, 295 (incomplete); total, 322. In addition, National referred 25 to regional boards).

Causes of complaint—

Alleged violation of section 7(a) (collective bargaining, union discharge for union activity, interference, etc.): National, 145; regional, 777 (incomplete); total, 922. Wage demands: National, 37; regional, 241; (incomplete) total, 278. Reduced weekly earnings (generally under shortened code hours): Regional, 43. Elections supervised: National, 39; regional, 58; total, 97. Cases jointly submitted for arbitration: National, 11; regional, 59; total, 70.

The CHAIRMAN. I think we also ought to have in the record the language of section 7 (a) to which you refer, and which I notice was not set forth in your speech.

Senator WAGNER. All right.

The CHAIRMAN. I think it is rather necessary to have that in view of your basing your reasons for this legislation upon the misinterpretation of the section and failure of it to function clearly in the interests of the employees.

(Section 7 (a) of the National Industrial Recovery Act is as follows:)

7 (a) Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing and shall be free from the interference, restraint, or coercion of the employers of labor, or their agents, and the designation of such representatives or in self-organization or any other concerted activities for the purpose of collective bargaining or their mutual aid or protection; (2) That no employee, and no one seeking employment, shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) That employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

Senator WAGNER. My own view has always been, Mr. Chairman, that the present company-dominated union is a violation of section 7 (a) as it exists today. But I do not know what the courts would do, and there have been others administering the law who differ with my interpretation. This bill is simply to carry out what I believe is in the intent of Congress.

Senator LA FOLLETTE. One other question, Senator: Is it your view or is it not that this legislation is permanent in character, and that the services to be rendered by the Board which the bill would establish would be rendered regardless of congressional or executive determination or as to the continuance of the National Industrial Recovery Administration?

Senator WAGNER. Oh, yes; this is permanent legislation. It is to create a permanent body and, I think, a very essential one. I think it is a great step forward.

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The CHAIRMAN. Have there been attempts in the Department of Labor to do some conciliatory work in connection with strikes and have they met with success?

Senator WAGNER. The difficulty is that no power exists.

The CHAIRMAN. Senator Thomas desires to ask you a question.

Senator THOMAS. Senator Wagner, you have connected up and linked up this proposed legislation very well with your experience in the last few months; will you go a little further and link it up with the evolution of labor legislation in the past, so we can see if it is a permanent evolutionary development or whether it is rather sporadic, growing out of that which has happened lately?

Senator WAGNER. I think that for a great many years, Senator, those who have been interested in avoiding industrial strife and bringing about industrial peace and industrial democracy have advocated some board of mediation, conciliation, and arbitration when both parties submit. In addition, they have believed that there ought to be some powers existing for the prevention of certain practices which interfere with equality of bargaining power.

I think it has been recognized that, due to our industrial growth, it is simply absured to say that an individual, one of 10,000 workers, is on an equality with his employer in bargaining for his wages. The worker, if he does not submit to the employers terms, faces ruin for his family. The so-called freedom of contract does not exist under such circumstances.

The only way that the worker will be accorded the freedom of contract to which, under our theory of government, he is entitled, is by the intrusion of the Government to give him that right, by protecting collective bargaining. When 10,000 come together and collectively bargain with the employer, then there is equality of bargaining power. That is all this legislation attempts to preserve, and I think it is a matter of evolution.

The CHAIRMAN. It need not be unanimous; a majority have that right, that is your view?

Senator WAGNER. Yes; it must be that way or you will never get anywhere.

Senator LA FOLLETTE. This is an application, is it not, of the same general principle which was involved in the Railway Labor Act, to the entire industrial field?

Senator WAGNER. Exactly; it is a development of that legislation, of course.

Senator THOMAS. Do you assume this is broad enough and general enough to cover our complex conditions as they exist in the different parts of the country?

Senator WAGNER. I think so.

Senator THOMAS. There has been a review, or, rather, a survey, made of various parts of the country in various industries and various occupations attempting to bring this bill into effect, has there not?

Senator WAGNER. Yes. Of course, this legislation, like all other legislation of its kind, is always for the recalcitrant minority. I will say that the majority of employers, by far, want to deal fairly with their employees, but the minority prevent them from doing so.

The CHAIRMAN. I am surprised to have you tell us, Senator, that your greatest difficulty has been with the group that employ the largest number of employees; that is, the bigger industries.

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Senator WAGNER. Exactly. They have regarded——

The CHAIRMAN. Is that true in the commercial field also? Do you think the bigger commercial dealers have exercised the same attitude toward their employees?

Senator WAGNER. Well, usually in commercial lines there is less difficulty. We have not had, as I recall it, any great difficulties. It has been primarily in the major industries, the large industries.

Of course, the N.R.A. and the fixation of hours has brought to the surface a great deal more exploitation of labor than I think any of us realized existed in this country. We have a tremendous problem ahead of us. Give the worker the right to organize and collectively bargain and he will eventually remedy that type of exploitation.

The CHAIRMAN. The committee will be pleased, Senator, to have you keep in touch with us during the course of these hearings and participate in the questioning.

Senator WAGNER. Thank you very much.

The CHAIRMAN. I observe the Secretary of Labor is in the room. Will you come forward, Miss Perkins?

STATEMENT OF HON. FRANCES PERKINS, SECRETARY OF LABOR

Secretary PERKINS. I am here this morning, sir, at your request, to express my very great interest in this measure, and to say that I think it is one of the most important which has been before the Senate in a long time.

The bill, as you know, has three titles, title 1, dealing with certain substantive provisions which are to establish clearly the practices; title 2, establishing a Labor Board to exercise judicial authority with regard to whether or not the fair labor practices described in title 1 have in effect been lived up to in any given case; and title 3, giving a clear statutory basis for the conciliation service in the Department of Labor.

I want to point out that, if I may, sir, discuss title 2 first, I should like to do so.

The CHAIRMAN. You may proceed as you choose.

Secretary PERKINS. Title 2, establishing the Labor Board, seems to me to be a very important step forward in our progress of management of our community life and a step forward in the practice of democracy, for we have undoubtedly recognized in the last 10 years a very great disparity between the opportunities of workers to determine the conditions of their work and the opportunities of their employers to determine those conditions, and yet, under our democratic form, we have held that all men should be equal in respect to the performance of all of the obligations.

We have found it necessary under the development of our common law and our statute law, to provide for judicial tribunals to determine certain items which men even in a Democracy were not able to adjudicate fairly for themselves, and, so, it seems to me, we have come to the time when the establishment of a judicial tribunal to determine certain things in the relationship between employers and employees is definitely indicated, and that we shall be making real progress in an orderly and democratic life if we establish on a permanent basis a national labor board which shall have certain very definite powers and duties which we all understand.

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Of course, the right of workers to organize and the right of workers to deal collectively with their employers existed before section 7 (a) of the National Recovery Act. Nevertheless, section 7 (a) of the National Recovery Act, by a very definite and clear statement of the Congress, reestablished and reaffirmed those rights and obligations and, apparently, because of the fact that the Congress itself modified the terms of the bill when it was before the Congress, it seems quite clear that the Congress had a definite conception of the rights and duties and opportunities of wage earners to deal collectively with their employers.

The Congress having, therefore, within the past year taken affirmative action on this point, and having reaffirmed the rights of labor to organize and deal collectively with the employers, has, therefore, it seems to me, a further obligation to clarify it, if it needs clarification, that relationship, and to establish on a permanent basis a tribunal before which the facts with regard to whether or not employees have had that opportunity can be clearly established.

The Labor Board has been set up, as you know, by Executive action during the summer because of the necessity which developed, at once, of having some trustworthy authoritative tribunal before which these questions could be put and where decisions which would be recognized as valid and impartial decisions could be rendered.

So, we have had 7 months experience with this type of organization even though it did not have the powers that it might have had conferred upon it if it had been established by a duly considered act of the Congress.

It was an emergency creation and has served an extraordinarily useful purpose, and I say this as one who has not been a member of the Labor Board, but who has cooperated with the Labor Board, who has observed the activities of the Labor Board, observed the cases that have come before it, and who knows of the countless decisions that have been made which were complied with and about which there has been no question.

The public in general and perhaps you, sir, are, however, better acquainted with the few cases which have been outstanding and in which the Labor Board has not been able to bring about a complete compliance with its decision. Those, of course are the items which concern us, and which put before you the necessity of taking some affirmative action which will define more clearly in the interests of the practice of democracy just what these obligations are and just what the duties and limits of authority of the Labor Board are.

Now, this Labor Board, in the 7 months of existence on an experimental basis, not constituted by Congress, has, nevertheless, given an authoritative interpretation of section 7 (a) of the Recovery Act. It is highly essential that there should be a definite interpretation of it. As a tribunal composed of men experienced in industry and labor questions, and as a tribunal dealing with controversies that have arisen, it has been able to build up in these 7 months, I think, the beginnings of a common law of industrial relations. This method of building law by decisions in particular cases does not seem to me to avoid the faults inherent in general laws which might be passed, or general orders which might be issued by administrative officers. It is, of course, a somewhat slower process, the process, the process of adjudication in particular cases and the evolution of principles out

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of cases, but, I think, an infinitely safer process than orders in council or the administrative orders, or even acts of Congress defining such delicate and as yet undetermined things as the rights and duties of both parties in industrial relations where our thinking has not been clear and where the natural rights are not so obvious as they are in some of the other human relations with which we have dealt in the past by our statutes or by our Constitution.

The Labor Board has, moreover, by utilizing the principle so familiar to the American Commonwealth, of holding elections to determine what are the desires of individuals, has carried over into this field principles well established in American democracy, and a discipline well established in our lives, the discipline of elections and of the rule of the majority.

It has acted, as you know, as a board of elections, and has conducted innumerable elections to determine what were the desires and what was the will of the wage earners in the community, in the industry, or in the plant with regard to their representation in dealing with their employers under the collective bargaining requirements of section 7 (a), and I think that that has been an extremely wise procedure, one which grew, as we may say, quite naturally and spontaneously out of the exigencies of the situation as they came this summer, and one which can safely be continued for a most conservative and yet democratic interpretation of the needs of the community in developing the human relations of employer and employee and the human relations between groups of employers and groups of employees on a sound and substantial and just basis.

By using its national prestige as an industrial labor board to act as arbitrator in cases voluntarily submitted to it, in which the parties in advance agreed to accept the final decision of the Board, it has produced a fundamental body of rulings, all of which it appears to me have been in the interests of law and order in industry, and in the interests of the progressive utilization of the disciplines of democracy in settling these controversies, these complexities of needs, and of interests between the two great parties of our industrial life.

Moreover, this board by regulation and by experimentation is working out the board's relationships to other agencies for the settlement of industrial disputes. The Conciliation Service of the Department of Labor, and the industrial relations board, and the cotton textile code authority, and the coal code authority, has performed a very useful service in determining just what the relationships between this board and other instruments of conciliation and arbitration might be, and this process of experimentation should, it seems to me, be allowed to continue. We have not yet reached the limits of the possibilities of cooperation or the possibilities for a great variety of devices to bring about the right relationship between employer and employee interests in a great democracy which is, after all, devoted constructively to the interests of all the people, not only the two great parties to the industrial situation.

Where this board has been inadequate it has been, I think, largely due to the lack of definite outlines of its powers, of its duties, and of its responsibilities, and due to the fact that the public in general, not knowing those definite outlines and not having the habit of acceptance

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of its authority, has been unwilling to participate voluntarily and to agree voluntarily to its decisions.

As, of course, you know, and as has been pointed out to you, because of the very Executive order under which it existed and because of the lack of congressional definition as to its authority, the board has lacked power to summon witnesses and to require elections to be held and to restore to their positions men who have been discharged for organizing, to stop discrimination, and so forth.

These powers, it seems to me, clearly can be conferred by Congress and ought to be conferred by Congress if the board is to fullfil all of its very great possibilities for usefulness in our community in this transition period.

I also think that the board has been obliged by the exigencies of the situation of the summer to mix its duties and by so doing has perhaps sometimes impaired its prestige. It has been obliged to mix its judicial duties with the technique of conciliation. I feel that it is desirable to separate the duty of conciliation from the duty of a judicial board. A judicial board ought, in my opinion—and this labor board, if it is created by Congress as anticipated in the draft before you, will be primarily a judicial board—a judicial board ought to confine its duties to really serious determinations of fact and the law, but ought not to attempt to make a conciliation in which the real desire is to reach a compromise.

A judicial board ought to be building up the body of our law and the body of our understanding, and our interpretation of law which we may come to count upon as a set of precedents.

A conciliator, however, on the contrary, goes into a particular situation and attempts to find a formula upon which both parties may agree at the moment, which may or may not be in the line of permanent justice.

This board, I think, should be confined to the practice of justice in in this very unusual field, whereas the function of conciliation and mediation is an important function, but I do not think it should be performed by the same board.

The continuation of the function of conciliation in the Department of Labor closely allied with the National Labor Board is, I think, highly desirable. Moreover, I think the National Labor Board, recognizing as it will in certain cases that come before it, that as a practical matter the proper technique in the particular case is not a judicial decision but conciliation—that is, many cases are brought, as you know, almost in the spirit of litigation and will be brought before any board which is a judicial board in the spirit of litigation, and the judge sitting upon that case sees at once that what is really needed is not a judicial decision but some negotiation, some method of bringing the parties together to agree upon a compromise which will meet the particular situation—the board should have the power to establish or to authorize the creation of boards of conciliation or boards of mediation or to refer the case for conciliation or for mediation to a properly constituted authority, but I feel that it should itself not engage and so impair its prestige in actual conciliation as it has been obliged to do.

The CHAIRMAN. What is the function of conciliation that your Department now possesses?

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Secretary PERKINS. The Department of Labor has a function of conciliation—it has three functions, arbitration, mediation, and conciliation, and they are rather distinct in the understanding of the Department.

Arbitration is a function which, as is well known, can be exercised only when both parties to a controversy agree to permit a third party to act as an arbitrator and agree to abide by the decision of that third party. The Department of Labor can exercise the function of arbitration when both sides agree to it.

The Department of Labor can also act as mediator, that is, it can of its own interposition and without invitation of either side, intervene in an industrial dispute with suggestions as to ways of bringing the conflicting parties into agreement, with suggestions perhaps as to the formula upon which they may agree.

It can also act in a third capacity of conciliation, by which is meant commonly a more or less negative activity in which the conciliator attempts to be the go-between between the parties who are in conflict until they, acting through him, come to some formula which it appears can be mutually agreed upon. Thereupon he retires from the scene leaving them to agree.

I am just defining this very roughly.

The CHAIRMAN. You have a bureau in your Department that handles those functions?

Secretary PERKINS. Yes.

The CHAIRMAN. What is the title of the officer of the bureau?

Secretary PERKINS. He is known as the "Director of the Conciliation Service," and there is a title known as "Commissioner of Conciliation," who are individuals appointed for the purpose of conciliation. Nevertheless, within the bureau we can perform the other functions.

The CHAIRMAN. How many employees in the bureau?

Secretary PERKINS. Thirty.

The CHAIRMAN. Is it proposed that the functions of that bureau be transferred to this board?

Secretary PERKINS. I should be very loath so to recommend, sir.

Senator WAGNER. No.

Secretary PERKINS. I think it is not proposed in this bill. Title III of the bill preserves the Conciliation Service of the Department of Labor. That function should go on and rather be strengthened by the existence of the Labor Board. That is my conception of it.

Senator WAGNER. It is preserved by this bill.

Secretary PERKINS. Yes; it is my conception that that function in the Labor Department ought to be preserved and strengthened, sir, and that the cooperation between the Labor Board and the Department of Labor in the performance of the function of conciliation ought to be clearly defined so that the Labor Board may refer cases for conciliation to the Department of Labor rather than attempting to perform the compromise and conciliation service itself, and so, I think, impairing somewhat its prestige as a judicial body engaged in a more serious and more dignified work.

Senator WAGNER. They have been doing that now, Mr. Chairman.

The CHAIRMAN. Care has been taken in drafting this bill to prevent any conflict between the powers of the board created here and the Department of Labor?

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Senator WAGNER. Oh, yes; there is no conflict now, and, as a matter of fact, we utilize to a great extent through the genuine cooperation of the Secretary, the conciliation clause of the Department of Labor in our efforts to compose differences.

The CHAIRMAN. Proceed.

Secretary PERKINS. On the composition of the board I think that public and the Government members of the board are necessary.

The CHAIRMAN. You are referring to the board?

Secretary PERKINS. To the board as created by this bill. I think that permanent public and Government representatives to give the board continuity, to give it disinterestedness, and to give it the services of persons who gradually acquire from a long period of service a certain expertness in those particular problems.

Moreover, I think it is wise and necessary that there should be members from industry and from labor in order to keep the board in touch with current activities and current thought in the industrial field on both sides, and to keep it from being a purely remote judicial tribunal that has no real and vivid relationship to the industrial needs of the moment.

My own suggestion with regard to this would be that in view of the provision which is made in this bill for its composition, that there should be rather panels from which the employer and employee members can be drawn, and that these panels should be perhaps not less than six or seven on each side, and that employer and employee members should be drawn from those panels to sit for a longer or shorter period of time or to sit even on special cases or special classes of cases.

I think this would be extremely important in bringing into the board those individuals on both the labor side and the employer side who have particular knowledge of the industry or of related industries in which the controversy is at that moment raging.

It is one of the most difficult things for a meat packer, for instance, to sit with any kind of intelligence upon a dispute in the cotton textile industry, and yet he may be an extraordinarily wise employer, but when it comes down to the particular questions, which, for instance, are involved in the stretch-out, he has relatively no knowledge which makes him a sound judge of what is just and fair.

It has been my experience that men are at their best in a moral sense, that is, their moral aspects function more keenly, when they are in the field of the material that they know well, and that they are inclined to follow somebody else's leadership in the details of a field which they do not know well.

Their principles are all right, but the application of them is sounder when they come into a field which they know well. I should be very much in favor of a panel system.

I also think it is highly important, in drawing up this board, that the employer-employee members of it be so selected that we are certain to escape the inhibiting effects that have so often come about in boards composed of the three parties, by drawing on to the employer-employee membership only the retired people—that is, those who are already out of active relationship to industry. Only by making their period of service short can you be certain to secure for this constructive judicial activity those who are at present in active rela-

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tionship to both the labor movement and to the employer responsibility. Out of that you get a very much sounder permanent system, it seems to me, than if you rely upon those who have already given over active responsibilities for the conduct of industry and leadership of labor.

I think one of the most important things that will grow out of such a board as this is that the active participation of both employer and employee in the educative experience of finding a formula, will develop a technique which is for the welfare of the whole American people.

I also wish to recommend to you, sir, that this board should be located not as an independent office of the Government, but should be located in the Department of Labor. I could, with equal logic, recommend that it be located in the Department of Commerce, or located in the Department of Justice, if you like, but I think it should be located in a regular department of the Government, a permanent department of the Government, one which has an officer, who has a place in the Cabinet of the President. I think that only by such location will you get that attention, that prestige and that continual cultivation and fostering of this important new function in our life that it deserves and that it ought to have. I am very much afraid if we pass into a period of prosperity, when these problems become less acute, that there will be that neglect of such a board in the public mind and in the conceptions of Congress, and in the conceptions of any administration which happens to be in power that it may lose its prestige as a national body. I think that its purposes can best be served by being attached to a regular department of the Government.

You will forgive me for a certain jealousy when I say I think it should be attached to the Department of Labor, I really believe that that department will be the department in which it can be developed into its soundest activities and can be given the very fullest cooperation. Here it can find the greatest integration with the other activities of the Department of Labor.

The CHAIRMAN. And especially if you are going to maintain the functions which you now have in the Bureau of Conciliation?

Secretary PERKINS. Especially if you are going to maintain the functions which we now have in the Bureau of Conciliation.

The CHAIRMAN. Don't you think the membership of seven is a little large? This bill provides a membership of 2 representing the employers, 2 representing the employees, and 3 representing the general public. The three representing the general public are given a salary of $10,000. Don't you think it would be better to have just a board—I would like to have your views about that—three members, those representing the employers and employees to be associate members?

Secretary PERKINS. That is a possible device. You mean by "associate members" members without a vote but in an advisory capacity?

The CHAIRMAN. In an advisory capacity. Let the responsibility rest upon the three representing the public interest.

Secretary PERKINS. That is a perfectly possible device and one that is not without sound and reasonable basis.

The CHAIRMAN. May I suggest that you and Senator Wagner give some consideration to that suggestion which has been made?

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Secretary PERKINS. I shall be glad to, but I would like to say at this moment, that after having given that considerable thought, my conclusion—although this is susceptible of correction, if the Senator wants to talk it over with me—my thought is that on the whole it would be wiser to maintain representation with vote by both employer members and labor members. That is for the present. It may be that we shall work out of that, but we are engaged at the present time in a mutual experience in this country, one in which the educative experience of responsibility in this field, is, I think, of extreme importance both to the employers' and employees' representations.

When an employer comes to take responsibility for a suggestion affecting the public interest, which he must take when he is sitting on one of these boards, he does begin to take a more impersonal and impartial view of the dispute than he does if he is only an adviser, and therefore in almost a special pleader's relationship. I think the same is undoubtedly true of the labor side.

The CHAIRMAN. My experience is that where you have a board composed of officials who are paid a full salary and other members of the board are paid a per diem, there is apt to be conflict in the feeling that the full-paid officials have superior rights, and are apt to assume them and proceed without consulting those who are on a per diem basis on the board.

Secretary PERKINS. In this proposed board you have self-interest motivating both sides.

The CHAIRMAN. I think if you have one commissioner, one representative of the employers and one representative of the employees, that my objection would not be so sound, but I think with 3 full-paid public officials serving on the commission and the other 4 being called in on a per-diem basis, there is apt to be a feeling that the other 4 are inconsequential in their rights and powers. At another stage we can discuss this section of the bill.

Secretary PERKINS. I think Senator Wagner can tell you more clearly than I can, out of his very large experience this summer, that the problems before the labor board have been so great as to make it physically difficult to handle the number of cases coming before it, and it is highly desirable it should be able to reconstitute within itself a group to hear a special case, and in that group there should be representation of all three parties.

Senator WAGNER. I will discuss that with the committee later on.

Secretary PERKINS. I also wanted to point out, sir, another reason for placing it in the Department of Labor is that the Department of Labor already has a large personnel which could be called into the service of this labor board appropriately, because they are already specialized on certain fields with which this labor board would have to come in contact. They could be called to do this service appropriately, if it were in the Department of Labor, and so save such expenditures that might otherwise be necessary by a growing staff for such a bureau or board.

The CHAIRMAN. I think Senator Wagner would probably agree if this board should be under the direction of any department it should be the Department of Labor.

Senator WAGNER. Yes.

The CHAIRMAN. It isn't necessary, but it could go there.

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Senator WAGNER. I am agreeing with Madam Secretary on that particular phase of it. We rarely differ on anything.

Secretary PERKINS. I want to point out one more thing on this. I do not think the board, if it should be placed in the Department of Labor, should be under the authority of the Secretary of Labor. I want to make that quite clear. I think the board should be appointed by the President and should have the distinction and prestige that comes from such appointment, and the independence from any rule or any imposition of a point of view by the Secretary of Labor. It should be an independent board. The fact it is attached to the Department of Labor would not in any way bring it under the control of the Secretary of Labor, and I do not think it should be.

I think, looking forward into the future, we recognize that this board will be judicial in its nature, and should, therefore, not be dominated by any Secretary or any Secretary's point of view, but that the attachment to the Department of Labor, as a purely administrative function, would be relatively simple.

Senator Wagner will recall in the Department of Labor in the State of New York there exists a judicial board appointed by the Governor, not responsible to the Commissioner of Labor in any way, and yet able to call on the Commissioner of Labor for such services and personnel as it needs, and the Commissioner of Labor is obliged to give them such services. It has worked out in a very satisfactory way for the particular judicial function which has to be performed there, and has made a minimum of cost and of conflict.

The CHAIRMAN. We have such a board in Massachusetts, in the department of industry and labor.

Secretary PERKINS. Yes. That is similar and is appointed also by the Governor and is separate from the Commissioner's authority and has a very definite usefulness.

With regard to the substantive provisions of title I, I think the time has come to review very seriously the responsibility of the Government to various individuals who have taken literally, in the course of the past 9 months, the meaning of section 7 (a) of the Recovery Act. The Department of Labor has investigated over 3,200 complaints against 264 employers where it was charged that there had been discharge and discrimination against individuals because they had attempted to organize a union or an organization of employees independent of the employer. There are other cases I know in the hands of the Labor Board and in the hands of other departments of the Government. These individuals undoubtedly acted, it seems to be clear on investigation, within what they believed to be their rights and their opportunities under section 7 (a) of the National Industrial Recovery Act.

The Government and Congress certainly has an obligation to people who find themselves in that position, who are discriminated against, and there should, therefore, I think, be some clear definition of just what the responsibility and responsibilities, opportunities, and obligations of both parties to this contract are. Workers should be reassured and reconfirmed in the rights of free speech, free assembly, free association in any organization of their choice, and the right to elect representatives to represent them in the details of their collective bargaining, and there should be some clear definition by Congress that the management itself cannot interfere or intervene in the free choice of the workers of their representatives.

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We have used the term "company-dominated union", for want of a better term. That is almost identical with what we mean by the term which is used when they speak of the captive mines. It is a union or an organization formed by the ownership or management of the company, dominated in its policies, and in many cases the officers salaried or paid on time by the employer. No such organization can, or course, exercise really independent judgment with regard to the major issues and the major points of difference between the employers and employees in that plant or in any industry.

The free opportunity for organization of the workers for purpose of being represented in a collective bargain is, it seems to me, essential to the further development of a sound industrial relationship in the interests of all of the people of America.

We are now in a transition period in our history and in our economic life. There is no reason why a people who are committed as we are to the conception that by the proper use and employment of political democracy we can solve our problems cannot avoid the major injustices which people have suffered under any other transition periods. I am not one of those who think that industrial dispute is necessarily wrong or always disastrous. There is a natural conflict of view in many aspects of life which springs up, and there must be a settlement of that conflict. It must be settled either by the economic action of those who are in control on either side, or it must be settled by some appeal to a constituted judicial procedure. It may sometimes involve utilization, and probably should involve the maintenance of both methods and both techniques, but unless we have an orderly judicial process there will assuredly always be the appeal to economic force even at times when it is not necessary and not wise, and when it involves an unnecessary hardship upon the whole community as well as upon those who are parties to the dispute. A useful and practical alternative is desirable—the public interest.

Therefore it seems to me that this session of Congress should give very great heed to the possibilities of the further development of the judicial method as an opportunity for the settlement of such industrial disputes as can be properly settled by the judicial method.

The CHAIRMAN. Are there any questions by the committee? If not, Madam, let me express the thanks of the committee for your able presentation and to express the hope that we may keep in touch with you and have your further advise and cooperation.

Secretary PERKINS. I shall be very glad to keep in touch with you.

The CHAIRMAN. Is Dr. Francis J. Haas in the room?

Senator WAGNER. He is coming here tomorrow.

The CHAIRMAN. Milton Handler, general counsel National Labor Board and professor of law at Columbia University.

STATEMENT BY MILTON HANDLER, GENERAL COUNSEL TO THE NATIONAL LABOR BOARD AND PROFESSOR OF LAW AT COLUMBIA UNIVERSITY

The CHAIRMAN. Your full name, please.

Mr. HANDLER. Milton Handler.

The CHAIRMAN. And your present occupation or profession?

Mr. HANDLER. General counsel to the National Labor Board, professor of law at Columbia University.

The CHAIRMAN. How long have you been general counsel?

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Mr. HANDLER. Since October 8, 1933.

The CHAIRMAN. We will be pleased to have your views in regard to this legislation.

Mr. HANDLER. If it please the members of the committee, I should like to review briefly the experience of this board since its establishment on August 5, 1933, last year, and to acquaint you with some of the difficulties under which it has labored, to explain the need of new legislation and to analyze some of the important features of the pending bill.

I have with me in my brief case some of the documents you requested in the testimony of Senator Wagner, which I should like to present to the reporter, if I may.

The CHAIRMAN. Yes; you may leave them with the secretary.

Mr. HANDLER. The present Board was established primarily as a board of mediation to compose industrial disputes, and for that reason it was organized on a bipartisan basis, with equal representation to labor and to industry, with an impartial chairman at its head. The volume of disputes during the early phases of the recovery program required the establishment of regional or local boards throughout the country in order to handle this tremendous volume of cases.

The CHAIRMAN. Do the regional boards act in those cases that are referred to them by the Federal board here?

Mr. HANDLER. Well, we have worked out a procedure whereby cases come before the Board either on the complaint of the parties or on the motion of the Board, and when a dispute arises either our boards in the field may take action on their own motion, or the cases may be referred to them by the Department of Labor, or they may be referred to them by the administrative staff of the Board. We have worked out necessarily a complete and whole-hearted cooperation between the Department of Labor and the administrative tive staff of the Board in order to avoid duplication of effort in any of these cases.

The CHAIRMAN. I do not quite understand what the regional board does.

Mr. HANDLER. Well, the regional boards are composed of equal representatives of management and labor under the head of an impartial chairman.

The CHAIRMAN. Do they first try to settle any local trouble, and if they are unable to settle it, it comes to the larger and central board here in Washington?

Mr. HANDLER. Precisely. The Board has assembled a staff of competent mediators whose function it is of adjust the disputes in the field, in cooperation with the regional boards.

Senator DAVIS. How many conciliators have you?

Mr. HANDLER. We have approximately 10.

Senator DAVIS. May I ask you what they receive monthly? Are they all on a per-diem basis or a monthly salary?

Mr. HANDLER. Some are on both, but I do not have those details just now, Mr. Senator.

The CHAIRMAN. You will furnish us with that information?

Senator DAVIS. Will you produce it for the record?

Mr. HANDLER. I will be delighted to.

The CHAIRMAN. You might let us have a record of the complete personnel of the organization. I suppose there is no objection to that, Senator Wagner?

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Senator WAGNER. Of course not.

Senator DAVIS. Mr. Chairman, I would like to have the decisions that have been made by the Board inserted in the record at this point.

Mr. HANDLER. I have them with me.

Senator WAGNER. All the decisions?

The CHAIRMAN. All the decisions made by the Board you mean?

Senator DAVIS. Yes; if they have them.

Senator WAGNER. That would make a volume in itself.

The CHAIRMAN. Will the Public Printer have sufficient paper? He says they are very voluminous.

Senator DAVIS. A digest would not be out of place, would it, Senator?

Senator WAGNER. We can give that. I don't know as you want them all printed in the record.

The CHAIRMAN. You do not want a written transcript of all the decisions?

Mr. HANDLER. We have the decisions of the Board.

Senator DAVIS. I just want a digest.

The CHAIRMAN. We have asked for a number of cases already. Now we would like to have the decisions, whether or not there was a settlement made, and just briefly what it was. Is that right, Senator Davis?

Senator DAVIS. That is right.

Mr. HANDLER. I might state the decisions of the Board are now in the hands of the Public Printer and they are going to be published in a volume.

Senator DAVIS. If they are it is not necessary to put in here.

Mr. HANDLER. So they will be readily available.

Senator DAVIS. That is all right.

Mr. HANDLER. The Board also has a compact administrative staff which has been set up to supervise the work of the regional boards, to control the field work, prepare the hearings before the full Board, to conduct research and advise the Board on the legal phases of the problems that are presented to it, and to supervise the compliance with the Board's rulings.

Now, while the Board was initially designed to mediate industrial disputes, it has served as a board of arbitration in cases where joint submissions were voluntarily made to the Board, and in the course of time it took on a new function, namely the enforcement of section 7 (a) of the Recovery Act.

Now, the strength and the weaknesses of the present Board can be illustrated by an illustration of the way in which a typical case has been handled by the Board, if the members of the committee would be interested in my doing so.

The CHAIRMAN. We would be pleased to have you.

Mr. HANDLER. Relying upon the provisions of section 7 (a) of the act, the workers in a plant form their organization. Upon refusal of the employer to recognize——

The CHAIRMAN. You are giving a specific case now?

Mr. HANDLER. Yes.

The CHAIRMAN. Without mentioning names?

Mr. HANDLER. Without mentioning names.

The CHAIRMAN. Very good.

Mr. HANDLER. It is quite typical.

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The CHAIRMAN. Very good.

Mr. HANDLER. Upon refusal of the employer to deal with the officials of a union a strike is called. Now as soon as the board learns of the strike it sends a mediator to the field to adjust the dispute, if that be possible. If he fails, the parties are then summoned to appear before the full Board, which is either a regional board or the National Labor Board, depending upon the importance of the case. Strikes have generally been settled along the following lines, after full hearing by the Board: An agreement is made between the parties to the dispute and the Board and it provides typically for the following: First, the strike is called off and the workers are reinstated without discrimination; an election is held to determine who shall represent the workers and to settle this disputed question of the authority of the officials of the union to represent the workers. The employer agrees to bargain collectively with the representatives selected at this election held under the board's supervision and the parties agree to submit all their differences which cannot be settled by negotiation either to a board of arbitration or to the National Labor Board or the regional labor board for final decision. Now in this way the board developed the election by secret ballot under governmental supervision as the administrative device under section 7 (a) for determining the representatives of the employees.

Now the procedure, as you will observe, has been entirely voluntary. In the great bulk of the cases before the board this method has been eminentlysuccessful. The mediators have settled on just and equitable terms innumerable strikes in the field, and the mere existence of this administrative machinery, the local and national boards, has been responsible for the averting of countless disputes.

Now, difficulty has arisen where the parties have refused to appear before the Board, where the terms of settlement proposed by the Board have been rejected, where the employers have refused to furnish the Board with their payrolls and the cooperation which is essential if a fair and reliable election is to be held, and finally, where the hearings disclosed violations of the statute. In the last instance the lack of power on the part of the Board to enforce its decision, and its inadequate facilities for the detection of violations, have made it difficult to enforce the law with desirable vigor and promptness.

Now, these difficulties are explicitly dealt with by the present bill. One of the major purposes of the bill is to provide the necessary machinery for the amicable adjustment of labor disputes. The mediation powers of the Board are continued, and, in my opinion, very properly so. Mediation is most successful when undertaken by a single individual. For this reason it is contemplated, under the bill, in continuation of our past practice, of having an experienced staff of mediators for field work. But where such mediation fails, and it does fail in many cases, unless there is to be a continuation of strife, it is imperative that there be some agency with adequate prestige to intervene in the interest of the public, and to bring about a peaceful settlement. It is for that reason that I urge that the bill remain the mediation functions of the present Board.

I can illustrate the importance of the mediation function by referring to a case which is pending before the board today. A serious dispute is pending in the automobile industry. A single mediator, either of our Board or a conciliator of the Department of Labor, is powerless

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to handle a dispute of such magnitude. Now we send in every case an individual into the field, a man who is trained in industrial relations and who, in the overwhelming majority of the cases, is able to effect settlement. But there must be some agency of the Government to which resort can be had where the single individual, the mediator or conciliator, fails, and unless this board is given that mediation power there will be no agency to handle a dispute which cannot be settled by a mediator. Without granting those functions to this board, the result would be that such disputes would remain unsettled until the parties were worn out by their strife or until one had prevailed over the other as a result of brute strength.

I might add that the main function of this Board and the real reason for its establishment was to compose those differences that were threatening the recovery program, to settle that multitude of strikes that occurred during the summer, disputes which the mediators and conciliators were unable to settle themselves.

Now, a national board, commanding public respect, can, by reason of its high office and detachment, inquire into the facts and propose an equitable basis of settlement, and informed public opinion is all that is necessary to enforce its decisions. Such a board must be composed of several impartial representatives of the public, in order that it possess the disinterestedness essential to command public respect.

Now, the bipartisan aspect of the Board, with a representation of labor and industry, is chiefly valuable in the peaceful settlement of disputes, in the exercise of the mediation functions of the board. When it comes to the purely judicial work of the Board, where you are inquiring into questions of law violation, obviously the value of the layman is somewhat diminished. They contribute greatly to an understanding of the problem, but you must have a corps of disinterested public representatives who are competent by training and experience to handle questions of law and judicial problems that arise in such cases.

The CHAIRMAN. That is a good distinction. I suppose that is the reason for constituting the board as suggested?

Mr. HANDLER. Yes. Experience has demonstrated that the power of subpena is essential in order to bring recalcitrant parties before the board. Otherwise the aims of the statute can be frustrated in the very cases requiring the intervention of a disinterested and responsible agency of the Government.

I should like to expand that, if I may. Where you get a very serious industrial dispute, where feeling runs very high, and where there is considerable bitterness, the man who goes out in the field is unable to bring the parties together. Now without the power of subpena, the board has found that in such cases, where intervention is imperative and necessary in the public interest, one of the parties would fail to respond to its invitation to appear before the board, to permit the board to furnish its good offices in the settlement of that dispute. Now, to my mind it is imperative that the board have the power of subpena in such cases, to call the parties together for a free and frank discussion of the difficulties. There is no compulsion whatsoever about such a procedure. The only compulsion is to have them come down and sit around the table and discuss their difficulties in the presence of a governmental body.

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Senator DAVIS. If the Division of Conciliation in the Department of Labor had such power as you are asking now for the National Labor Board, wouldn't the Division of Conciliation be able to act just the same?

Mr. HANDLER. I think not, Mr. Senator, for this reason: That in these disputes of national scope, it is important that you have a board of the prestige such as the present Board, composed as it is of the leading members of both labor and management, and under the high supervision and leadership of the Senator.

Senator DAVIS. The Division of Conciliation is national in its scope.

Mr. HANDLER. Yes, but it does not command the same respect and prestige.

Senator DAVIS. Why should not it command the same respect? It is a governmental bureau, it has the Secretary of Labor to back it up—and that appointment is made by the President, just as you are arranging to make the National Labor Board here.

Mr. HANDLER. I might answer that by saying that your point illustrates the necessity for having the bipartisan representation on the Board. With the highest respect for the Department of Labor and its Division of Conciliation, it does not, in the public estimation, command the respect and confidence of men such as Mr. Swope, Mr. Green, Mr. Lewis, and the like.

Senator DAVIS. Yes; but the act creating the Department of Labor could be amended to give the President the right to appoint the men, if they want, and they could be a part of the Department of Labor and the Board would have the power of a Cabinet officer back of them, rather than they being more or less an independent board, such as is proposed in this act. It isn't, after all, so much the man as it is the governmental power back of it.

Mr. HANDLER. If I may state my personal opinion, as long as you have a governmental body, there is room for a difference of opinion as to whether it should be an independent agency, with all the respect that an agency which is independent of any department commands, or whether it should be a part of a department of the Government.

Senator DAVIS. It doesn't make any difference where it is. I cannot understand why we want to create two boards to do the same work.

Mr. HANDLER. Well, I do not believe that they do the same work. Of course this board is going to have these powers of conciliation and mediation powers.

Senator DAVIS. Well, those powers could be granted to the particular board by amending the act creating the Department of Labor.

Mr. HANDLER. That would merely mean having a National Labor Board in the Department of Labor, rather than as an independent agency of the Government.

Senator DAVIS. That is right.

Mr. HANDLER. My own opinion is it will command a much greater respect if it is entirely independent of any executive department.

Senator DAVIS. Well, you say an independent board, independent of a Cabinet officer, will command greater respect than one that is in a bureau without a Cabinet officer at the head?

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Mr. HANDLER. I believe so. Of course the bureau takes on the appearance of a mere appendage to a great department.

Senator DAVIS. Then you are developing a new board without any experience, and you have 16 or 17 years' experience back of the Department of Labor.

Mr. HANDLER. Well, there has been the closest cooperation between the two, and all the mediators are men of great experience and training.

Senator DAVIS. Why have that close corporation when one division can do it?

The CHAIRMAN. Are you through?

Senator DAVIS. Yes.

The CHAIRMAN. I infer from what you say, that the employer and employee is psychologically affected very much by whether the decision made in his dispute is by some department employees as now in the Department of Labor, or whether it is made by a board directly constituted and appointed by the President of the United States.

Mr. HANDLER. Yes. I think a close analogy would be whether you would want the Interstate Commerce Commission as an independent agency, or whether you would want to put it in the Department of Commerce as an appendage of that department.

The CHAIRMAN. The first part of the question by Senator Davis was to the effect that he thought that these powers that are proposed in this bill should be given to the bureau now in the Department of Labor, and I take it that your answer to it was that such a method does not command the attention, the respect, and the solemnity that a decision affecting their rights would command by an independently constituted board?

Senator DAVIS. In other words, following that along, you must have a lot of window dressing, and stage setting to enforce a governmental decree.

Mr. HANDLER. I do not think I should agree with that. I think if a board exercising judicial functions is to command the highest respect, it ought to be put on an entirely independent basis.

Senator DAVIS. My own opinion is, having some little knowledge, and watching it since the department has been organized, that I do not know a man in the United States that could command greater respect than the Director of Conciliation in the Department of Labor. I think he is the best authority in the United States on that particular subject.

Mr. HANDLER. I would agree without reservation to that, Mr. Senator.

Senator DAVIS. You would what?

Mr. HANDLER. I said I would agree without any reservation to that.

Senator DAVIS. Then why divert from a man who is thoroughly equipped in every way to direct the conciliation, mediation, and arbitration forces of the Government to somebody that has got to learn it all over again?

Mr. HANDLER. I do not believe that the bill diverts any power from him, because most of the conciliation work is going to be carried on by Mr. Kerwin's division. The intention of the mediation clause is to enable it to supplement and to step in where his conciliation has been unsuccessful.

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Senator DAVIS. You have 10 conciliators under the National Labor Board, you have 30 in the Department of Labor, in the Division of Conciliation; that is 40. Why could not they be all together? This is all industry, your troubles all come from industry, and they are in touch with industry, they have the machinery to reach industry, and the men who are affected by it know that it is the Labor Department and they would want to go there to have it adjusted.

The CHAIRMAN. Senator Wagner would like to ask a question.

Senator WAGNER. Professor, in some of the questions that have come before the Labor Board for judicial determination, there is the implication of cases coming before the United States Supreme Court? I mean there are great property rights involved, and they are important questions of national policy that are involved, which are way beyond a mediator in a department, and would not it be almost like attempting to put the United States Supreme Court, a body of that type, or the Interstate Commerce Commission as a bureau in a department, with these great industrial questions, which are the most important, I think, now in our whole economic life coming up for a solution? Would a bureau in a department be the proper place for the solution of these great controversies?

Mr. HANDLER. I should think not, Senator.

Senator DAVIS. After all, wouldn't it be this, that the parties who are aggrieved, who are depending on a decision from the National Labor Board, have the right to appeal to the Supreme Court, and after all the National Labor Board is more or less a bureau in the Government, compared to the Supreme Court of the United States?

Mr. HANDLER. I think it is going to develop in time as the ultimate tribunal for the settlement of industrial disputes.

Senator WAGNER. I do not think the Senator is sufficiently familiar with the work of the board.

Senator DAVIS. Couldn't you have just as competent men in the Division of Conciliation as you have in the National Labor Board?

Mr. HANDLER. I do not believe it could work that way without the independence that is necessary.

The CHAIRMAN. Has the amount of this work, I will ask you, Senator Wagner, grown in tremendous volume since the N. R. A.?

Senator WAGNER. Yes.

Mr. HANDLER. Oh, yes.

The CHAIRMAN. I mean the work that the Department of Labor performed in the past is insignificant with the tremendous amount of work that has come out of the N. R. A.

Mr. HANDLER. The volume of work increased tremendously. It was entirely beyond the power of the Department of Labor to handle it.

Senator DAVIS. How many workers have you had out on strike at one time under the N. R. A.?

Mr. HANDLER. I do not believe any such figures have ever been collected, Mr. Senator.

Senator DAVIS. Could you give the Committee an estimate?

Mr. HANDLER. I am afraid I could not.

Senator DAVIS. What would be your highest estimate of the number that were out on strike at any one time under the N. R. A.?

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Mr. HANDLER. I could not estimate it, because there are strikes that occur in industries that are not under codes, local strikes and national strikes, and the situation varies from hour to hour.

The CHAIRMAN. I suppose, Senator, it would be more important, perhaps, to know the number of strikes, rather than the number of employees.

Senator DAVIS. I am asking that for my own information.

The CHAIRMAN. Or the percentage.

Senator DAVIS. Would you have 1,200,000? Have you had that many out at one time?

Mr. HANDLER. I should think it would not reach that magnitude.

Senator DAVIS. Well, I have seen it in the Department of Labor, with the entire coal and railroad industries closed down, and that was satisfactorily adjusted by the Department of Labor.

Mr. HANDLER. Well, the President, with the aid of Congress established in the railroad——

Senator DAVIS. Just a minute now. We are talking about the Department of Labor not being qualified to adjust labor disputes. I have seen the textile industry on strike, and they adjusted it. I have seen the entire coal fields down, and they adjusted it. I have seen pretty nearly the entire Brooklyn shoe industry out on strike, and they adjusted it. I have seen nearly every ship that came into our ports, tied up by strike, and they adjusted it. I have seen the glass industry at a standstill, and they adjusted it.

Mr. HANDLER. Mr. Senator, I yield to no one in my high and exalted respect for that division in the Department of Labor. The precedent for this bill is the Railway Labor Act, where you do have an independent agency. The purpose of this body, don't you see, is primarily judicial, to pass upon the violations of the statute, and it is mediatory where the Department of Labor has been unable to effect a settlement. The fact remains that sometimes the Department is unable to effect a settlement, and in such case you need a Board of this composition to bring about a proper settlement.

Senator DAVIS. Well, let us take the Standard Oil, for instance. They have a collective bargaining scheme in which the Secretary of Labor is the last word, is the so-called "Supreme Court" of the Standard Oil industry. I know for 12 or 13 years, since that has been put into effect, there has not been an appeal from the Secretary of Labor to the Supreme Court of the United States. They, the Labor Department, have adjusted all these disputes in the Standard Oil, as well as those strikes in other particular industries. I cannot quite understand, if there is an appeal to be taken, why it could not go from the Labor Department to the Supreme Court, as well as it could go from the Labor Board to the Supreme Court.

The CHAIRMAN. What is the wish of the committee? Would you like to sit beyond the present hour? Perhaps we ought to finish with this witness anyway.

Let me say, Senator, I think if it is possible we ought to try to work out legislation that will establish some governmental agency that will prevent or arrest the losses and disturbances that result from strikes, by settling threatened strikes.

Senator DAVIS. Mr. Chairman, I am in accord with you.

The CHAIRMAN. It is rather easy to settle a strike after it happens, because one or the other has got to give in ultimately.

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Senator DAVIS. That is right.

The CHAIRMAN. What we should seek is the creation of a governmental organization that will prevent strikes, that will check them before the workers are out on the street and their families obliged to suffer.

Senator DAVIS. I am in accord with you on that. I would like to ask one other question before we adjourn, if I may. Is it your idea that this tribunal, in the matter of adjusting industrial disputes, be more or less of a supreme court in industry, to be a part of the judicial system of the country?

Mr. HANDLER. No; it is an administrative agency with the power to find facts. A full and ample court review will be provided for by the statute.

Senator WAGNER. The bill, if the Senator will take the time to read it, clearly sets forth exactly what the purpose of the creation of the board is.

Senator DAVIS. I desire to say to the Senator that I have spent more time reading this bill than any bill pending in Congress, because I believe this bill is very close to the hearts of the working men and women of America. It is for that reason that I am interested.

Senator WAGNER. I am glad to have the Senator's cooperation.

Senator DAVIS. I have always given the Senator my cooperation in these matters, and as I understand the administration, they want friendly criticism and wholesome suggestions, in order that we might have a perfected bill.

The CHAIRMAN. The chairman is glad to see the spirit of the Senate prevailing in the committee.

Can you finish in a short time, Mr. Handler? We have diverted you, I am afraid.

Mr. HANDLER. I think I can finish in 5 or 10 minutes.

The CHAIRMAN. Proceed.

Senator DAVIS. I will not interrupt you any more.

The CHAIRMAN. Your interruptions are helpful, Senator.

Mr. HANDLER. For the enforcement of the law, added powers are needed. Enforcement, to be effective, must be speedy. Under the present statute, interminable delays have resulted from the fact that numerous administrative hearings have been held by agencies without power to enforce their decisions. The courts cannot be relied upon exclusively for the enforcement of legislation dealing with the delicate problems of industrial relations. Hence the need of an administrative agency with the power to issue orders enforcible in the courts.

It has been claimed that unprecedented powers are vested in the proposed board. This criticism springs from a misconception of the functions and nature of an administrative body. The procedure of an administrative body must be flexible. If it is to be effective, it must not be restricted by the technical rules of pleading, practice, and evidence, which prevail in the courts. It must have the power to proceed on its own motion, or upon complaint. It must apprise the respondent of the nature of the offense with which he is charged, it must afford him a full and fair hearing, its order must be definite and precise—and the bill so provides—but there is no need for its pleadings possessing the attributes of criminal pleading, or for its hearings to be as formal as a court trial. It must not be forgotten that the orders of the board are not self-executing; they can only

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be enforced in the courts and they will only be enforced if the constitutional rights of the parties to a fair hearing are scrupulously observed. The board can merely proceed upon the evidence submitted, and an order which is not based upon the evidence would not stand up in the courts.

The administrative provisions of the statute are modeled upon those of similar administrative agencies created by Congress with some modifications designed to avoid some of the difficulties experienced by such agencies.

The power to compel the attendance of witnesses and the production of books and papers is no broader than those habitually conferred upon administrative bodies. The complaint must state the general nature of the offense charged. The complaint may be amended during the hearing—but so may court pleadings under our modern procedure in the absence of surprise. It is unthinkable that the Board would not afford a full opportunity to the parties to respond to the issues developed at a hearing. If it failed to do so, no court would affirm its rulings. Effective administrative action requires an informal procedure, but the right of court review adequately protects against any abuse of power.

The findings of fact by the Board should be conclusive upon the courts; otherwise there would be endless trials of the same issues, and there would be no point to an administrative determination. The bill provides for hearings either in Washington or the field in order to suit the convenience of the parties or witnesses, and to permit the adjustment of disputes and the investigation of cases in the locality where they occur. The bill contemplates hearings shortly after the service of the complaint, as speed is imperative in this type of dispute. Flexible provisions for service of processes have been adopted, but adequate notice is afforded.

The effectiveness of administrative bodies has frequently been impaired by the raising of objections in the courts which were not presented to the Board. In all fairness, the Board should have an opportunity to pass on all objections in the first instance. Similarly if after the order is presented to the court, it becomes desirable to adduce additional evidence, the case should be returned to the Board for further hearing.

An additional method of enforcement is provided for in the form of suits in equity by the Attorney General to restrain violations of the statute. There are cases where immediate relief may be needed and where there is not sufficient time for following the procedure prescribed for the issuance of orders.

The conflicting interpretations of section 7 (a) and the current misunderstanding of its provisions require supplementary legislation clarifying its provisions. The bill in sections 4 and 5 does little more than clarify section 7 (a) and accords with the administrative interpretation of the statute by the present Board. Section 7 (a) confers the right of collective bargaining upon employees; it does not expressly impose reciprocal obligations upon employers. Nor does it define collective bargaining. The bill, on the other hand, in section 5 (2) makes explicit what is implicit in 7 (a), namely, that employers are obligated to exert every reasonable effort to make agreements with their employees. Section 7 affords freedom in the choice of representatives, but it does not expressly provide that employees may be repre-

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sented by a union. The bill defines representatives as including unions. The right of employees to be represented by those not in the company's employ has been questioned in many cases before the Board. The bill in section 4 clearly indicates that there is no restriction upon the choice of representatives.

The meaning of interference, restraint, and coercion as used in section 7 has caused much difficulty. The bill employs language that is at once broader and more specific. A troublesome question has been whether the initiation and participation of the management in the creation of company unions is an act of interference within the meaning of section 7 (a). This is cleared by the specific prohibitions in the bill against the participation of the management in any labor organization, which are predicated upon the principle that an agent cannot serve two masters.

There are various questions of substantive law covered by the statute which I should like to discuss, but as time is lacking, I shall merely enumerate them, and I shall be happy to discuss them at some future time, such as—

(1) Recognition of representatives (sec. 5 (2)).

(2) Discrimination regarding wages, hours, tenure of employment, reinstatement.

(3) Validity of closed-shop agreements.

(4) Effect upon company-union plans formulated in anticipation of the statute. (See sec. 304 (b).)

(5) Reinstatement of employees discharged for union activity.

(6) Premature elections by employers to prevent unionization.

(7) Participation of strikebreakers in elections.

(8) Payment of back pay in cases of discriminatory discharges.

(9) Validity of lock-outs to prevent unionizat ı, and so forth.

There are many technical questions of procedure and administrative action which I should be glad to discuss at a later hearing.

The CHAIRMAN. We want to thank you very much. We will be free to call on you again?

Mr. HANDLER. Yes, Mr. Chairman. I will leave the documents with the secretary.

The CHAIRMAN. Very well.

(The documents referred to by Mr. Handler are as follows:)

NATIONAL RECOVERY ACT (SEC. 7 (A) (B))

[PUBLIC—No. 67—73D CONGRESS]

[H. R. 5755]

AN ACT To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of, America in Congress assembled,

TITLE I.—INDUSTRIAL RECOVERY

SEC. 7. (a) Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that

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no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

(b) The President shall, so far as practicable, afford every opportunity to employers and employees in any trade or industry or subdivision thereof with respect to which the conditions referred to in clauses (1) and (2) of subsection (a) prevail, to establish by mutual agreement, the standards as to the maximum hours of labor, minimum rates of pay, and such other conditions of employment as may be necessary in such trade or industry or subdivision thereof to effectuate the policy of this title; and the standards established in such agreements, when approved by the President, shall have the same effect as a code of fair competition, approved by the President under subsection (a) of section 3.

Creation of National Labor Board

1. Statement of the President, August 5, 1933.
2. Statement of N.R.A., through its industrial and Labor Advisory Boards.
3. Statistics of work of National Labor Board.
4. Executive orders creating the present National Labor Board.

1. Statement by the President, August 1933

"Of importance to the recovery program is the appeal to management and labor for industrial peace, which has just been sent to me for approval.

"With compelling logic, it calls upon every individual in both groups to avoid strikes, lockouts or any aggressive action during the recovery program.

"It is a document on a par with Samuel Gompers' memorable war-time demand to preserve status quo in labor disputes, and in addition to the signature of the president of the American Federation of Labor it carries the signature of every great labor leader and every great industrial leader on the two advisory boards of the Recovery Administration. It is an act of economic statesmanship. I earnestly commend it to the public conscience.

"This joint appeal proposes the creation of a distinguished tribunal to pass promptly on any case of hardship or dispute that may arise from interpretation or application of the President's reemployment agreement. The advantages of this recommendation are plain and I accept it and hereby appoint the men it proposes whose names will carry their own commendation to the country."

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2. Announcement by the National Recovery Administration

August 5, 1933.

Creation of a National Board of Arbitration to mediate disputes or controversies between employers and employees arising through differing interpretations of the President's reemployment, was announced today by the National Recovery Administration's Industrial and Labor Advisory Boards.

The announcement includes an appeal to labor and industry alike for a moratorium on disputes which would impede the progress of the President's recovery program. It reads as follows:

"The country in the past few weeks has had remarkable evidence of cooperation in the common cause of restoring employment and increasing purchasing power. Industrial codes are being introduced, considered, and put into effect with all possible dispatch, and the number of firms coming under the President's reemployment agreement is inspiring.

"This gratifying progress may be endangered by differing interpretations of the President's reemployment agreement by some employers and employees.

"The Industrial and Labor Advisory Boards jointly appeal to all those associated with industry—owners, managers, and employees—to unite in the preservation of industrial peace. Strikes and lockouts will increase unemployment and create a condition clearly out of harmony with the spirit and purpose of the Industrial Recovery Act. Through the application of the act the Government is sincerely endeavoring to overcome unemployment through a Nation-wide reduction in the hours of work and to increase purchasing power through an increase in wage rates. This objective can only be reached through cooperation on the part

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of all those associated with industry. In order to develop the greatest degree of cooperation and the highest type of service on the part of management and labor, we urge that all causes of irritation and industrial discontent be removed so far as possible; that all concerned respect the rights of both employers and employees; avoid aggressive action which tends to provoke industrial discord, and strive earnestly and zealously to preserve industrial peace pending the construction and adoption of the industrial codes applicable to all business, large and small. Exceptional and peculiar conditions of employment affecting small employers and others whose business circumstances merit special consideration will be handled with due regard to the facts of the situation and with the desire to achieve increased employment and purchasing power.

"This appeal is made to the sound judgment and patriotism of all our people in the belief that even the most vexatious problem can be settled with justice and expedition where employers and employees act in accord with the letter and spirit of the National Recovery Act, without fear that any just rights will thereby be impaired. In that way only can the reemployment agreement be made to apply with the fairness pending the adoption of the code.

"To protect every interest, it is the unanimous recommendation of the Industrial and Labor Advisory Boards of the National Recovery Administration that a board to which differences may be referred should be created, this board to be made up of the following members: Hon. Robert F. Wagner, United States Senator from New York, chairman; Dr. Leo Wolman, chairman of Labor Advisory Board of N.R.A.; Walter C. Teagle, chairman of Industrial Advisory Board of N.R.A.; William Green; John L. Lewis; Gerard Swope; Louis E. Kirkstein.

"This board will consider, adjust, and settle differences and controversies that may arise through differing interpretations of the President's reemployment agreement and will act with all possible dispatch in making known their findings. In return, employers and employees are asked to take no disturbing action pending hearings and final decision. This board will promptly proceed to establish such central and local organizations as it may require to settle on the ground, such differences as arise in various parts of the country."

WALTER C. TEAGLE, GERARD SWOPE, LOUIS E. KIRSTEIN, DAVID R. COKER, W. F. VEREEN, HENRY H. HEIMANN, AUSTIN FINCH, R. L. LUND, JOHN B. ELLIOTT, EDWARD N. HURLEY, ALFRED P. SLOAN, JR., JAMES A. MOFFET, HENRY I. HARRIMAN,
Industrial Advisory Board.

LEO WOLMAN, WILLIAM GREEN, JOHN FREY, G. L. BERRY, JOHN L. LEWIS, J. A. FRANKLIN, FRANCIS J. HAAS, SIDNEY HILLMAN, ROSE SCHNEIDERMAN,
Labor Advisory Board.

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3. STATISTICS OF WORK OF NATIONAL LABOR BOARD

NATIONAL RECOVERY ADMINISTRATION

Immediate release, January 6, 1934. Release No. 2599

AFFAIRS OF 600,000 WORKERS HANDLED BY NATIONAL AND REGIONAL LABOR BOARDS

A total of 600,000 workers have been involved in cases which have been handled by the National and regional labor boards, according to tabulations made public today by Senator Robert F. Wagner.

The Board's reports show a high proportion of settlements by agreement, a diminishing number of strikes, increased recourse to the system of labor boards for arbitration, and a diminishing number of cases listed as still pending.

"A total of 350,000 workers were involved in National Board cases to December 15, and about 220,000 in regional board cases", said Senator Wagner. "Since then cases involving 120,000 more have come up. Allowing for duplications the total is about 600,000."

On the latest date (Dec. 15) for which comparable reports had been obtained from the National Board's 17 regional boards the totals involved were as follows:

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	Number of workers involved	Strikes averted	Strikes settled
Atlanta	6,000	7	
Boston	11,000	6	10
Buffalo	687	3	
Chicago	32,663		6
Cleveland	14,700	8	6
Detroit	18,444		73
Indianapolis	4,229		
Minneapolis-St. Paul	10,953	10	6
Newark	3,301		
New Orleans	10,242	8	5
New York	21,087	22	148
Philadelphia	8,800	3	3
Pittsburgh	5,264	9	3
Seattle	7,332	3	
St. Louis	24,031		(7)
San Francisco	38,000	8	(6)
Total	216,733		

In addition, the National Labor Board itself had taken jurisdiction of 155 cases involving 350,000 workers; 97 cases were strikes or lockouts; 104 cases had been settled, largely by agreement; 14 cases were pending; 25 had been referred to regional boards and 6 to the Labor Department or special committees. The National Board had held 43 hearings and supervised 31 elections.

Notable features of the work of the regional boards were the number of strikes averted, 87, and of strikes settled, 273; 11 boards.

"Reports show a continuation of the trend which I first pointed out a month ago," said Senator Wagner. "Namely, a diminution in the number of actual strikes and a corresponding increase in the number of cases submitted before strike or lockout. Recourse to the system of boards for purposes of arbitration also is on the increase. The proportion of cases pending is low. The work of the regional boards has received the congratulations of the National Board and deserves the thanks of the country. Sample reports lying before me read as follows:

"From the New York board, from October 24, when it was appointed, to December 15: Total cases, 170; workers involved, 21,087; strikes settled, 148; strikes averted, 22; arbitration agreed to, 6; workers reinstated following discrimination because of union activities, 552.

"From the New England Regional Board: Cases, 54, involving 11,000; strikes averted, 6; strikes and lockouts settled, 11; elections held, 7; voting, 3,700.

"From the Chicago board: Cases, 69, involving 32,663 workers; 13 settlements by agreement, involving 17,809; 8 strikes pending; 49 cases under investigation, the fact of taking jurisdiction in many instances having averted strikes.

"From Cleveland: 49 cases, from 15 northern Ohio cities; settlements by agreement, 16; decisions and recommendations, 12; 8 strikes averted, involving 6,100; total workers involved, 14,700; returned to work after discrimination for union activity, 300.

"From the Detroit Regional Board: 102 cases, involving 18,444 workers; settlements, 83; number of strikes, 75; settled, 73.

"From New Orleans Regional Board: 13 cases, involving 10,242; strikes and lockouts, 5; strikes averted, 8, involving 8,900.

"The lists of cases read like a roster of the Nation's industries, so varied have been the problems put before the boards. No case has been too small, as many cases involve only 2 or 3 workers; and a single case may involve 70,000. All the while it must be remembered that the boards' members, some 170 men, are volunteers serving under Presidential appointment without compensation, comprising busy industrialists and labor leaders, with impartial chairmen drawn generally from the ranks of universities or the bench.

"Despite certain recalcitrants, the outstanding thing still is the widespread acceptance of this system of settlement of disputes, which was created by Presidential order adopting a joint proposal of capital and labor. Instances of what are termed 'defiances' of the boards naturally make more spectacular headlines than do these quiet labors which, for example, prevent strikes from breaking out and so into the newspapers. Those who do challenge the boards' activities are, I am afraid, people with bad cases and bad consciences. Unquestionably there is a small minority, the same minority which wants all the advantages of the

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National Recovery measures and none of the responsibilities, and to deal with this minority steps will have to be taken to prevent their getting an advantage over the majority which is honestly endeavoring to attain the better industrial relations necessary to recovery and reform."

February 4, 1934. Release No. 3113.

National Recovery Administration (National Labor Board)

LABOR BOARD SYSTEM HANDLED CASES OF 900,000 WORKERS

The affairs of over 900,000 workers, Senator Robert F. Wagner announced today, have been passed upon by the National Labor Board and its regional labor boards in the shape of labor disputes brought before this system of mediation and arbitration. The National Labor Board was set up last August and began to form regional boards late in October.

Tabulations made public by the Board, based on detailed reports from the regional boards, show that the regional boards have handled so far 1,628 cases. Adding the 190 cases of the National Board makes a total of 1,818 cases.

The regional board cases involved a total of 514,321 workers. To this must be added, approximately 400,000 workers in cases brought before the National Labor Board, making a total of 914,000.

"Getting along toward the million mark", said Senator Wagner, "in the number of workers whose representatives and employers have appeared before the Labor Board system proves what a necessary and progressive step the President took in establishing the National Labor Board.

"The fact that the work gets heavier shows another thing, namely, the steadily increasing recourse had to the boards.

"This is pointed out in most of the reports from the 17 regional boards, which I have been examining; labor in established areas continues to resort to the regional boards in preference to striking. Some boards' reports show a greater number of strikes averted than of strikes breaking out. Other boards report a marked increase of strikes in areas to which new organizing movements are extending.

"A number of boards, however, report an increased tendency on the part of a small minority of employers to resist decisions of the boards. Complementarily these boards report an increasing amount of criticism by labor for failure to enforce Board decisions. Boards in widely distant parts of the country report impediments to their work by a minority which is watching 'how certain cases come out.'

"The sum total of impressions based on reports from New England to California is that the overwhelming majority of employers and employees use, trust, and support this system of industrial adjustment."

National Board settlements were 132 cases out of 190. Regional board settlements totaled 1,021 out of 1,628. Combined total, 1,153 settlements out of 1,818 cases. The National Board settled 107 out of 132 strikes.

The percentage of regional board settlements range from 89 percent (New York board) down to 31 percent. The great variation in the success of the boards is attributed, in the regional board reports, to the varying conditions in different communities, principally to the local willingness or unwillingness of parties to abide by Board decisions.

The regional boards' reports show a total of 466 strikes, of which 359 were settled. In addition 169 strikes were averted.

The regional boards have 373 cases pending; the National Board, 27; total 300.

NOTE.—Duplications, of cases involved both in the regional boards' reports and the National Board's report, are canceled out, in the estimate of the Board's statistician, by a very large number of "adjustments" which a number of boards make without recording them in their tabulations as "cases."

Summaries of cases handled by the National Labor Board and regional labor boards follow:

NATIONAL LABOR BOARD SUMMARY, FEBRUARY 1, 1934

Number of cases to date	190
Cases settled	132
Cases referred to regional boards	22
Settlements by agreement	103
Settlements by decision of Board	29

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NATIONAL LABOR BOARD SUMMARY, FEBRUARY 1, 1934—continued

Total workers involved in cases	400,000
Number of strikes	132
Number of strikes settled	107
Cases jointly submitted for arbitration	11
Number of elections held	39
Cases pending	27

It should be noted that 25 cases have been transferred to other boards, of which number many have been settled but not listed as such in this report. This is exclusive of the cases over which the regional boards assume original jurisdiction.

A comparison with the report of December 21, 1933, will show the total number of cases increased 45, or nearly one a day. Thirty-five of these cases had strikes. There has also been an increase in the number of elections held and decisions rendered, the first by 18 and the latter by 15. The number of men involved in the last 45 cases was only 50,000, or an average of only 1,100 men to each case, as compared with the previous figures of 155 cases, involving 350,000 men, making an average of 2,300 men to each case.

Regional Labor Boards' summary to Jan. 31, 1934

Board	Total cases	Cases settled	Total workers	Strikes	Strikes settled	Strikes averted	Cases pending
Atlanta	42	26	9,000	10	5	7	----------
Boston	82	26	18,389	19	11	14	21
Buffalo	31	10	4,197	4	4	7	14
Chicago	113	45	44,673	23	13	8	15
Cleveland	102	46	17,834	6	0	10	56
Detroit	136	114	19,013	78	78	4	22
Indianapolis	95	44	9,244	6	6	16	15
Los Angeles	34	19	28,203	8	5	5	----------
Minneapolis-St. Paul	35	26	23,387	13	13	3	9
New York	319	285	97,913	224	181	35	----------
Newark	66	39	12,338	16	10	15	----------
New Orleans	53	22	65,000	9	9	13	31
Philadelphia	97	74	28,490	21	11	5	23
Pittsburgh	60	41	35,715	10	6	7	15
St. Louis	55	17	43,463	12	----------	6	31
San Francisco	283	277	47,000	7	7	14	6
Seattle	25	10	10,462	----------	----------	----------	15
Total	1,628	1,021	514,321	466	359	169	273

NATIONAL RECOVERY ADMINISTRATION (NATIONAL LABOR BOARD)

Immediate release
February 21, 1934—No. 3414.

NATIONAL LABOR BOARD REPORTS TO THE PRESIDENT

Senator Robert F. Wagner today submitted to the President a statistical report summarizing the work of the National Labor Board system from its inception to February 1. The report reads:

FEBRUARY 21, 1934.

TO THE PRESIDENT: I have the honor to submit a statistical summary of the work of the National Labor Board and of 17 of its 18 regional labor boards.

Disputes involving 914,000 workers have been before the boards, or a total of 1,818 cases, to February 1, of which 69 percent were settled. Altogether about 650,000 workers have been put back to work or kept at work, or had their less acute disputes adjusted.

Included in this total are 599 strikes, of which we have settled 80 percent, besides averting 197 more strikes—a total of 482,500 returned to work or kept at work in strike situtations.

Cases pending are 322, or 18 percent, involving 164,000. About 100,000 workers (or a flat average of 5,500 to a board) come under cases, largely of strikes which dragged on, where no definite solution could be enforced, or of disputes where some adjustment resulted whose terms were not reported to the boards.

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There is a marginal area of settlements through the influence of the mere existence of the boards. Disputants have settled up because it was realized there was a tribunal to which the matter would ultimately have to go.

One half (9,636) of the settlements have been by agreement, and most agreements promise durable peace.

The boards have supervised 97 industrial elections and have had 70 cases jointly submitted for arbitration. The recent increase in arbitration cases bespeaks confidence in the boards.

Altogether the record is a testimonial to the public spirit of the boards' 250 members—all of them busy people, prominent in the affairs of their communities, whose services on the boards are voluntary.

Considered against the background of the disturbed economic conditions when the National Labor Board (Aug. 5) and the regional labor boards (October) began their work, and with the question in mind as to what might have happened had the country lacked this system of mediation and arbitration, the work has won the praise of many commentators. What this record actually reflects is the cooperative attitude and desire for industrial peace of the great majority of employers and employees, who have followed the Board's methods in the adjustment of complicated and contentious affairs. This support of the majority is very reassuring and indicates that the general principles of the boards are soundly based.

The record has a disqueting aspect. Its percentage of settlements is too low, and some settlements have been unsatisfactory. The statistics bear out what the boards in many regions have been reporting for some time; namely, that the willingness to use the boards, displayed by the majority, is encountering the impediment of a small minority whose desire for industrial peace is not uppermost

This impediment is increasing. Certain industrialists' effort to challenge the Board's authority is symptomatic. Far more significant is the fact that three quarters of all the disputes involve complaints of denial of the rights of self-organization and collective bargaining contained in section 7 (a) of the Recovery Act.

Clearer understanding and recognition of these rights and of the National Labor Board's authority seem to be the requirements of the present situation as indicated by our 6 months' experience."

ROBERT F. WAGNER,
Chairman National Labor Board.

With the report, Senator Wagner made public tabulations summarizing the disposition of cases, numbers involved, causes of complaints, etc. He paid tribute to the work of the regional boards which have been established in the following centers: Atlanta, Boston, Buffalo, Chicago, Cleveland, Detroit, Indianapolis, Kansas City, Los Angeles, Minneapolis-St. Paul, Newark, New Orleans, New York City, Philadelphia, Pittsburgh, St. Louis, San Francisco, and Seattle.

"I must direct attention", said Senator Wagner, "to a feature of these boards' quiet work that does not make headlines in newspapers. Their reports include thousands of those difficult problems known as discrimination cases. involving usually but a few men each, yet each requiring infinite patience and skill to determine the facts and to do justice. The regional labor boards reinstated a total of 6,852 workers who had been discharged for discrimination or laid off, or debarred from work for other causes which the boards found unjustified.

"Of the causes of disputes, charges of violation of section 7 (a) of National Industrial Recovery Act not only constituted the principal cause in more than half of all cases, but were corrollary in hundreds of other cases. Next come wage questions. A growing complaint is reduced weekly earnings from the shorter work week under industrial codes.

"Naturally the boards prefer agreements and foster them in every way. The recent increase in the number of settlements by board decisions is disquieting, for it is another indication of resistance to agreements, chiefly evinced by a minority of employers."

Senator Wagner said that a considerable number of reports from regional boards, which he had gone over, directed attention to the fact of "a waiting attitude" on the part of both employers and workers pending the outcome of certain cases which had been before the National Labor Board. "However," he said, "the principal impression, based on reports from New England to California, is that the overwhelming majority of employers and workers use, trust, and support this system of industrial adjustment. The President took a necessary and far-sighted step in establishing the National Labor Board."

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The tabulations cover number of cases to date; cases settled; settlements which were by agreement; settlement by decision; total of workers involved in cases; workers reinstated (exclusive of strikes) in discrimination cases; cases pending; total of strikes with workers involved; total strikes settled, with workers involved; total strikes averted, with workers involved; complaints of violation of section 7–a; complaints involving wage demands; complaints involving reduced weekly earnings; number of elections; number of joint arbitrations.

(Duplication of cases involved in both regional boards and the National Board's reports are canceled out, in the weighted estimates, by a very large number of adjustments which a number of boards made without reporting them in their tabulation of "cases.")

TABLE I.—*Regional labor boards' summary*

	Total cases	Cases settled	Agreements	Decisions	Total workers	Reinstated	Cases pending
Atlanta	42	26	17	7	9,000	100	----------
Boston	82	26	11	8	18,389	0	21
Buffalo	31	10	7	3	4,197	4	14
Chicago	113	45	31	7	44,673	2,098	15
Cleveland	102	46	34	12	17,834	317	56
Detroit	136	114	101	13	19,013	5	22
Indianapolis	95	44	35	3	9,244	1,808	15
Los Angeles	34	19	14	5	28,203	9	3
Minneapolis-St. Paul	35	26	21	5	23,387	205	9
New York	319	285	146	119	97,913	1,793	34
Newark	66	39	23	16	12,338	16	----------
New Orleans	53	22	13	9	65,000	49	31
Philadelphia	97	74	50	10	28,490	115	23
Pittsburgh	60	41	25	15	35,715	52	15
St. Louis	55	17	0	17	43,463	----------	31
San Francisco	283	277	0	0	47,000	200	6
Seattle	25	10	5	5	10,436	81	----------
Total	1,628	1,121	533	254	514,295	6,852	[1] 295

[1] Incomplete.

TABLE II.—*Regional labor boards' summary*

	Total strikes	Workers involved	Strikes settled	Workers involved	Strikes averted	Workers involved
Atlanta	10	5,100	5	1,600	7	6,000
Boston	19	2,694	11	2,026	14	7,861
Buffalo	4	430	4	430	7	3,066
Chicago	23	17,667	13	13,966	8	14,848
Cleveland	6	8,300	0	0	10	7,750
Detroit	78	16,250	78	16,259	4	597
Indianapolis	6	1,964	6	1,964	16	4,729
Los Angeles	8	9,241	5	5,515	5	7,200
Minneapolis-St. Paul	13	18,312	13	18,312	3	4,870
New York	224	30,966	181	23,036	35	5,444
Newark	16	4,610	10	1,597	15	2,814
New Orleans	9	1,852	9	1,852	13	10,510
Philadelphia	21	15,083	11	10,940	5	4,143
Pittsburgh	10	5,361	6	3,347	7	8,079
St. Louis	12	16,240	12	14,943	6	1,800
San Francisco	7	16,180	7	16,180	14	15,695
Seattle	1	183	----------	----------	4	159
Total	467	170,442	371	131,967	173	105,565
National Labor Board	132	325,000	107	213,000	24	33,500
Grand total	599	495,442	478	344,967	197	139,065

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TABLE II.—*Regional labor boards' summary*

	Total cases	Sec. 7-a	Wage demands	Reduced earnings	Elections	Joint arbitration
Atlanta	42	34	2	2	30	4
Boston	82	43	26	4	7	3
Buffalo	31	30	1		0	1
Chicago	113	57	21			
Cleveland	102				1	2
Detroit	136	41	95	0		
Indianapolis	95	92	2	1	0	2
Los Angeles	34				3	2
Minnesota, St. Paul	35	30	5	0		
New York	319	251	16	10	7	10
Newark	66	60	8		2	10
New Orleans	53	28	25		0	11
Philadelphia	97	46	24		5	
Pittsburgh	60	50	2	1	1	0
St. Louis	55		7	1	0	2
San Francisco	283	9		24	1	8
Seattle	25	6	7		1	4
Total	1,628	[1] 777	[1] 241	43	58	59

[1] Incomplete.

TABLE IV.—*National and regional labor boards' summary*

	Total cases	Cases settled	Agreements	Decisions	Total workers	Cases pending
National Labor Board	190	132	103	29	400,000	27
17 regional labor boards	1,628	1,121	533	254	514,295	295
Grand total	1,818	1,253	636	283	914,295	[1] 322

	Total strikes	Strikes settled	Strikes averted	Sec. 7-a	Wage demands	Elections	Arbitration
National Labor Board	132	107	24	145	37	39	11
17 regional labor boards	467	371	173	777	241	58	59
Grand total	599	478	197	[1] 922	[1] 278	97	70

[1] Incomplete.

Summary of tables of national and regional labor boards

Total cases:	
National	190
Regional	1,628
Total	1,818
Cases settled:	
National	132
Regional	1,121
Total	1,253
Cases settled by agreements:	
National	103
Regional	533
Total	636
Settle by decisions:	
National	29
Regional	254
Total	283

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Summary of tables of national and regional labor boards—Continued

Total workers involved:	
National	400,000
Regional	514,000
Total	914,000
Strikes:	
National (involving 325,000)	132
Regional (involving 170,000)	467
Total (involving 49,000)	599
Strikes settled:	
National (involving 213,000)	107
Regional (involving 131,000)	371
Total (involving 344,000)	[1] 478
Strikes averted:	
National (involving 33,500)	24
Regional (involving 105,500)	173
Total (involving 139,000)	[2] 197
Workers reinstated (exclusive of strike figures) after charges of discrimination unjust layoffs, etc.: Regional	6,852
Cases pending:	
National	[3] 27
Regional	[4] 295
Total	322
Causes of complaint:	
Alleged violation of section 7–a (collective bargaining, union discharge for union activity, interference, etc.):	
National	145
Regional	[4] 777
Total	922
Wage demands:	
National	37
Regional	[4] 241
Total	278
Reduced weekly earnings (generally under shortened code hours):	
Regional	43
Elections supervised:	
National	39
Regional	58
Total	97
Cases jointly submitted for arbitration:	
National	11
Regional	59
Total	70

[1] Strikers returned to work.
[2] Kept at work.
[3] In addition, National referred 25 to regional boards.
[4] Incomplete.

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NATIONAL RECOVERY ADMINISTRATION (NATIONAL LABOR BOARD)

For release Monday, March 5 Release No. 3607

OVER A MILLION WORKERS INVOLVED IN NATIONAL LABOR BOARD CASES—PRESIDENT THANKS THE BOARDS

"A long step toward that ultimate goal" of peaceful settlement of all capital-labor difficulties is mentioned by the President in a letter to Senator Robert F. Wagner, made public today by the National Labor Board. The letter refers to the report to the President by the National Labor Board on the results accomplished during its first 6 months.

At the same time Senator Wagner made public a summary of the National Labor Board system's reports showing that over 1,060,000 workers had been involved in cases up to March 1.

The letter requests Senator Wagner to communicate the President's appreciation to the 250 members of the National Labor Board and its 18 regional labor boards. The boards' memberships consist half of industrial and half of labor representatives, with impartial chairmen, the service of all being voluntary.

The President's letter reads:

THE WHITE HOUSE,
Washington, February 26.

MY DEAR SENATOR: Thanks very much for your very comprehensive statistical summary of the work of the National Labor Board and the regional labor boards.

May I take occasion to express to you my sincere appreciation of the fine, untiring, and patriotic service you and your colleagues have rendered. The work that you have been doing is a long step toward that ultimate goal for which we are striving, that of settlement of all differences between capital and labor by peaceful means.

I would like especially too, to get to the two hundred and fifty volunteer members my deep appreciation of the sacrifice they are making in carrying on this great work.

Very sincerely yours, FRANKLIN D. ROOSEVELT.

The report to the President covered the work of the boards to February 1. "The reports to March 1", said Senator Wagner, "have just come in from 18 regional labor boards. A tentative summary shows that the total of workers involved in cases coming before the 18 regional and the National Labor Board is now 1,061,000 as compared with 914,000 in the report to the President. The present total of cases is 2,012 (as compared with 1,818 to February 1), and the present total of settlements is 1,377 (as compared with 1,253). The regional labor boards have had a total of 431 new cases involving 140,000 workers the past month. Of these they have settled 381 cases, or 88 percent.

"This is an improvement over the last report where the flat average of settlements for the whole system was 69 percent. In the report to the President I stated that I considered this percentage too low and pointed out that it was caused by the small majority of employers whose attitude was not that of the great majority in cooperating with the National Labor Board.

"Cases pending are 531, or 26 percent, as compared with 18 percent previously. It should be noted that the number of new cases the past month represents a heavy increase. It presages a marked increase in the number of disputes and therefore of work to be faced this spring. The stresses and strains of our national economic readjustment are by no means on the wane.

"Altogether the present report indicates that of over a million workers, whose affairs have been dealt with by the labor boards since their inception, about 775,000 have been put back to work or kept at work or had their less acute disputes adjusted."

NATIONAL RECOVERY ADMINISTRATION

EXECUTIVE ORDER

CONTINUANCE OF THE NATIONAL LABOR BOARD AND DEFINITION OF THE POWERS CONFERRED UNDER SECTION 2 OF THE NATIONAL INDUSTRIAL RECOVERY ACT

By virtue of the authority vested in me by an Act of Congress, entitled "An Act to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other pur-

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poses", approved June 16, 1933 (Public, No. 67, 73d Cong.), and in order to effectuate the purposes of that Act, it is hereby ordered that:

The National Labor Board, created on August 5, 1933, to "pass promptly on any case of hardship or dispute that may arise from interpretation or application of the President's Reemployment Agreement", shall continue to adjust all industrial disputes, whether arising out of the interpretation and operation of the President's Reemployment Agreement or any duly approved industrial code of fair competition, and to compose all conflicts threatening the industrial peace of the country. All action heretofore taken by this Board in the discharge of its functions is hereby approved and ratified.

The powers and functions of this Board shall be as follows:

1. To settle by mediation, conciliation, or arbitration all controversies between employers and employees which tend to impede the purposes of the National Industrial Recovery Act; provided, however, the Board may decline to take cognizance of controversies between employers and employees in any field of trade or industry where a means of settlement, provided for by agreement, industrial code, or Federal law, has not been invoked.

2. To establish local or regional boards upon which employers and employees shall be equally represented, and to delegate thereto such powers and territorial jurisdiction as the National Labor Board may determine.

3. To review the determinations of the local or regional boards where the public interest so requires.

4. To make rules and regulations governing its procedure and the discharge of its functions.

FRANKLIN D. ROOSEVELT.

WHITE HOUSE, *December 16, 1933.*

EXECUTIVE ORDER

By virtue of the authority vested in me under Title I, of the National Industrial Recovery Act, approved June 16, 1933 (Public, No. 67, 73d Cong.), and in order to effectuate the policy of said Act, I, Franklin D. Roosevelt, President of the United States, do hereby provide for and direct the enforcement of certain provisions of Section 7 (a) of said Act and the conditions contained therein, as incorporated in, and made a part of, any code of fair competition, or agreement heretofore or hereafter approved or prescribed by me in the following manner:

1. Whenever the National Labor Board shall determine in such manner as it sees fit, that a substantial number (as defined in the discretion of the Board) of the employees, or of any specific group of employees, of any plant or enterprise or industrial unit of any employer subject to such a code or agreement, have requested the Board to conduct an election to enable them to choose representatives for the purpose of collective bargaining or other mutual aid or protection in the exercise of the rights assured to them in said Section 7 (a), the Board shall make the arrangements for and supervise the conduct of an election, under the exclusive control of the Board and under such rules and regulations as the Board shall prescribe. Thereafter the Board shall publish promptly the names of those representatives who are selected by the vote of at least a majority of the employees voting, and have been thereby designated to represent all the employees eligible to participate in such an election for the purpose of collective bargaining or other mutual aid or protection in their relations with their employer.

2. Whenever the National Labor Board shall have determined upon an investigation, or as the result of an election, that the majority of the employees of an employer, or the majority of any specific group of employees, have selected their representatives in accordance with the provisions of said section 7 (a), and shall have certified the names of such representatives to their employer, and thereafter upon complaint or on its own motion, the Board shall determine that such an employer has declined to recognize or to deal with said representatives, or is in any other way refusing to comply with the requirements of said section 7 (a), the Board shall report its determination promptly to the Administrator for Industrial Recovery for appropriate action.

3. The powers and duties herein conferred upon the National Labor Board are in addition to, and not in derogation of, any powers and duties conferred upon such Board by any other Executive order.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, *February 1, 1934.*

Approval recommended.

HUGH S. JOHNSON.

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TEXT OF THE EXECUTIVE ORDER OF FEBRUARY 1, 1934, AS AMENDED FEBRUARY 23, 1934

By virtue of the authority vested in me under Title I, of the National Industrial Recovery Act, approved June 16, 1933 (Public, No. 67, 73d Cong.), and in order to effectuate the policy of said Act, I, Franklin D. Roosevelt, President of the United States, do hereby provide for and direct the enforcement of certain provisions of Section 7 (a) of said Act and the conditions contained therein, as incorporated in, and made a part of, any code of fair competition, or agreement theretofore or hereafter approved or prescribed by me in the following manner:

1. Whenever the National Labor Board shall determine, in such manner as it sees fit, that a substantial number (as defined in the discretion of the Board) of the employees, or of any specific group of employees, of any plant or enterprise or industrial unit of any employer subject to such a code or agreement, have requested the Board to conduct an election to enable them to choose representatives for the purpose of collective bargaining or other mutual aid or protection in the exercise of the rights assured to them in said Section 7 (a), the Board shall make the arrangements for and supervise the conduct of an election, under the exclusive control of the Board and under such rules and regulations as the Board shall prescribe. Thereafter the Board shall publish promptly the names of those representatives who are selected by the vote of at least a majority of the employees voting, and have been thereby designated to represent all the employees eligible to participate in such an election for the purpose of collective bargaining or other mutual aid or protection in their relations with their employers.

2. Whenever the National Labor Board shall find that an employer has interfered with the Board's conduct of an election or has declined to recognize or bargain collectively with a representative or representatives of the employees adjudged by the Board to have been selected in accordance with Section 7 (a) or has otherwise violated or is refusing to comply with said Section 7 (a), the Board, in its discretion, may report such findings and make appropriate recommendations to the Attorney General or to the Compliance Division of the National Recovery Administration. The Compliance Division shall not review the findings of the Board but it shall have power to take appropriate action based thereon.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, *February 23, 1934.*
Modified February 23, 1934.

The CHAIRMAN. Is Mr. Slichter here?

Mr. Robert L. Hale, professor of law at Columbia University.

STATEMENT OF ROBERT L. HALE, PROFESSOR OF LAW AT COLUMBIA UNIVERSITY

The CHAIRMAN. Mr. Hale, I understand you would like to be heard today so you will not have to remain in Washington until tomorrow morning.

Mr. HALE. Yes.

The CHAIRMAN. All right, Mr. Hale, we will be glad to hear you. What is your full name?

Mr. HALE. Robert L. Hale.

The CHAIRMAN. And your profession?

Mr. HALE. Associate professor at Columbia University.

The CHAIRMAN. Do you hold any public position?

Mr. HALE. No.

The CHAIRMAN. Are you interested in this legislation?

Mr. HALE. Yes.

The CHAIRMAN. We will be glad to have your views about this bill.

Mr. HALE. I am heartily in accord with the main purpose of this bill.

The CHAIRMAN. Could you, for the record, please, give us your background, your interest in public affairs, your law research work?

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Mr. HALE. I have been teaching a law course in industrial relations, and I am somewhat familiar with the cases in the courts dealing with it.

The CHAIRMAN. You have specialized on the interpretations of industrial relations by the courts?

Mr. HALE. Yes.

The CHAIRMAN. Senator Wagner vouches for your standing as a high-grade lawyer.

Mr. HALE. Thank you.

The CHAIRMAN. You may proceed, please.

Mr. HALE. I am heartily in favor of the general purposes of the bill. I think there are certain objections which a great many people raise to any bill of this kind, which perhaps ought to be mentioned briefly.

There is frequently a great deal of talk to the effect that a closed shop destroys the freedom of the worker to be independent of a union if he wishes to be. Well, to a certain extent, of course, it does, but in a complicated modern society like ours, nobody is going to be entirely free. If a man wants to work in a steel plant, he does not just go out and work according to his own ideas about how it should be worked; he has to join an organization. Normally, in the case of a steel plant, he becomes an employee of a steel company, and then he has no freedom as to the details of his work whatever; he is a nonvoting member of a society. Now, if he belongs to a union in a closed-shop industry, it is perfectly true he has no freedom to work without being a member of the union, but he has a little more freedom through the brotherhood of his union against the restraint imposed upon him by the employer.

Now, of course, any system of organization is liable to have faults at times. A union itself may possibly have faults, and sometimes it has been oppressive of its members, but it is in any event a choice between evils. Government of any sort has certain evils, or may have at particular times, but the only alternative is anarchy, where the evils would be much greater. If he is subject to be governed by the rules of his union he presumably has a little more control over what those rules are than if he is governed solely by the rules laid down by his employer. So I think the moment you reflect a little bit on that notion of individual freedom, you see that it breaks down.

Now, another objection that will be raised will be as to the constitutional rights of the employer under this bill. There are two parts of the Constitution which will undoubtedly, I presume, if this bill is passed, be raised, at some time or another, in the courts. One is as to whether the Federal Government is taking over powers which belong properly to the States, and the other is, where that is not the case, is it depriving the employer of liberty or property without due process of law, contrary to the fifth amendment?

Now, on the Federal-State proposition, I am not in a position to say very much. If you look at the document, the constitutional document—I mean the paper, the Constitution—there is nothing in there which would tell you one way or another whether this was a usurpation of State powers. Congress has power to regulate interstate commerce. Now we know under court decisions that they sometimes can regulate intrastate railroad rates if those will have a bearing on interstate rates.

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Now we know the court has made certain other limitations, but as I say, I am not familiar with all the decisions, but as far as the language of the Constitution goes a court would be free to interpret this one way or the other, insofar as it affects an industry which is engaged in the manufacturing business within the State, with the idea of shipping its goods to other States later. But now the fifth amendment question will come in. If it is an unfair labor practice for an employer to discriminate against union men, and if that is penalized, or the board is given power to go to a court to get an injunction against it, why the question will be raised as to two cases which have been decided some years ago by the Supreme Court, *Adair* v. *The United States* (205 U.S. 161), and *Coppage* v. *Kansas* (236 U.S. 1). In those cases, by a divided court, by a division among the judges, the majority of the court held that the employer had a constitutional right to fire a man for any reason he wanted, and to insist, as a condition of his employment, that he sign what has been called a "yellow dog" contract, and the court there said to take away that right, at least to make it a crime to do that, was contrary to the fifth or fourteenth amendment, depending on whether it was the Federal Government or the State.

Now, I think it is fairly good evidence that the court has changed its views on that since then. In *Coppage* v. *Kansas* there were two dissenting opinions, one written by Justice Holmes and the second one written by Justices Day and Hughes, where they dissented seriously from the proposition that that kind of law was unconstitutional, and the general philosophy of the Day-Hughes opinion was that the purpose of this statute was not so much to interfere with the right of the employer as it was to protect the right of the employee to join a union, and the Congress or the State, as the case might be, had full power to protect that right by making it a crime for the employer to interfere with it through his right to discharge.

Well, that was a dissenting opinion; but in 1930, in the case of the *Texas-New Orleans Railroad* v. *Brotherhood of Clerks* (281 U.S. 548), the opinion was rendered by Chief Justice Hughes, and there was no dissent, Mr. Justice McReynolds took no part in the proceedings, but he did not dissent; otherwise the court was unanimous.

The CHAIRMAN. Did that opinion recite the views of Mr. Justice Hughes when he was a single justice before his resignation?

Mr. HALE. In effect it did. It insinuated the same philosophy, although Justice Hughes was careful to say that he was not overruling *Adair* v. *United States* or *Coppage* v. *Kansas*, because he said this was not aimed at the right of the employer, the railroad company in that case, to discharge, but it was aimed to protect the right of the union, of the men to select their own representatives for the purposes of collective bargaining.

Well, the same thing, of course, was true in *Coppage* v. *Kansas*. I mean, we all know when a judge says he isn't overruling a case that it isn't inconsistent, that the court is not quite ready to repudiate it flatly, but when the distinction is one which is so exceedingly thin it indicates a tendency on the part of the court to limit those cases at least to the most narrow statement possible of their facts.

The CHAIRMAN. In other words, the court sometimes says it is not overruling when it is actually overruling.

Mr. HALE. Yes. Except you are not permitted to argue in the court later that the case has been flatly rejected. Sometimes the

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court does flatly reject a case, quite frequently it happens, but at many other times without flatly rejecting it it distinguishes it so that there is no life left in it.

The CHAIRMAN. The Supreme Court can complain as well as the Senators.

Mr. HALE. Justice Hughes in that case said it would be a mockery. I can get his exact words here. He talks about the right of representation and then he said:

> Courts are not required to ignore this right of the employees but could safeguard it and seek to make their appropriate collective action an instrument of peace rather than of strife. Such collective action would be a mockery if representation were made futile by interferences with freedom of choice.

That is exactly what Day and Hughes said in the Coppage case, that the right to join a union, which Justice Pitney for the majority recognized as existing, and they said the right is a mockery if the employer could make the exercise of it impossible.

Senator DAVIS. Just a minute.

Mr. HALE. Yes.

Senator DAVIS. I would take it for granted that you are in accord with the thought that the signing of what is known as the "yellow dog" contract would take us back to the feudal system.

Mr. HALE. Yes. I am not sure that I am putting it in exactly those words, because I am not quite sure what the feudal system was, but it is a good working phrase.

Senator WAGNER. Congress has declared itself only lately on that question.

Mr. HALE. Yes; in the Norris Act.

Senator WAGNER. Yes.

Mr. HALE. Now there is a further thing. Section 303 I think is very important to be retained, that "nothing in this bill shall be taken to diminish," I am quoting from memory, "the right to strike." It is conceivable, of course, that if a board passes on all things we do not know 15 or 20 years from now what sort of membership will be on that board, and if the union is absolutely precluded from striking against it you might have a pretty dangerous situation.

Senator DAVIS. But the right is not denied in the bill.

Mr. HALE. No; that is why I say it is very important to leave that section in, 303, because if it is not left in I think there is real danger that a number of judges, particularly in the lower courts, will construe it as if the setting up of this machinery made strikes improper, in fact, illegal. In fact, a great many courts, lower courts in New York, New Jersey, and elsewhere, have suggested that strikes under the N. R. A. are illegal. Why, you can search the statutes with a fine-tooth comb and you won't find anything, but judges may be able to find what you and I could not.

Now there are certain very important details in this bill which I think call for a change. There is one detail which is material, or one word which I think emasculates this bill entirely, if it stays, or at least would be an invitation to a court to emasculate it.

You all recall the history of the Clayton Act, what happened to it in the courts.

Senator DAVIS. Will you call our attention to that particular word?

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Mr. HALE. Section 4, on page 4 of the bill, at the bottom, says that "Employees shall have the right to organize and join labor organizations", and so forth. Section 5 defines unfair labor practices, and paragraph 1 states:

> To attempt by interference, influence, restraint, favor, coercion, or lock-out, or by any other means, to impair the right of employees guaranteed in section 4.

That is a dangerously ambiguous word. A court could well say, as Justice Pitney said, you remember, in the Coppage case, Justice Pitney said, certainly, the employee has the right to join a union, but the employer is not impairing that right, or is not infringing it when he makes him sign a contract that he won't join. I have a right to sell goods to you, but you are not impairing that right if you do not buy. So a court, which is so inclined, might well say, "Certainly I am not going to let an employer impair the right of an employee to organize, but when he tells the employee he won't employ him if he exercises it, that is not impairing it."

A very simple change would satisfy that.

The CHAIRMAN. Pardon me.

Mr. HALE. Yes.

The CHAIRMAN. We must leave at once to vote in the Senate on the St. Lawrence Waterway.

Mr. HALE. Yes.

The CHAIRMAN. I suggest the secretary take charge of the meeting and you continue your statement. It will be then in the record. That will obviate the necessity of your waiting until our return.

Mr. HALE. All right.

Senator WAGNER. What was that word?

Mr. HALE. "To impair."

The CHAIRMAN. The witness will go on with his testimony. The secretary will preside until I return.

Mr. HALE. There are two more rather vital changes, I think, that are required. Judge Panken has suggested to me that instead of having "prevent the exercise of the right", to make it "interfere with the exercise of the right."

The SECRETARY. What page is that?

Mr. HALE. Page 5, section 5, paragraph 1.

The SECRETARY. What is your suggested amendment?

Mr. HALE. "To attempt by interference", and so forth, "or by any other means to interfere with the exercise of." Then the court would not be free to say, "Well, you are not impairing."

The SECRETARY. "Interfere by the exercise?"

Mr. HALE. "Interfere with the exercise of the right of employees."

The SECRETARY. That is in place of "by interference?"

Mr. HALE. No, I am leaving the "interference," although that does make it kind of redundant there, it is not very artistic. It should read, "to attempt by interference, influence, restraint, favor, coercion, or lock-out, or by any other means, to interfere with the exercise of the right." In fact, I think you could strike out the "interference", because you are saying it all over again.

There is a second thing about the legality of the clause in reference to the closed shop, there is something about the legality of the closed shop under section 7(a) and under this act. Section 7(a), as you

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know, makes it somewhat doubtful whether a closed-shop agreement is legal, because it says

Every code shall

and so forth,

shall contain the following conditions: * * * (2) That no employee and no one seeking employment shall be required, as a condition of employment, to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing.

Now, if there is no other union except the union which is trying to order the closed shop, that does not prevent it, as far as I can see, because it does not say you must not make it a condition that he join a regular union, not a company union, but it does say you must not make it a condition that he does not join. Supposing you have a union representing 0.9 of the people there and another union representing 0.1, and the union representing 0.9 signs a contract with the employer for a closed shop, that they have got to join that major union, well, by doing that, they are promising not to join this minority union. That is contrary to section 7 (a).

Now, does this act cure that? Well, it does not, and it ought to. The only thing on that is this: On page 5, at the bottom, paragraph 6—this is one of the unfair labor practices—it says,

To engage in any discriminatory practice as to wage or hour differentials, advancement, demotion, hire, tenure of employment, reinstatement, or any other condition of employment which encourages membership or nonmembership in any labor organization: *Provided*, That where a contract or agreement of any kind is or shall be in force between an employer and a group of employees the provisions of such contract or agreement regarding conditions of employment shall not, because of anything contained in this paragraph, compel an employer to observe similar conditions of employment in his relations with all his employees: *Provided further*, That nothing in this act shall preclude an employer and a labor organization from agreeing that a person seeking employment shall be required, as a condition of employment, to join such labor organization, if no attempt is made to influence such labor organization by any unfair labor practice, if such labor organization is composed of at least a majority of such employers' employees, and if the said agreement does not cover a period in excess of 1 year.

Now nothing in this act prevents it, but something in 7 (a) prevents it. Now that clause in 7 (a) is not repealed by this act, and it ought to be. There is a provision in this act that anything in section A which conflicts with this act is hereby repealed, but that does not conflict with anything in this act. There ought to be something in this act which will conflict with that in section 7 (a), so as to repeal it. So it ought to have provided that nothing in this act and nothing in any act of the United States, or possibly nothing in any code, shall preclude an employer and a labor organization——

The SECRETARY. That is line 7?

Mr. HALE. Yes; beginning at line 7.

The SECRETARY. Yes, sir.

Mr. HALE. Now one of those "ifs" there is a little broad too.

If such labor organization is composed of at least a majority of such employers' employees.

Suppose you have the United States Steel Co. running seven steel mills and also running one or two captive mines. Suppose they were compelled by pressure of the union to sign a closed-shop agreement on a captive mine. Well, that would be discriminating against people

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who did not belong in the union, and that union would not represent a majority of all the employees of the United States Steel Co. It ought to be enough if it represents a majority of all the employees affected by the agreement, which would be very simple to insert.

The SECRETARY. Where would you put that in the section?

Mr. HALE. In lines 12 and 13, where it says,

If such labor organization is composed of at least a majority of such employers' employees, who are affected by the agreement.

The SECRETARY. Insert "who are affected by the agreement"?

Mr. HALE. Yes. There is another question which raises a broad question of policy and not a matter of interpretation—that is, under this bill—if any employer engages in one of these unfair labor practices the only remedy you have is before the Board.

Now, under the Railroad Labor Act, if the railroad is interfering with the choice of representatives, the union can go directly into court and get an injunction against the railroad. That is what they did in the Texas and New Orleans case, but here there apparently is no private remedy. You have got to bring your case before the board, and the board deals with matters from all over the country, and it is only if the board grants relief that anything more can be done about it, and the thing that can be done is the Board will issue an order. That is not enough. The employer may disobey the order. Then there are two orders. The Board can go to the Federal district attorney and ask him to seek an injunction, or it can bring direct proceedings for enjoining compliance with the order, but if the Board is too busy to do that—and I do not see how it could fail to be, being the only court—for instance, if every right you had under the Federal law had to go to the Supreme Court before you get anything, there would be such an impossible congestion of business that you would not get anywhere. You go now to a local court and you have a right to appeal to the Supreme Court, but in a great many cases there is no appeal taken, so the court is not loaded with all these matters; but this Board would be, and obviously its calendars would get congested. You take the Weirton and Budd case, prolonged not only in this rather disappointing way, where they have been thundered at and slapped on the wrist, but indefinitely for years maybe. We don't know, we don't know who will be on the Board. It seems to me there ought to be some further remedy that a private person can take.

In that connection there is a statement that anybody who is aggrieved by a judgment of the Board can go into court. That is on page 13, section E. It says, "Any person aggrieved by an order of the Board may obtain a review."

Now, suppose a labor union goes to the Board and complains about the employer, and the Board decides in favor of the employer. Now it would look from that as if the labor union would be aggrieved and could appeal to the court, but the court will not interpret it right, I think, because in the Interstate Commerce Commission Act, if the Interstate Commerce Commission grants an order against the railroad, the railroad cannot appeal, but if the Interstate Commerce Commission on the complaint of a shipper refuses to take any action whatever, that is, if it decides wholly in favor of the railroad, in that case it is called a negative order, and the Supreme Court has worked

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out a principle in interpreting that statute, that there is no appeal from a negative order of the Interstate Commerce Commission.

Now, that could be easily altered by saying, "Any person aggrieved by an order of the Board, or by the failure of the Board to issue an order." Then, if the Board happened to side with the employer, the employee could have an appeal, just as the employer would have an appeal now, if the Board sides in favor of the employee.

Now there is another thing of very vital consequence which also goes beyond any question of the language, and that is on pages 18 and 19. The Board is given immense power, and I just want to raise the question whether possibly that is too much. At the bottom of page 18, it says, "In any dispute as to who are the representatives of employees, the Board, if the dispute might burden or affect commerce, or obstruct the free flow of commerce, may investigate such dispute and certify to the parties in writing, the name or names of the individuals or labor organizations that have been designated and authorized to represent employees."

Now they may take a secret ballot, but they do not have to. Suppose your Board consisted of some employers, some public representatives, who had risen high in politics, and some labor representatives, who were connected with one particular union; suppose you had a situation such as you had 15 or 20 years ago in the men's clothing trade. There was a union, the United Garment Workers Union, which belonged to the A. F. of L. and it was not functioning. A new union was started, the Amalgamated Clothing Workers, which was not until this year affiliated with the A. F. of L. If this law had been in force at that time, and if the Board had been dominated by A. F. of L. people on the labor side, they would undoubtedly have said, or they would have made a finding that the representation of the workers in the garment trade was the United Garment Workers Union, and the Amalgamated Clothing Workers would have been still-born, and you would have had a union which really did not function.

Now that is a good deal of power to give a Board if they can just destroy any union, even if it may happen to represent a majority of the people, because the Board is not confined to that. And secondly, if the Board does say that the X.Y.Z. union represents the employees in this case—suppose a lot of people working in that trade are not admitted to membership in the X.Y.Z. union, well, then, if the X.Y.Z. union represents labor, these people who are not allowed to enter it because of moral discrimination, or because they are not pleasing to the people in control of the union, or for political reasons, will have to be represented by someone that does not really represent them.

Now I have no opinion as to how that should be fixed up. This power might be used for very beneficial purposes, and I can see great difficulties in trying to surround it by safeguards without amasculating it too much, but I think that ought to be considered.

That is all.

The CHAIRMAN. Have you got a brief with the amendments prepared in it?

Mr. HALE. I have just given these amendments here orally.

The CHAIRMAN. Is that all, Mr. Hale?

Mr. HALE. Yes.

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The CHAIRMAN. I want to apologize to you for the necessity for the Senators hastily departing, because of the unexpected vote on the St. Lawrence Waterway Treaty.

Mr. HALE. I quite understand.

The CHAIRMAN. I am very much pleased, and the committee will be that you have completed your statement so we will have a complete record of your views. My secretary informs me you have suggested some amendments to the bill.

Mr. HALE. Yes.

The CHAIRMAN. Have they been submitted?

Mr. HALE. The clerk has them.

The CHAIRMAN. Have they been submitted in regular form?

Mr. HALE. I have not written them out.

The CHAIRMAN. It is just a suggested idea?

Mr. HALE. In some cases I did suggest the language.

The CHAIRMAN. Thank you very much, sir.

Mr. HALE. That is all right.

The CHAIRMAN. Dr. S. H. Slichter. Doctor, can you remain over until tomorrow morning, or would you prefer to go on now in order that the record may have your views?

Dr. SLICHTER. I am afraid, Senator, that I must be in the Middle West tomorrow morning.

The CHAIRMAN. Very well, then. I will be pleased to preside, although many of the committee members are absent because of their necessity of being on the floor of the Senate. I will continue the hearing, so the record will have your views for the information of the Senators later.

STATEMENT OF DR. SUMNER SLICHTER, PROFESSOR OF ECONOMICS, HARVARD UNIVERSITY

The CHAIRMAN. May we have your full name?

Mr. SLICHTER. Sumner Slichter.

The CHAIRMAN. Your residence?

Dr. SLICHTER. Cambridge, Mass.

The CHAIRMAN. You are professor of economics at Harvard University?

Dr. SLICHTER. Yes, the Harvard Business School.

The CHAIRMAN. The Harvard Business School?

Dr. SLICHTER. Yes.

The CHAIRMAN. Doctor, are there any public activities or any other special subjects or studies that you have made that you would be willing to have recorded in the record?

Dr. SLICHTER. Perhaps I should add, Mr. Chairman, that my job the Business School is in the field of industrial relations. I have acted from time to time as arbitrator in labor disputes.

The CHAIRMAN. But your special subject at Harvard Business School is what?

Dr. SLICHTER. Industrial relations, labor problems.

The CHAIRMAN. Industrial relations?

Dr. SLICHTER. Yes.

The CHAIRMAN. You may proceed to give us your views on the pending bill.

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Dr. SLICHTER. In general, Mr. Chairman, I am in favor of the bill. In fact, it seems to me to be a bill which ought to arouse very little controversy. Its basic policy, if I understand it correctly, is to prevent the growth of employer-dominated unions. I have been trying to find some of these employer-dominated unions, and I have talked with many employers, and thus far I have been unable to discover a single employer who admits that he has an employer-dominated union. In fact, every employer with whom I have talked has been outspoken in expressing the principle—the belief in the principle that employees organizations should be entirely independent of employer control. So I should be greatly surprised were any employer to appear and oppose this bill, except in matters of detail.

The CHAIRMAN. In matters of what, please?

Dr. SLICHTER. Matters of detail. My remarks will not be long and will be divided in two parts. First of all I should like to offer some—well, perhaps you may call them destructive criticisms of the bill, and then I should like to attempt to put something in their place, to suggest something to take the place of the sections which I shall criticize. My attention has been primarily focused upon section 5, which appears on page 5 of the bill.

It seems to me that this section is perhaps based on a misconception of the present situation in industrial relations, and if enacted in its present form there would be considerable danger that this section would prematurely freeze the situation which would be and which ought to be permitted to remain in flux.

To begin with, notice paragraph 2 of section 5, which reads:

> It shall be an unfair labor practice to refuse to recognize and/or deal with representatives of his employees, or to fail to exert every reasonable effort to make and maintain agreements with such representatives concerning wages, hours, and other conditions of employment.

The first part of that section does not seem to me to be open to exception, but if the entire section were enacted, it would probably result in a rush on the part of employers to enter into agreements with existing company unions. After all, the company union problem is not simply a problem of preventing the formation of new company unions. It is a problem of maintaining fair competition between the company unions which exist and other organizations.

I do not like the latter part of that section anyway, because it seems to me to be merely the expression of a pious wish and I do not like the notion of merely putting pious wishes into statutes. It says, "to fail to exert every reasonable effort to make and maintain agreements."

You cannot make it a definite duty of a man to try to agree. He can always say he tried to agree. The words are rather meaningless. You might almost enact that the lions and lambs shall not fail to exert every reasonable effort to lie down together.

I drop those words altogether, not merely because they are meaningless, but because I feel quite certain they would precipitate a vast number of agreements between employers on the one hand and organizations on the other, which, in fact, are really not independent, and yet which no one can prove by objective evidence are dominated by employers.

The CHAIRMAN. I think your objection is well taken. Have you any language to suggest as a substitute?

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Dr. SLICHTER. No. I should simply curtail the paragraph (2), retain the words "to refuse to recognize and/or deal with representatives of his employees," and leave it there.

The CHAIRMAN. Will you later, Doctor, sometime while this legislation is pending before the Committee give us the language which you think might be substituted for these criticisms which you are making?

Dr. SLICHTER. Yes, I have a rough draft here which I shall introduce in more constructive parts of my remarks.

The CHAIRMAN. That will be most helpful.

Dr. SLICHTER. Now, paragraph (3).

The CHAIRMAN. Still on page 5?

Dr. SLICHTER. On section 5.

The CHAIRMAN. Yes.

Dr. SLICHTER (reading):

> To initiate, participate in, supervise, or influence the formation, constitution, bylaws, other governing rules, operations, policies, or elections of any labor organization.

This paragraph seems to me in some respects to be meaningless and ineffective and in other respects to go too far. There are four verbs that evidently apply to each of the seven objects, which means that the section prohibits or declares it to be an unfair labor practice for an employer to influence the policy of any labor organization. Well, now, that is what collective bargaining is, an attempt on each side to influence the policies of the other, and far from it being a bad thing, that is generically, for the employer to attempt to influence the policies of the labor organization, I should say that is a good thing. That is what bargaining is. It is difficult for me to see the logic of that.

It is equally a part of bargaining for the labor organization to attempt to influence the policies of the employer. That is why they organize, so they will be more effective in influencing his policies.

So, in prohibiting employers from attempting to influence the policies of labor organizations, you are virtually taking the heart out of collective bargaining.

In other respects, that section impresses me as being meaningless and ineffective. I doubt if it would have any importance, whether it would have any important practical effect. To be concrete, it prohibits employers from initiating the formation of a labor organization. Well, how is an employer to be prevented from initiating the formation of a labor organization? The prohibition is in very broad terms. It reads "directly or indirectly." But as far as the employer is concerned, suppose he, or his superintendents, or his foremen, say to some of the men, "Why don't you fellows get together and get some kind of committees to handle your affairs with us? Men in other plants round about are doing it, why don't you do it?" And the employees get together. The employer has made it evident he is not going to object if they do. And in that change of atmosphere they respond quite promptly and they start committees of their own. Has the employer initiated a labor organization?

Well, he is hauled before the National Labor Board and accused of having initiated a labor organization. His answer obviously is, "Why no, the men started it. We suggested it, it is true." His suggestion

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that it would be a good thing for the men to organize, is that initiating a labor organization? I see no objective line that can be drawn, and consequently I see no way in which that word "initiate" can acquire effective meaning.

Even the prohibition against the employer supervising the elections. Any labor organization with which I am in entire sympathy, is, as a practical proposition, of very little meaning, it seems to me, because the employer can always act through employees, and you cannot put your finger on his actions and say, "Well, he is violating the law because the law says 'directly or indirectly' and he is acting indirectly." You cannot put your finger on what he is doing.

It has been the tactics of employers recently, after getting into trouble, before the Labor Board, apparently to withdraw, but in an effort to encourage the employees to take the initiative and hold elections, it has pursued those tactics, and the Labor Board apparently has found it is rather helpless in meeting those tactics.

So I do not conceive of paragraph (3) as of much help. I think the word "policies" in the last line should certainly be eliminated, and I do not think it would make much difference in the law if the whole paragraph were eliminated, though I am in sympathy with what the paragraph is trying to do in most cases.

It should be observed, however, that there are some instances in which it is entirely legitimate for an employer to initiate the labor organization. Suppose men do not act themselves? Suppose they do not feel like joining an outside labor organization? And in some instances dues in the outside labor organizations, the dues are so high that men, after 4 years of depression, do not feel like paying those dues. That is particularly true in instances where you have to buy a lot of insurance at the same time that you become a member of a labor organization. Selling a man membership in the labor organization is selling him insurance at the same time.

The CHAIRMAN. Is that a frequent occurrence?

Dr. SLICHTER. It is only a minority of the organizations in the American Federation of Labor which have compulsory insurance, but some of them do. I do not care to be understood as necessarily criticising those insurance schemes, because that is a complicated problem in itself, but I am directing attention to the fact that there are circumstances under which the employer, with perfect propriety, it seems to me, may initiate a labor organization among his employees. Were that section retained, I wonder whether the courts would feel disposed to uphold the rule defining as an unfair labor practice the initiation of a labor organization by an employer under any circumstances.

There may be two conflicting and competing labor organizations in the employer's plant, and it may be that situation which leads him to take some initiative and try to introduce an organization which would comprehend both of the others.

There is competition in the automobile industry at the present time, in some plants, between three labor organizations, one a company union, one the A. F. of L. union, and one an independent union. Now, if the section meant a great deal, my disposition would be to say, let it remain and let the few employers who would suffer from it, suffer, but I do not think it means very much of anything.

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The CHAIRMAN. It is an attempt to suppress domination and control by an employer who wants to organize a union for his own selfish ends.

Dr. SLICHTER. Precisely.

The CHAIRMAN. And in doing that, it prevents a well-meaning and altruistic employer from trying to direct and guide his employees in organizing a worthwhile and sound organization, isn't that true?

Dr. SLICHTER. Yes; I believe it is. Now, Mr. Chairman, up to this point, I have been entirely destructive. I should like to attempt to offer something in place of the criticisms that I have made.

The CHAIRMAN. I think the bill can be improved in a great many particulars without injuring the objective.

Dr. SLITCHER. Perhaps I should add this before passing on to the constructive phase. In section (4), or in paragraph (4) of section 5, it reads:

> To contribute financial or other material support to any labor organization, by compensating anyone for services performed in behalf of any labor organization, or by any other means whatsoever.

I venture to suggest a saving clause at the end of that section reading somewhat as follows:

> Except that nothing herein shall prevent employee representatives in the service of the company from drawing their regular rate of pay for committee work done within regular working hours.

There has been a great deal of committee work done within regular working hours, and it has been customary for the man who has been taken away from the bench or the machine, to get his regular rate of pay while doing that committee work. That has been true in union shops as well as in nonunion shops, and I see no reason for disturbing that situation, which section (4) might do, or paragraph (4), might do, if narrowly interpreted. Now to pass on to the constructive suggestions. The problem which impresses me as overwhelmingly important is not the one of preventing the formation of the so-called "company union", because as a practical matter I do not believe that can be done. I think the employer who makes the suggestion, "Well, boys, you certainly ought to have a committee to look after your interest," you can always do that, you can always create committees and deal with them, so the problem is not preventing that action. It cannot be done, even if it were desirable to do it.

But the problem is giving the independent labor organizations a fair opportunity to compete with the employee committees and to provide a method by which, in an impartial manner, the wishes, the preferences of the employees can be ascertained, and in particular to prevent the employer from showing an undue preference in dealing with various competing committees, because where there is a company union and a trade union in the same plant, each trying to deal with the employer, the way the employer is likely to behave is simply this: He meets any committee which wishes to talk over things with him, he is very nice to them, and does not hesitate to discuss conditions in his shop with them, but he has a choice, he indicates that he is going to make concessions, and in case he is going to make those concessions, he has his choice as to which committee will get the concessions. The great weapon of the employer in maintaining the fidelity of company unions as against trade unions is in letting those men be the ones who

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bring home the bacon. If you study the history of the formation of company unions on the railroads; you will find that is the way in many instances in which the trade union was undermined. The trade union could not get concessions and the employee committee could.

So, in my judgment, the problem is one of determining who has the right to represent the employees and placing some restrictions upon the dealings of the employer with other persons.

This is what I suggest, in a very rough form. I have plagiarized rather liberally the President's recent order authorizing the National Labor Board to hold elections, but it is not 100 percent plagiarization.

Whenever either the employer or a substantial number of the employees, as defined in the discretion of the National Labor Board, of any plant or industrial unit of any employer shall question the right of any persons to represent the employees in collective bargaining, the Board may take appropriate steps to determine who are the representatives of the employees.

In doing so the Board may, in its discretion, conduct an election either under the exclusive control of the Board or with the cooperation of the interested parties, and under such rules and regulations as the Board shall prescribe. Thereafter the Board shall publish primarily the names of those representatives who are selected by the vote of at least the majority of the employees voting. Whenever the National Labor Board shall have determined, upon investigation, or as the result of an election, who are the representatives of the majority of the employees of any employer, or of the majority of any specific group of employees in his employ, the Board shall certify the names to the employer, who shall immediately post the names on bulletin boards throughout the plant.

After certification of representatives of employees by the National Labor Board, it shall be an unfair labor practice for the employer, at any time within a year of the election, to bargain with other persons purporting to represent the employees, without submitting any agreements to the certified representatives, either for approval or for further negotiation, and no agreement governing wages, hours, or working conditions made within 1 year of the certification of employee representatives by the National Labor Board shall be binding on the employees, unless approved by the certified representatives.

If I may interject here, it seems to me futile to undertake to specify, as paragraph (2) does that two sides shall make a reasonable effort to agree, but it is possible to say that the employer must not make agreements with persons who are not representatives of his employees, unless those representtttives have first an opportunity to ratify the agreement or to go to the employer and say, "No, this is not satisfactory; we must have this, that, and the other changed."

I would add to the section the following:

On receiving complaints from a substantial number of employees in any plant, or industrial union of any employer, that the employer is bargaining collectively with persons who are not representatives of the employees, the National Labor Board may, in its discretion, order the employer and the alleged representatives to cease and desist from negotiating agreements pending determination by the National Labor Board of the persons who are representatives of the employees.

The danger is that the employer will rush in the agreement with persons who represent no one, and then when an independent organization undertakes to bargain, the employer will say, "I am sorry, but I am bound by an agreement. I might consider dealing with you, but this agreement ties my hands. You know you have always stood for the sacredness of agreements. You live up to your own agreements, and I must live up to mine."

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Finally, I think that there ought to be a modest retroactive feature to this part of the bill reading somewhat as follows:

> If within 3 months of an election, within 3 months prior to an election, held under the authority of the National Labor Board, the employer shall have negotiated an agreement with persons whom the National Labor Board finds are not authorized to represent the employees, the Board may, upon petition of the certified representatives, order an abrogation of the agreement, and the agreement shall no longer be binding upon the employees. Notice of such abrogation shall be posted by the employer within the plant.

Now that, Mr. Chairman, completes the constructive suggestions which I have to offer. They are based, as I said before, upon the conviction that it is both futile and unwise to attempt to tie the employer's hands completely in starting organizations among his employees, but it is sound policy to expose any organizations which exist to prevent fair competition and to prevent any organization from initiating collective agreements in cases where a substantial number of employees question the right of its personnel to represent them.

The CHAIRMAN. Do you think limitations should be put upon industries affected by this bill so as to prevent industries with only a few employees from being subjected to its provisions?

Dr. SLICHTER. I should hesitate very much, Mr. Chairman, to approve of such a limit, although its administrative convenience is obvious. Some of our worst labor problems are in industries such as branches of the needle trades, where most of the plants are exceedingly small, the plants may be small and yet the number of employees involved may be large because it may be a simultaneous affair affecting dozens of the small plants. I do not think that the same considerations apply in this kind of an act as would apply in an act for unemployment reserves where you get into a large amount of book work for small concerns. After all, the National Labor Board would presumably handle minor disputes through examiners much as the Interstate Commerce Commission handles minor rate cases through examiners.

Mr. HANDLER. We have experienced cases where it would have been relatively easy to have reached a satisfactory agreement between the parties to the dispute but no agreement was reached because of the competition of the small plants with bad labor conditions prevailing in them, whom we were unable to make parties to the agreement, so that I should think that the exemptions might cause considerable difficulty.

Dr. SLICHTER. I should like to conclude, if there are no further questions, Mr. Chairman, with this observation:

I heard the Secretary of Labor this morning suggest that the contemplated Labor Board be placed under the Department of Labor. With all due respect to the Department of Labor, if it were to be placed under any department I should say that would be the last place to put it because the Department of Labor, quite properly, is looked upon as the guardian of the interests of the wage earners. It is intended to be a partisan Department in a way, and, rightly or wrongly it will always be regarded as more partisan than it actually is, so it would diminish the prestige of the Labor Board and impair its usefulness if it were placed under that Department.

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As a matter of fact, I do not quite catch the importance of putting the Board in any Department, but the strategy of it, if it were to be placed under any department, would seem to me to dictate that it go in the Department of Commerce, because, after all, it is going to be mainly a protector of the rights of labor and its effectiveness is going to depend primarily upon its prestige with the employers and the way to give it that effectiveness would be to place it in the Department of Commerce. I do not think, however, there is any particular reason, any compelling reason, for placeing it under any Department, and I like to regard it as an independent agency comparable to the Interstate Commerce Commission.

The CHAIRMAN. Thank you very much. You have been most helpful and I want you to know the committee appreciates very much your giving us the benefit of your well thought-out views. You may feel free also, Doctor, to write us any suggestions that you may have on further study of the bill.

Dr. SLICHTER. Thank you very much.

(Whereupon, at 1:30 p.m., the committee adjourned until 10 a.m. to-morrow, Thursday, March 15, 1934.)

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TO CREATE A NATIONAL LABOR BOARD

THURSDAY, MARCH 15, 1934

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The committee met at 10 a.m., pursuant to adjournment, in room 335, Senate Office Building, Senator David I. Walsh presiding.

Present: Senators Walsh (chairman), Thomas, Borah, Walcott, and Davis.

Also present: Senator Robert F. Wagner.

The CHAIRMAN. The meeting will come to order, please.

Mr. Green.

Mr. GREEN. Yes, sir.

The CHAIRMAN. We will be pleased to have you address the committee.

STATEMENT OF WILLIAM GREEN, PRESIDENT OF THE AMERICAN FEDERATION OF LABOR

Mr. GREEN. Mr. Chairman and members of the committee, I appear this morning in behalf of the American Federation of Labor, in support of Senate bill 2926, introduced by Senator Wagner. I ask for the privilege of offering some amendments to the bill, which I hope may be favorably considered.

The CHAIRMAN. We will be pleased to have you do so.

Mr. GREEN. But I wish to assure the committee that the American Federation of Labor stands wholeheartedly and unreservedly behind Senator Wagner in support of this bill. I understand that the bill introduced by Congressman Connery is a companion bill and is practically the same as the bill introduced by Senator Wagner.

It might be appropriate for me to say that it is the opinion of labor that this measure is of tremendous importance. We have learned through experience during the last few months the necessity of the enactment of a measure of this kind. We believe that if labor is to be free, economically and industrially free, and is to enjoy the rights guaranteed labor as declared in section 7 (a) of the National Recovery Act, that it is necessary to enact this Wagner bill into law.

I am further of the opinion that this bill will be bitterly opposed by many employers of labor, by the manufacturers' associations, and by the organizations of employers who are known to be uncompromisingly hostile to the bona fide trade union movement as represented by the American Federation of Labor. But labor asks for this bill. It believes that it ought to have the right to identify itself with an organization of its own choosing and to be represented in negotiations with employers by its own chosen representatives selected free from

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coercion and intimidation. It asks that labor be placed upon a basis of equality with industry and with the employers of labor.

It can only be placed upon that basis of equality when it is accorded the right to organize and select its own agency through which the workers may collectively bargain. It opposes paternalism as reflected and represented by company unions. It objects and protests against being placed in a position of inferiority, and that is the position in which it is placed when it is compelled to accept company unions, organized, formed, fostered, financed, and maintained by the company.

The labor disputes act is proposed to facilitate realization of the purposes of the National Recovery Act. It is intended to further the permanent interests not only of labor, but of industry and the general public. It seeks to give concrete expression to the spirit of the National Recovery Act, by establishing for producing workers that status that would enable them to meet employers upon an equal footing necessary for collective bargaining.

The functional factors concerned in business—investors, producers, buyers—must be equally prepared to promote their interests if we are to have that balance in business which will assure sustained production and consumption. One of the major causes of the industrial collapse of 1929 was the inability of wage earners and small salaried persons to participate proportionately in the increased wealth produced through technical progress. Prices and production both depend upon capacity of consumers to buy and use. If the largest group of consumers—the wage earners—make more than 66⅔ percent of the purchases in retail markets—if they were in a position to maintain their incomes at a level that would absorb the output of industry, we would have operating a condition essential for balance in distribution and regularity in production. That condition is that workers be given industrial status that makes possible bargaining power equal to that of their employers.

The National Recovery Act frees trade associations from restraints formerly imposed by anti-trust laws and assures them opportunity for industrial self-government. Industrial management has gained a priceless opportunity for self-government and can demonstrate its long-boasted capacity to manage industry for the best interests of all concerned. Since the power of government has been definitely increased, it is of the utmost importance that labor have that status that will provide equality in bargaining. That status rests upon recognized and accepted right to organize and to negotiate collective agreements. Section 7 (a) of the National Recovery Act was intended to assure the right to organize and to bargain collectively and 7 (b) charged the President with the duty of encouraging collective bargaining.

Now the right to organize in organizations of their choosing, free from employers' interference, as the President recently declared, means just what it says. But employers have shown their unwillingness for employees to have equal rights with them or even rights that would substantially better their conditions. The general counsel for the National Association of Manufacturers who has been the relentless foe of the principle of union organization for two decades, now seeks to show that provisions to assure free choice to workers is special privilege. Any such charge ignores the obvious organized effort of employers to substitute "unions" planned and controlled by the

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company for standard labor unions, in an effort to appear to conform to the labor provisions of the National Recovery Act without in any material detail losing their control over conditions and terms of work. The company union is an agency developed by management for the purpose of more effectively dealing with employees to accomplish management's purposes. It is so organized and operated that the employers' control over jobs is all pervading. The situation now resolves itself into this form. The law says employees have the right to organize. Shall they control their own organizations, or shall employers control them?

After the passage of the National Recovery Act there was a move toward organization the like of which had not been seen before in this country. Believing in the good faith of the administration and Congress, wage earners eagerly applied for union membership. They honestly believed that organization in unions to cooperate in carrying out the purposes and procedures of the National Recovery Act was a duty to themselves and the country. To the amazement of many, discharges and lay-offs for union activity was the response of management. Many found they had no choice but to join the company union which employers began establishing along standard patterns. To make effective the purposes of the law enacted last year we now ask for additional legislation.

Never was there such a campaign of ruthless persecution launched against working men and women who literally interpreted section 7 (a) of the National Recovery Act as according them the right to step out and organize. In their simple faith in Congress, in the Government, and in the laws of the land, these workers who had been held in a condition approximating servitude for many decades stepped out, believing they were free, and united with their fellow workers in trade unions.

What happened? Immediately a campaign of discrimination; men and women persecuted, discharged, thrown out of work. What for? Only because, inspired by the language of section 7 (a), they had dared to join a labor union.

Members of this committee, only a working man who is forced to go home from his job and sit down in the bare rooms of his home, without an income, and his family hungry, can understand what it means to lose a job. And of course out of that has grown bitterness, unrest, and industrial strife. We have enacted in the Department of Commerce building now a drama growing out of the unrest in the automobile industry, and that has grown out of the fact that this industry that had no company unions prior to the passage of the National Recovery Act organized these company unions, and called the workers in and advised them, in no uncertain language, that they wanted them to become members of the company union. Immediately the workers resented that, that attitude of paternalism. They wanted to be free men. And gradually, ever since, through the imposition of this company union, unrest has developed, feeling has been engendered, until today the automobile industry stands upon the verge of one of the greatest strikes that has ever taken place in the history of this Nation, and it is directly traceable to the determination of the automobile managers to compel their workers to belong to company unions.

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Last August, when the National Labor Board, in its present form, was organized, it was upon the formal assumption and belief that the employers of the country were willing and eager to comply with the provisions of section 7 (a) of the National Industrial Recovery Act; that force was unnecessary in securing that compliance; that only through misunderstandings would failure to comply arise, and that these instances of failure to comply could be smoothed out and eliminated by an agency set up to bring the two parties to the misunderstanding, employer and employee, together.

But this assumption has broken down in the 7 months of the National Labor Board's existence. Perhaps it would be nearer the truth to say that the assumption has been destroyed by the stubbornness of some employers who never have wanted, do not now want, and do not intend to accept that portion of the National Industrial Recovery Act which guaranteed to labor the right to organize, to choose its own representatives, freely and unafraid, and to bargain collectively. Labor thought, last August, that section 7 (a) of the National Industrial Recovery Act, had done exactly what the bill under discussion today aims to do, that is, to equalize the bargaining power of employers and employees and encourage the amicable settlement of disputes between employers and employees. Labor has never asked, and does not now ask, more than that the equality of bargaining power and freedom from restraint so essential if we are to carry out the recovery program, be established in fact. Only through something approaching equality of bargaining power can we hope to create and maintain mass purchasing power; only through freedom from restraint on the part of employers can labor hope to build up the necessary bargaining power.

The bill we are discussing today must be looked upon as a frank recognition of several facts: First, that collective bargaining is not wanted by all employers; second, that some employers—how many, I cannot say—have shown themselves entirely unwilling to support the recovery program; third, that if unobstructed organization of the workers is to proceed, it must do so in the face of bitter and often unscrupulous opposition from these employers; fourth, that if collective bargaining is to be carried out, it must be forced upon some employers; and fifth, that the agency set up by President Roosevelt last August has not the requisite power and authority to enforce section 7 (a).

Certainly no one can deny that the National Labor Board has done a real work. But no one can deny that it has not done what it was hoped it would do. This failure to fulfill all our hopes can in no way be considered as the fault of the Board itself. Rather, it is due entirely to the position in which the Board has been placed by the ambiguous nature of section 7 (a). The National Labor Board has been given a very heavy burden of responsibility—that of preserving industrial peace—without the accompanying authority which is essential if its responsibility is to be fulfilled. The Board has been consistently forced to straddle the real issue in many of the cases, and the real issue is that of union recognition for collective bargaining.

When the Board came up to that issue it was then face to face with an insurmountable obstacle, and of course the Board, calling upon its own resourcefulness as a mediation instrumentality, en-

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deavored, through mediations, to prevail upon employers and employees to agree.

Unless Congress is prepared to establish the National Labor Board as an authoritative body, with power to enforce its rulings, it must be prepared to see the entire national recovery program held in increasing disrespect and disregard. There is no middle course. For 7 months we have tried the method of persuasion. It has not worked. We are now forced to recognize that a deliberate and planned campaign is underway, on the part of certain employers, not to comply with section 7 (*a*). We must recognize this fact and meet it. Not only is labor deprived of the rights granted it by the National Industrial Recovery Act, not only is social justice defeated, but also the fair-minded employers, who are in a majority, are prevented also from carrying out the purposes of the administration. The employers who are systematically challenging and impeding the action of the National Labor Board are, as I have just stated, in the minority. We must not, in fact we cannot, permit the lawless few deliberately to destroy an agency which the cooperative majority are willing and eager to support. There will always be some employers who yield only to coercion, to legal action. Upon these few the moral force and the appeal to public opinion upon which the Board has so far been forced to depend, are not sufficient. Industrial law, like civil or criminal law, is aimed at the few, and not at the many.

This labor disputes bill becomes necessary largely because of the failure of the employers of the country to abide by the spirit and the letter of section 7 (a) of the National Industrial Recovery Act.

Congress had listened to the voice of the workers and when it gave employees the right to organize for the purpose of cooperative action among trade groups, it gave workers the right to self-organization and representation through representatives of their own choosing. Did the employers of the country accept this law? Many refused to listen to the voice of the workers and the voice of Congress, even the voice of the President. They made haste to say to their workers: "You must have organization. Here is a plan of representation." And pretty soon what they had was not self-organization at all.

The National Industrial Recovery Act marks a most important step in the emancipation of the workers. It abolishes the yellow-dog contract. Workers cannot as a condition of employment be required to join a company union or to refrain from joining, assisting or organizing a union of their own choosing. This clear-cut abolition of the yellow-dog contract is a great step forward. But it has done nothing to abolish the company union. In fact it has caused them to multiply. Now it must be remembered that only a small number of employers ever used a yellow-dog contract. The majority of company union shops depended on other tactics for the promotion of their home-made unions. And now company unions are spreading to many more companies. The bona fide labor movement is attacked on a much wider front.

May I make this observation upon this particular point just here. Section 7 (a) provides that no worker shall be required to join a company unions as a condition of employment. That is specific and plain.

Now may I take the liberty of stating that, in my opinion, Congress intended, when that section was adopted, that workers would

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not be required to join a company union. But let me ask you, what is the difference in requiring a man who seeks employment to join the company union as a condition of employment, and requiring all of the workers already employed to join the company union, in spirit at least, in order to hold their jobs? What I mean by that is this: When the company union is formulated and the law is drafted in the sacred precincts where the board of directors meet, and it is carried out and handled to the workers and they are asked to accept it and to join, the gesture itself carried with it coercion because those who know the workers understand how full of fear they are. They do not want to offend the management. The whole atmosphere is surcharged with coercion. Immediately the foremen and subforemen and bosses and managers are all enlisted as organizers, and they go from John to Jim and Bill and Jack on the bench and give them to understand that it is the desire of the company that they identify themselves with the company union.

This is coercion, this is intimidation, and in my judgment it is a violation of the spirit, if not the letter, of the law.

Someone has said that the company union movement since the National Industrial Recovery Act is an attempt to put new wine into old bottles. I disagree. I've looked into a lot of these plans and have heard a lot about their working, and I tell you it's the same old wine in the same old bottles. They haven't even changed the labels. They have merely changed the advertising.

To abandon this figure of speech, few of the company union plans in themselves pretend to be an agency for collective bargaining. Show me a company union through which a wage agreement, signed and sealed by the representatives of the union and the management, has ever been consummated. Never one.

The new constitutions carry the same old statements of purposes. These emphasize communication and cooperation, not the give and take of collective bargaining. "Business Week" was right, perhaps unintentionally so, when it stated, December 30, 1933, that General Motors set up the Chevrolet Employees Association "to cooperate with the Chevrolet management." In the scores of company union plans which have been sent in to the federation, only one mentions collective bargaining, one out of six, and that one is S. Dresner & Sons, Inc., Co., whose plan came to grief in the National Labor Board. The General Cable Corporation in its suggested plan of employees' representation mentions the National Industrial Recovery Act in these words:

> The purpose of this plan is to promote a more direct and mutual relationship between the employees of this plant and its management, in respect to conditions and terms of employment and all other matters of mutual interest or concern which may arise under the National Industrial Recovery Act, in furtherance of the declared policy thereof.

It is in the letters to the employees selling them the company union schemes that the companies depart from reality and in the new phraseology of the National Industrial Conference Board, state that a company union provides machinery for collective bargaining. As soon as the N.I.R.A. gave workers the right to collective bargaining through representatives of their own choosing, the employer's organizations began to say "there are two kinds of collective bargaining." In June the conference board published a book on collective bargaining through employee representation. In it they said:

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Collective bargaining has been practiced in this country in two forms. One form recognizes the working force of each company as a compact unit, and the management deals directly and exclusively with representatives of this group. The other form seeks to organize into trade unions all those within particular trades, and dealings with employers are carried on by officers of the organized union, who in most cases are not employees of the company with which the union may be negotiating.

Tead and Metcalf wrote "Labor Relations Under the Recovery Act" about the same time. Though they urge the formation of an employee-representation plan under some circumstances, they state in unequivocal terms:

Some employers now speak of negotiations with their own employees exclusively through the medium of shop committees, factory councils, company unions, etc., as collective bargaining. * * * To apply a term which has been used for decades to connote dealings with an inclusive body of craft or industrial workers having outside affiliations to dealings which are completely confined to one plant or one company not only is confusing but readily leads to a deception of both workers and managers as to the basic difference between the two types of negotiation. To apply the phrase "collective bargaining" to both types of transactions is to confuse the issue.

Senator DAVIS. Mr. Green, I will have to leave in a few minutes, but will be back again, probably before you conclude, however I would like to ask one question before I depart.

Mr. GREEN. Yes, sir.

Senator DAVIS. Because of the many classifications in this modern industry of ours, many employers are objecting to trade unions because of the jurisdictional dispute. What assurance has an employer with many classifications, the jurisdictional dispute will not enter into his factory, and that it will be amicably adjusted without a general strike in the industry?

Mr. GREEN. My dear Senator, that objection is not well founded, because it is the policy of the American Federation of Labor, particularly in mass production industries, to set up their works council, the trade union councils in these mass-production industries, and to negotiate agreements through collective bargaining for all the workers at the same time, so that contracts will begin and end at the same time.

Now, I will admit that in the building trade organization the question of jurisdiction is still a serious one, a difficult problem, but that is a problem that has come down to us at the beginning. The employers who object to jurisdictional disputes are those who will suffer least from jurisdictional disputes, and that is the mass-production industries.

Senator DAVIS. As you went on in the earlier part of your paper, did I get a slight notion that you were more of less favoring compulsory arbitration?

Mr. GREEN. No, sir; and the bill does not provide for compulsory arbitration.

Senator DAVIS. I know the bill does not provide for it, it does not deny the right to strike; but you continued with your remarks it was creeping into my mind, at least, that you were leaning toward compulsory arbitration.

Mr. GREEN. Well, I want to relieve that impression because we do not favor, nor do we ask for compulsory arbitration as applicable to either employers or employees.

Turning specifically to the sections of the act which have to do with limitations on company unions, namely, section 5, articles 3 to

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6, I cannot overemphasize how important these provisions are to safeguard the rights of workers for self-organization and representation through representatives of their own choosing. Article 3 states that it shall be an unfair labor practice for an employer or anyone acting in his interest directly or indirectly to—

initiate, participate in, supervise, or influence the formation, constitution, bylaws, other governing rules, operations, policies, or elections of any labor organization.

We believe that that section as I have just read it or referred to it is in thorough accord with the letter and the spirit of section 7 (a) and section 7 (b) of the National Recovery Act. In other words, it is intended to give vitality and strength and reality to the provisions of section 7 (a) and the Senator has well drafted this section, and I imagine that it was drafted out of his experience as a member of the national labor board.

However, I wish to refer to a development which has taken place almost simultaneously with the preparation of this act. Company unions had been established upon the transportation lines of the Nation. These company unions had been organized by the railroad executives. They were fostered, financed, nursed, assisted, and in many instances administered by the representatives of the railroad executives. The situation was appealed to the commissioner of railroads. Commissioner Eastman, the Director of Railroads——

Senator WAGNER. The coordinator of railroads.

Mr. GREEN. The coordinator of railroads. As the result of his study of the situation he issued the following order, and I think it is quite appropriate for me to read it for the record just now:

The history of the organization of many of the company unions—

This is a quotation from a circular, an official document, a circular issued by Coordinator Eastman—

as disclosed in the carriers' answers to my questionnaire, points to the conclusion that they have not been duly designated and authorized to represent employees in accordance with the above requirements. Their organization appears to have been tainted in many instances with coercion or influence on the part of the carrier managements. They must be cleared of such taint if they are to meet the specifications of the Emergency Act.

The principle now embodied in the law, in short, is that railroad managements must keep their hands off, so far as labor organizations are concerned. That this principle is sound is not open to question, if we believe, as we must, that employees are free American citizens and not a menial class subservient to the employing class.

What a splendid argument in opposition to company unions!

Whatever may have been the attitude of employees in the past, it is plain that today they are prepared to insist upon the right to bargain and deal collectively with their employers upon equal terms. The provisions of section 7 (e) with respect to the railroads are paralleled by the provisions of the National Industrial Recovery Act with respect to other industries, and the latter provisions are recognized in the codes which have been and are being established. The same principles are implicit in the Railway Lab[illegible]t and in the Norris-LaGuardia Anti-injunction Act. They are principles [illegible]ch have, as aforesaid, been accepted by most railroads with respect to certain classes of employees and by some railroads with respect to all classes, and with good results.

Nothing will make for more dissatisfaction among railroad employees and affect their morale more adversely than attempts to undermine these sound principles, which are now a part of the law of the land. No practices retard the permanent improvement of labor relations and destroy the spirit of cooperation between men and managements more effectively than efforts to interfere with

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free choice of labor organizations and representatives. No one factor leads more certainly in the long run to strikes and threats of strikes. Nor is anything more important to railroad rehabilitation and the future good of the industry than relations between employees and managements which will promote a more constructive and a less defensive attitude on the part of the employees and their organizations. The employees form the largest part of the industry and they can only prosper as it prospers, but this basic fact is often forgotten when the sound principles which the law now recognizes are denied and can be maintained only through struggle and strife.

To the end, therefore, that railroad labor practices may be brought into entire harmony with the law and the basis be laid for peaceful and cooperative labor relations, I offer for your consideration the following suggestions for action on the part of the railroads:

(1) That all carrier officers, subordinate officials, supervisors, and agents be advised by appropriate notice that influence, or coercion by them of employees with respect to membership or nonmembership in organizations of labor or choice of labor representatives, or any interference with such organizations, is illegal and will not be tolerated; and that employees who exercise their right to join or not to join a labor organization, or who legally solicit membership in such an organization or who discontinue membership in or cease to pay dues to a labor organization must not in any way be cautioned, reprimanded, threatened, penalized or otherwise subjected to pressure or discipline because of such action or nonaction.

(2) That all employees be advised by appropriate notice posted on bulletin boards and distributed generally that, in accordance with the provisions of section 2, paragraph 3, of the Railway Labor Act and paragraphs (o), (p), and (q) of section 77 of the Bankruptcy Act as amended March 1933, which paragraphs were by section 7 (e) of the Emergency Railroad Act, 1933, made applicable to all carriers by railroad, they are free to join or not to join any labor organization and will in no way be penalized or prejudiced by the management because of their choice.

(3) That those railroads which have at any time in the past required any employees as a condition of employment to sign a contract or agreement to join or not to join a labor organization, notify their employees by an appropriate order that such contracts or agreements have been discarded and are no longer binding in any way.

(4) That all railroads cease in any way to contribute financially to the support of any labor organizations or pay the salaries, wages, or expenses of any labor or employee representative while engaged on behalf of employers in carrying out the purposes of the railway labor act, except in the case of members of local shop committees who work regularly at their trade and who, by virtue of a written rule included in a labor contract protected by the proviso of section 10 (a) of the emergency act, are not to suffer loss of time when they meet with the local shop supervisors or officials on company time for the purpose of handling a local grievance matter.

(5) That those railroads which retain any control over the constitution and bylaws of any labor organization, or whose officers, subordinate officials, supervisors, or agents participate in the process of selecting representatives of employees in connection with labor agreements or disputes, withdraw from all such participation or control.

(6) That those railroads which now extend special privileges exclusively to the members of any labor organization, such as group insurance or contributions to relief funds, either make such privileges available to all employees concerned or cease extending them only to the member of such labor organization.

(7) That those railroads which now audit the accounts and books of labor organizations or act as agents for labor organizations for the purpose of collecting or assisting in the collection of their dues and fees, discontinue providing these services to such labor organizations.

In submitting this matter for your consideration, I do so in the hope and belief that compliance with the law can be assured by voluntary action of the railroads, and I am confident that only good results will flow from such voluntary action.

There is a splendid argument in support of the Wagner bill. That prohibits the representatives of the railroads from doing the very things that you say the management of private industries shall not do, and if this ruling made by Coordinator Eastman, which I under-

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stand is in accordance with the law, is good for the railroads of the Nation, for the transportation industry, then I say to you that the Wagner bill is good for private industry. It will abolish abuses. It will make men free. It will prevent them from being subjected to the membership in a union, a company union, against their will. It will eliminate this contantly rising feeling of discontent in the minds of the workers which ultimately must develop into an industrial conflagration. And I say to you, my friends, and I say it in all seriousness and with a full sense of my personal responsibility, that industry in America is, as it were, undermined by a volcano of industrial discontent, and the responsibility is directly traceable to the employers of the Nation, who have in a short-sighted way imposed, if you please, company unions upon the workers of the Nation. They resent it. They hate it. They are against it, and not only will there be strikes in the automobile industry, not so much against wages as against the company unions, but it will spread to steel and other industries of the country, unless the greedy hands of these employers are restrained.

Now may I refer just briefly to the growth of company unions. The growth of company unions in the past few months is ample proof of employers' activities in initiating and supervising these pseudo-labor organizations. First, let us examine the numerical growth of the company union. There is just one bit of statistical information on this subject, the report of the National Industrial Conference Board on Individual and Collective Bargaining Under the N.I.R.A., published in November 1933. This report is obviously a study of a sample of the larger companies in manufacturing and mining in this country. It is a sample large enough to be representative, however, including reports from over 3,300 companies, among the companies with a capitalization of $500,000 or more, representing an aggregate employment of 2½ million wage earners, or approximately 27 percent of the estimated total number of workers now employed in manufacturing and mining. Although the sample is large enough to be representative, no one would suppose that it is an unbiased sample. The interest of the National Industrial Conference Board all these years in company unions would indoubtedly lead its member companies to respond to its questionnaire, while the same reputation would undoubtedly cause some more broad-minded companies to throw the questionnaire into the waste basket promptly. That the conference board assumes that 1,164,000 represents all the workers covered by employee representation in the country and not 27 percent of them is illustrated in its method of computing increase. Its June study, which purported to be a survey and not a sample, found 433,000 members of company unions in manufacturing and mining. This figure is compared with the 1,164,000 to show an increase of 169 percent between June and November in the wage earners in manufacturing and mining industries covered by employee representation plans.

That is significant. Between June and November, immediately following the application of the National Industrial Recovery Act, the development of company unions in industry began, and between June and November the corporations of the country, the organizers of the corporations brought all these millions of workers into company unions, I charge, for no other purpose than to thwart and make in-

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valid the collective bargaining sections of section 7 (a) of the National Recovery Act.

The CHAIRMAN. How many company unions, if you know, were organized after the passage of the N.R.A.?

Mr. GREEN. I think I have that here. As I go along with my figures, Senator, I will give you that.

Out of the 3,300 companies reporting, 556 reported that they dealt with their employees only through employee representation. Another 97 companies reported employee representation plans covering some fraction of their workers. Interestingly enough, 400 of these companies had started their employee-representation plan since the enactment of the Industrial Recovery Act.

It will be observed that the conference board asked whether companies dealt with employees individually or through a plan of employee representation or through an organized labor union. Its report makes it perfectly clear that the figures do not show how many members company unions now have, and especially how many members outside unions have among their employees. In fact, the report states:

* * * the small proportion of wage earners indicated in this study as dealing with the employer through organized labor unions does not conflict in any way with the claims of greatly increased labor-union membership. It should be borne in mind that this is a study of the relative popularity of methods of dealing with the employer and not in any way a census of membership or nonmembership in organized labor unions.

This has been frequently lost sight of when the conference board figures are quoted—and misquoted—as, for instance, by David Lawrence in a signed article in the Washington Star last week, when he said that 45 percent of the employees—what employees?—are members of unions of their own choosing which are not affiliated with national unions. Taking the figures at their face value, they show that of these 2½ million workers covered, 45.7 percent worked in companies which deal with their employees through company unions, and 9.3 percent through companies which have contracts with bona-fide labor unions.

Senator BORAH. Mr. Green.

The CHAIRMAN. Senator Borah.

Mr. GREEN. Yes?

Senator BORAH. Did you say that the 45 and some percent——

Mr. GREEN. 45.7 percent.

Senator BORAH. Of the labor employees deal with company unions?

Mr. GREEN. This is what David Lawrence said.

The CHAIRMAN. This is what David Lawrence said. It is a signed article by David Lawrence. You did not yourself assert that information.

Mr. GREEN. No. I do not agree to that. The conference board report quotes statements of some reporting companies that "50 percent of our employees have joined a union." The attitude seems to be: Some of our employees have joined a union; however, we elect to deal with our employees through our works council, which we control; therefore we report that our employees have elected to deal with us through the works council. Such reasoning is on its face disingenuous to the point of cynicism.

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Concerning the growth of company unions since November, no one has accurate information. The files of the National Labor Board indicate that these organizations are still being formed. True, other files—in some cases of the National Labor Board—show that some firms have signed agreements with the chosen representatives of the employees and the company unions are falling into disuse. One instance of this is the Link Belt Co. of Indianapolis.

To summarize what we know about the numbers of workers covered by employees representation plans: The National Industrial Conference Board found a million and a quarter workers covered by such plans in 1932 in all industry. In November 1933 they found almost as many workers so covered in manufacturing and mining industries. An informed estimate of the present membership of company unions throughout the country is between two and three million, not alone in manufacturing and mining but in public utilities and on the railways, and also in trade.

These company unions, I repeat, were formed by the corporations. The laws were drafted by the board of directors, they were taken to the workers ready-made, handed to them, and the workers were told, "The corporation asks you to belong to this company union and be governed by these ready-made laws."

The CHAIRMAN. You mean by-laws?

Mr. GREEN. I mean by-laws. I beg your pardon.

Senator WAGNER. And constitution, too.

Mr. GREEN. And constitution.

The CHAIRMAN. Yes.

Mr. GREEN. They spent the money earned by the corporation in paying highly priced men to draft these laws. They spent the money earned by the company to pay the expenses of the company union. They are using funds out of their earnings for illigitimate purposes, and in my judgment it is illegal and unlawful, because that is a method used by powerful corporations to defeat the purposes of section 7 (a) of the National Recovery Act.

I ask, is it not enough for corporations to exercise all their rights under a corporate charter? Is it not enough to collect from the market in the United States the money which pays the dividends and earnings of the corporation? Is it not enough for employers to organize in the manufacturers' associations and automobile chambers of commerce, and into chambers of commerce free without interference? Is that not enough? What right have they to threaten, coerce, and intimidate the workers and compel them by indirect methods and coercion to belong to their company unions? They are not only exercising their corporate strength over the earnings of the company and in its manufacturing, but they are exercising their corporate strength over the economic power, the social welfare of these millions of employees.

Senator BORAH. And prices.

Mr. GREEN. And prices. I say to you—I feel strongly about it, because I see the development of a most menacing situation here, one that is filled with serious potentialities.

The Manufacturers' Association charged some time ago that the strikes of this country were due to labor union activities. I have hurled the charge back in their face, that these strikes are due, directly due to the illegal acts of these corporations in establishing company unions and in imposing these company unions against their will.

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The CHAIRMAN. Were most of these strikes in industries where company unions prevailed?

Mr. GREEN. Yes, sir. The Budd Strike. I think I shall enumerate a large number of them as I go along.

The CHAIRMAN. The record shows that since the adoption of the N. R. A., whatever strikes have occurred have been more frequent in the establishments and industries where company unions exist rather than in the industries where organization labor unions, so-called exist?

Mr. GREEN. Where heretofore no contract existed between employer and employee.

Senator WALCOTT. Can we have a list of those companies where the strikes occurred?

Mr. GREEN. Yes, I have them here.

The CHAIRMAN. Senator Walcott.

Mr. GREEN. Pardon me. If you were at the hearing yesterday conducted by the National Labor Board upon the complaint of those employed in the automobile industry, representing thousands, you would have soon discovered that the threatened strike, with all its serious potentialities and consequences, in the automobile industry is directly traceable not only to the determination but the actual imposition of company unions by automobile manufacturers upon their employees. They prepared them; they presented them. I say truthfully they forced them to accept them, during the period between last June and the first of December.

Senator BORAH. Are there any company unions which you concede to be voluntary unions upon the part of the employees?

Mr. GREEN. Well, Senator, I know of none. There may be some independent unions that have been formed outside of the American Federation of Labor; the Railroad Brotherhoods are bona fide unions, and there are others. We do not classify them as company unions; we classify the company unions as a union fostered by the company, organized by the company, promoted by the company, and imposed upon the workers by the company.

Senator BORAH. You would not deny to the employees of the company, should they desire to do so, the right to voluntarily organize in that company?

Mr. GREEN. Positively not. And we would not deny to a worker the right to say whether he wanted to belong to a union or stay out. We want him to have his free choice.

SENATOR BORAH. I understand that. But the idea has gotten abroad that you desire to deny the right to the employees to organize if they wish to organize.

Mr. GREEN. I want to issue my denial of that in the record. We want them to be free to say whether they want to be with us, or whether they want to be with another bona fide union, but let it be a union that is not supported and fostered and financed by a corporation.

Senator BORAH. You want to take away the domination of the employers.

Mr. GREEN. Yes, sir; we want to take away the domination of the employer.

Senator BORAH. That is the limit of your desire in this matter?

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Mr. GREEN. Yes, sir.

Senator WALCOTT. And you want to also, do you, leave him entirely free to his individual choice, whether he should belong to any union or not?

Mr. GREEN. Absolutely.

Senator WALCOTT. With no pressure whatsoever from the employer?

Mr. GREEN. Let him decide it for himself.

Senator WAGNER. That is all this legislation is intended to do.

Mr. GREEN. That is what this legislation is intended to do.

Senator BORAH. Are we narrowing it down to the propostion of whether a man shall have the right to be free from the domination of his employer? Is that all there is to it?

Mr. GREEN. Well, Senator, we found that section 7 (a) did not work.

Senator BORAH. I know you did.

Mr. GREEN. Now we want to make it workable and vital and that is the purpose of this legislation.

Senator BORAH. Well, the purpose of it is to remove the controlling, the dominating power of the employer of forcing these employees into a company union.

Mr. GREEN. Absolutely.

Senator WAGNER. That is all it is.

The CHAIRMAN. When it comes to collective bargaining while nominally they are representatives of the employees of the railroad, they are, in fact, representatives of the employers?

Mr. GREEN. Really they are representatives of the company. I will repeat again, Senator, what I stated before you came in, that there isn't a single agreement providing for wages, hours, and conditions of employment that has been negotiated and signed by the representatives of corporations and company unions.

Senator WAGNER. That came out in the case we had yesterday.

Mr. GREEN. It came out very clearly yesterday.

Senator WAGNER. No effort ever has been made?

Mr. GREEN. No effort has ever been made at all.

Senator BORAH. Let me understand that again. What was your statement?

Senator WAGNER. Yesterday we had a hearing in the automobile industry and it came out very clearly that the company union was formed by sending to each worker a constitution and bylaws and telling him, "This is now your organization." As the result of that an election was held, and the workers testified that they voted because they knew very well if they did not vote their jobs were gone. Then they elected these representatives. We asked the representatives whether they had ever negotiated or attempted to negotiate a collective bargaining agreement as to wages and hours on behalf of the workers with the company, and they said, no; they never did, never made any such effort. The sole purpose seems to be to listen to the complaints of the workers as to some complaint around the shop, something of that kind. We tried our best to find out what else was done.

Senator BORAH. Do you think that is characteristic of company unions generally, that there is no agreement made?

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Senator WAGNER. I can only speak for those that actually came before us, and it was characteristic of every case of a company-dominated union. I think there are company unions that are not dominated by the employers, independent unions that may not be affiliated at all with the national organization here.

Senator WALCOTT. While we are on that subject, why cannot we get a list here, either as part of the record, or if it is too confidential, Mr. Green, submit it to this committee for executive session. That will show all those companies that have, by force or intimidation, as you charge, compelled a company union to be organized within its own branch, and those that have unions that are independent from employer control. Why can't we get such a list as that?

Mr. GREEN. I have a list.

Senator WALCOTT. You make a very serious charge here. Now it seems to me we ought to know the exact facts about that, and the names of the people that are guilty of intimidation.

Mr. GREEN. It will be very difficult, I presume, to assemble that data, but I will endeavor to do it, Senator, and submit it to you.

Senator WAGNER. Mr. Green, may I just emphasize this point, that if a union is not dominated by the employer this legislation cannot affect it.

Mr. GREEN. Then this law does not affect it.

Mr. WALCOTT. I understand.

Senator WAGNER. This legislation only affects the cases and all we do is to restrain some practices through which an employer's dominated union operates, this affects cases where the employers dominate the unions. That is all this legislation does.

Senator WALCOTT. I understand.

Senator WAGNER. If they do not dominate the union there is no interverence of any kind or character.

Senator WALCOTT. I understand.

Senator BORAH. What is your test of domination?

Senator WAGNER. For instance, financing the union, completely dominating the union through financing it, initiating the union.

The CHAIRMAN. Yesterday, Senator, in your temporary absence, Dr. S. H. Slichter, a professor from Harvard, made an able presentation injecting that thought into this bill. He thought it was conceivable that a right-minded employer could initiate a company union and not dominate it, and he rather objected to the word "initiate."

Senator WAGNER. He objected to the word "initiate."

The CHAIRMAN. He agreed with you and Mr. Green in the necessity of preventing coercion or domination by employers, but he thought an employer ought to have the right to say to his men, "you are not organized. I think you ought to get together and from an employees organization", and then leave them free to do so.

Senator WAGNER. I have no pride of words at all. It is the substance I am after.

The CHAIRMAN. It is along the line of the question of Senator Borah as to the test of domination, as to what the definition of "dominating a union" is.

Mr. GREEN. Yes.

Senator WAGNER. I think Senator Borah put it all in one sentence when he said the only effort here is to make free men out of workmen.

Mr. GREEN. That is all there is to it.

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Senator WAGNER. That is all there is to it.

Mr. GREEN. Let the workers decide for themselves if they want to belong to a union, or if they do not.

The CHAIRMAN. Is it difficult for anyone to get direct evidence of domination by employers of a company union?

Mr. GREEN. It isn't difficult to secure evidence that would convince the ordinary person, Senator, because it goes back to this, that if there is no union in the plant, the corporation sets up a union for them, it drafts the bylaws of the union, and says, "Here us your union, here are your bylaws." That is what happens. The employer goes on, then, and says, "Now we want you to call an election and select your representatives." They usually participate in the selection of the representatives. The balloting is held in the factory in an atmosphere of coercion, where the subbosses and the foremen and superintendents are watching and observing and directing the whole election machinery. There is not a fair-minded man that would not say that that is a company-dominated union.

Senator WAGNER. And the workers are directed to go up and vote.

The CHAIRMAN. Senator Walcott, you could ask the Department of Labor to procure the statistics.

Senator WALCOTT. I think it is very important, if that is an extensive thing, that we know it, because it has a distinct bearing on this bill. That is the purpose of this bill.

Senator WAGNER. I do not think it has the slightest bearing on this bill, because if the company is not dominating the union, the bill will not affect it.

Senator WALCOTT. We do not need the bill if that is the case.

Senator WAGNER. Exactly. It is only a certain type of companies that we are after.

Senator WALCOTT. Let us find out how extensive this practice is, because we don't know.

The CHAIRMAN. Senator Wagner yesterday in his testimony, in your absence, Senator Walcott, stated that 75 percent of the strikes since the inauguration of the N. R. A. came out of or related to the creation of company unions in industries.

Senator WAGNER. It came our of the refusal of employers to recognize those who had been selected by the workers to represent them.

Mr. GREEN. Yes.

Senator WAGNER. The dispute was on the question of recognition, recognizing the employees' representatives.

Senator WALCOTT. And in most cases the representatives were chosen out of the union?

Senator WAGNER. No; as the result of an election by the workers, but the employees in those cases felt that they had a right to decide with whom they should deal on behalf of the workers.

Mr. GREEN. I think I can bring some of these facts out and some of the information you are referring to, in the statement I have.

The CHAIRMAN. With the permission of the committee, we will proceed, Mr. Green.

Mr. GREEN. All right. Now, how company unions are formed.

No one needs to stand here and cite evidence that company unions have been formed by companies and not by employees. That is an open secret. As General Johnson told the code authorities last week:

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There is no law prohibiting a company union as such if there is no interposition whatever by employers, and if the men freely choose it.

But 99 times out of 100, you and I know that this is not the case. Let's not kid ourselves.

The printed constitutions which have been sent us by union members all over the country—some of them identical even in format, others identical only in wording—would dispel any doubt concerning the spontaneous nature of these organizations. It is interesting, however, to see how these plans have been publicized. For years, the publications of the National Industrial Conference Board and of the American Management Association have been telling employers how to start company unions.

In 1932, the Policy Holders' Bureau of the Metropolitan Life entered the field with a pamphlet called "Employee Representation", in the foreword of which was the statement, "The bureau expresses no opinion either pro or con on the subject of the report. The aim has been to present a picture of actual practices in the organization and operation of employee representation plans from a purely fact-finding point of view." In 1933, the Policy Holders' Service Bureau issued a pamphlet with the new style terminology, "Collective Bargaining Through Employee Representation." This contained no such foreword and presented two plans for employee representation: (1) for a company having widely separated units, or employees at different working locations. These plans are complete, with a suggested letter to be signed by the president of the company or the joint committee "drafting the plan" as a means of introducing the employee representation plan to those affected.

Even official governmental sanction has been given in a report by Walter C. Teagle, chairman of the industrial relations committee of the business advisory and planning council for the Department of Commerce. In his introduction, Mr. Teagle states that his report "champions the advantages of employee representation for the purposes of collective bargaining."

Since the National Industrial Recovery Administration trade papers have told their readers how, either by printing the constitution of the Carnegie Steel plan or the Chrysler Motor Co. plan, or by news notes that the Republic Steel & Iron Co., which had operated a successful plan for 15 years, would send a copy of its constitution on request, or that the industrial relations section of Princeton University would send a bibliography of reference.

Mr. T. H. A. Tiedeman, of the Standard Oil Co. of New Jersey, is quoted in Personnel, the magazine of the American Management Association, for November 1933, as saying that one company, presumably his own company, had sent out almost 2,000 copies of an outline of preparation and installation of an employee representation plan—

For the confidential use of many executives, who because of the Industrial Recovery Act, are making inquiry as to the best method of inaugurating a plan of collective bargaining between elected representatives of employees and management.

Mr. Tiedeman states that inquiries were carefully scrutinized so that answers were sent only to the 2,000 worthwhile inquiries.

Mr. GREEN. Here I have a number of plans prepared by these service organizations, as I am informed, and everyone of them are similar.

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The CHAIRMAN. Just what are they?

Mr. GREEN. Here is the plan of employee representation of the Allenwood Steel Co.

The CHAIRMAN. What is it?

Mr. GREEN. It is a constitution and bylaws draft.

The CHAIRMAN. It is a booklet of constitution and bylaws for the use of employees in some particular industry? What are the names of the industries, please?

Mr. GREEN. I will give them to you. The Allenwood Steel Co.

The CHAIRMAN. Located where, do you know?

Mr. GREEN. Conshohocken, Pa. Here is the representation plan of the Carnegie Steel Co.

The CHAIRMAN. Are they all alike?

Mr. GREEN. Here is the representation plan of the Continental Can.

The CHAIRMAN. Are they all similar?

Mr. GREEN. All similar. The Weirton Steel Co., that is at Weirton, W. Va.

The employee representation plan of the Illinois Steel.

You notice they claim to be the bylaws of the companies, the steel companies.

The CHAIRMAN. They all seem to have the same colored cover.

Mr. GREEN. The Trenton works of the American Steel & Wire Co.; consolidated works of the American Steel & Wire Co.; Michigan Limestone & Chemical Co.; Pittsburgh Plate Glass Co.

Then here are some others that I will refer to later. These plans are all drafted by experts and you may look at them if you wish [handing papers].

Senator WAGNER. I think you will find that all of them prevent their choosing anybody as a representative except somebody in the plant.

Senator BORAH. This booklet here says:

> This plan shall in no way discriminate against any employee because of race, sex or creed, or abridge or conflict with his rights to belong or not to belong to any lawful society, fraternity, union or other organization.

Mr. GREEN. Yes, sir.

Senator BORAH. Is that carried out?

Mr. GREEN. Which?

The CHAIRMAN. That bylaw.

Senator BORAH. That bylaw which says it does not interfere with anyone joining another union? I do not see how that would work.

Mr. GREEN. Yes, it says that, Senator, but when they join another union they are immediately told that they are discharged.

Senator WALCOTT. Mr. Green, you know that we want facts in this thing and that is a wholesale, sweeping statement, that an employer will discharge anybody who does not agree to belong to this particular union. Can you bring that as a wholesale charge?

Mr. GREEN. My dear Senator, I have been sitting on the National Labor Board as a member of that board for months and I have heard the cases of these workers who came in with their grievances, members who dared to join labor unions and who were discharged because they joined labor unions, ruthless persecution.

Senator WALCOTT. Although they belonged to the company union perhaps?

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Mr. GREEN. Many of them refused to join, formed their own union and wanted to deal with the companies through their own chosen representatives but they were deprived from doing so because the company simply refused to deal with them.

Senator WAGNER. Mr. Green, have we not had cases too where the only request the workers asked was an opportunity to have an election in which they could freely express their thoughts as to whether they wanted one representative or another representative, whether they wanted a union representative or a non-union representative?

Mr. GREEN. Yes.

Senator WAGNER. And that the companies have resisted any requests on the part of the employees simply to have an election to determine it as free men?

Mr. GREEN. Yes.

Senator BORAH. This is another bylaw which should perhaps be read in connection with the bylaw which I read previously:

> The management of the works and the direction of the working forces, including the right to hire, suspend, or discharge for proper cause, or transfer, and the right to relieve employees from duty because of lack of work or for other legitimate reasons, is vested exclusively in the management; and, except as expressly provided herein, these rights shall not be abridged by anything contained herein.

The management has the exclusive right to determine when they have abided by the laws?

Mr. GREEN. Yes; and most of them provide, Senator, that these bylaws can only be amended by a unanimous vote of the members of the works council and the plant management.

Senator WAGNER. I think maybe we ought to read the proposed amendments in it. It is a little different, but here is the way you may amend this union of workers.

The CHAIRMAN. You are reading now one of the bylaws that provides the means for amending the bylaws?

Senator WAGNER. This is the employee representation plan of the Pittsburgh Plate Glass Co.:

> Any method of procedure hereunder may be amended at any time by two-thirds vote of the entire membership of the joint committee on rules, or by concurrent majority vote of the employees' representatives and of the representatives of the management at an annual conference.

In other words, without the consent of the management these employees' unions cannot amend their bylaws.

Senator WALCOTT. Is that number XI?

Senator WAGNER. That is number XI.

Senator WALCOTT. It is exactly word for word with this one. They are all similar.

Senator THOMAS. I have looked over all of these and they are practically the same.

The CHAIRMAN. Mr. Green, you may proceed.

I want to say, Senator Walcott, that he is supporting this bill, not only as the representative of organized labor, but as a result of his experience on the Labor Board, of which Senator Wagner is chairman, so that some of the facts that he has given are the result of observation there.

Will you proceed, Mr. Green?

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Mr. GREEN. The plan which "this company" sent out is complete even to instructions for a trip around the city and taking a picture at the first district meeting and the menu for the dinner. Let us not be distracted, however, by the amusing features of this plan. More interesting, as revealing the unfortunate, insincere attitude of business men in this crisis, is the instruction as to how to start the plan so that it seems to come from the employees. It is interesting that these instructions are on a typewritten sheet pasted to the mimeographed outline of "Steps necessary to prepare and conduct elections." I quote in full:

In order to have an employee representation plan, somebody has to start it. Since it cannot function at all unless the employees choose it as their medium, it is highly beneficial to have the first suggestion come from them, and to have their recommendation and approval for each step and for the whole procedure.

Therefore, for the items covered herein, it is desirable to have the advice and approval of a committee of employees before the presentation of a plan for the consideration of the employees as a whole.

To do this, an employee is usually selected who is unquestionably representative of the group as a whole. He is asked to name another employee, with the idea that the two of them will name one more, or such other number as in their opinion would be equitable to draw up the fundamentals of a plan.

The various items which are covered in this booklet are then turned over to them for their consideration, in order that there may be discussion so as to develop any changes and amendments which, in their opinion, would be beneficial. This committee of employees would then sign the election notice together with the President (and probably other members of the management).

When the first meeting is held, this employee committee would act with the chairman in presenting to the meeting for its adoption the joint agreement, which would represent the mutual recommendation of the management and the employee committee.

The outline of preparation and installation includes a suggested letter from the President to department and field managers. The items in parentheses and italic within the letter were added in longhand, apparently an afterthought—after the N.I.R.A.

(Date.)

Suggested letter from the President to department and field managers.

The board of directors has authorized the installation of a representation plan in this company. The plan (*which has been approved by a committee of the employees*), is practically identical with those which have been in successful operation for some years in many other companies. As you know, we have contemplated the adoption of such a method for some time and we have now made the decision in order to be in harmony with the provisions of the Industrial Recovery Act.

You will undoubtedly share my satisfaction at this announcement which offers to the employees and the management further and better opportunity for the discussion of their mutual problems and the furtherance of their common interests.

There is attached a set of instructions together with the other papers necessary for conducting the election. Please read these carefully so as to become thoroughly familiar with the details.

Please feel free to call on us for any further information or advice as we wish to aid you (*and the employees*) in every way in assuring an election in your territory or plant which will be fully participated in by all employees.

Yours very truly,

PRESIDENT.

This particular outline of installation includes no letter to employees. Our mail included three identical letters to employees announcing that the ------ ------ company, adhering to the principles set forth in the National Industrial Recovery Act, had inaugurated a plan of employee representation. There is nothing different in these three excepting the date and the letterhead.

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CONTINENTAL CAN CO., INC.,
Harvey, La., August 7, 1933.

To our employees:

It gives us pleasure to announce that the Continental Can Co., Inc., adhering to the principles set forth in the National Industrial Recovery Act, sponsored by the President of the United States, and passed by the Congress, has inaugurated a plan of employees representation under the provisions of which the employees of our various departments and operations will have a voice in all matters pertaining to industrial relations.

A copy of plan is enclosed herewith, which we hope you will read carefully, and give it your hearty support.

We would suggest that arrangements be made promptly to have this plan become effective by nomination and election of representatives, as provided under the law.

The whole-hearted support of the plan by you and your fellow employees will be appreciated.

Very truly yours,

CONTINENTAL CAN CO., INC.,
J. M. MILLER,
Factory Manager.

ILLINOIS STEEL CO.,
Chicago, June 14, 1933.

To employees of the Illinois Steel Co.:

It gives me pleasure to announce that the Illinois Steel Co., adhering to the principles set forth in the National Industrial Recovery Act sponsored by the President and passed by the Congress of the United States, has inaugurated a plan of employee representation under the provisions of which the employees of our various plants and operations will have a voice in matters pertaining to industrial relations.

A copy of the plan may be obtained at the general office of your plant or from your department superintendent. It is hoped that you will secure a copy of the plan, read it carefully, and give it your hearty support. We would suggest that arrangements be made promptly to have this plan become effective by nomination and election of representatives as provided under the plan.

The whole-hearted support of the plan by you and your fellow employees will be appreciated.

Yours very truly,

G. G. THORP, *President.*

AMERICAN STEEL & WIRE CO.,
Cleveland, June 15, 1933.

To Employees of the American Steel & Wire Co.:

It gives me pleasure to announce that the American Steel & Wire Co., adhering to the principles set forth in the National Industrial Recovery Act sponsored by the President and passed by the Congress of the United States, has inaugurated a plan of employee representation under the provision of which the employees of our various plants and operations will hava a voice in matters pertaining to industrial relations.

A copy of the plan may be obtained at the general office of your plant or from your department superintendent. It is hoped that you will secure a copy of the plan, read it carefully, and give it your hearty support. We would suggest that arrangements be made promptly to have this plan become effective by nomination and election of representatives as provided under the plan.

The whole-hearted support of the plan by you and your fellow employees will be appreciated.

Very truly yours,

C. F. BLACKMER, *President.*

Here is another from the Sun Oil Co. at Marcus Hook, Pa., dated July 17, referring to a number of petitions signed by a large group of our employees requesting the company to approve the adoption of an employee representation plan, and suggesting that employees select "from among your own groups representatives to work out the details

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of an employee representation plan" in an election to be held on July 20 and 21. The letter makes it clear that many details of the plan have already been worked out:

* * * The refinery has been divided into seven election divisions. One representative shall be elected from each election division by a secret vote. A ballot containing full information concerning the election is enclosed herewith for your use * * *. Three employees shall act as tellers who will count all the ballots and announce the results of the election.

The construction department of the refinery has been invited to select representatives and will be asked to join your selected representatives in developing a representation plan.

You are urged to vote in this election in order that the representatives may be selected as a result of a full and free choice on the part of the employees.

Another bit of very persuasive writing appears in a letter sent employees of the Fisher Body Corporation of Detroit on August 17, in which they say: "We have made this plan your plan." I quote the letter in full:

We are presenting in detail in the attached booklet—

All set up, all drafted—

a plan to provide all employees under our jurisdiction with direct personal representation with management through men of your own selection.

It has been our purpose in preparing this plan to provide in the fairest possible manner every possible agency for thorough and sincere cooperation between employees and management in all matters pertaining to the operation of our plants which affect our employees or our relations with our employees.

It has always been our sincere purpose to manage this business with the greatest possible benefit to our employees, commensurate with general business conditions.

Consequently we have made this plan your plan.

It has no strings tied to it in any way; requires no payment of dues and we expect to gain from this closer relationship a more sympathetic, mutual understanding of the problems common to employees and management.

Your cooperation will guarantee the success of the plan and its success will assure the continued satisfactory operation of this plant.

They are in here now threatened with a strike and the strike would have taken place four days ago if the National Labor Board had not intervened, offered its good offices, and brought them in and delayed the strike.

Senator WAGNER. And it involves approximately how many men, Mr. Green?

Mr. GREEN. The Fisher Body involves——

Senator WAGNER. I mean the whole situation there.

Mr. GREEN. One hundred and fifty thousand.

The CHAIRMAN. What is the exact issue in that case?

Mr. GREEN. The company union.

The CHAIRMAN. They are resenting the——

Mr. GREEN (interposing). They are resenting the imposition of company unions and they ask that they be permitted to form their own union free from the domination of the company, to elect their own representatives at an election so that these representatives may meet with the management for the purpose of dealing with them. That is what they asked, and the strike is threatened because the companies say, "No, you cannot do that."

Senator WAGNER. They cannot have an election?

Mr. GREEN. We have another one here to the employees in the Kimberly-Clark Corporation Mills in Neenah, Wis., dated June 14, 1933:

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On June 12 and 13 nineteen men and women, elected by their fellow employees in mills of this corporation, met in Neenah, at my invitation, with an equal number of management representatives, to discuss a plan under which we may work in harmony with the letter and spirit of the National Industrial Recovery bill. This bill will probably have become law before this reaches you. Among its purposes are two which are of great mutual interest, as stated in my letter of June 5, viz, the spread of employment and the increase in income of employees.

In our discussions of the 12th and 13th we thrashed out a revision of our council plan which completely satisfies the requirements of the law and under which satisfactory relations between management and employees of this corporation will not only be safeguarded but advanced.

A copy of the proposed new council plan, as amended and approved by your representatives and by the representatives of the management is attached for your critical study. Under it, genuine legislative responsibilities will be placed upon the representatives whom you elect to serve you. Employees of this corporation and their representatives will, under the plan as now revised, assume joint responsibility for major decisions which affect the welfare of employees, of stockholders, and the future of the corporation itself.

It is my firm belief that Kimberly-Clark employees are ready for and competent to assume these greater responsibilities. We look forward with confidence to your acceptance of this plan upon the date set for the "yes" or "no" vote. We also look forward with pleasure to our closer cooperation together under the plan.

I hope you will be patient with me because I am trying to make the case of the American Federation of Labor here for your information, and I know that the manufacturers are coming in to state their opposition later.

COMPANY UNIONS IN THE STEEL COMPANIES

I have indicated above that many of the company union plans are identical. That is more than a coincidence. It is interesting to see how there are certain large families of plans. Take the steel family, for instance. The Bethlehem Steel Co. has had an employee representation plan for 15 years. This is the granddaddy of many later plans. It was taken as a pattern by the steel companies in setting up employee representation plans in June 1933. The plan of the Carnegie Steel Co., widely publicized—the entire constitution printed in the magazine Steel for June 19, 1933—was the Bethlehem plan with the addition of the following paragraphs:

The management of the works and the direction of the working forces, including the right to hire, suspend or discharge for proper cause, or transfer, and the right to relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the management; and, except as expressly provided herein, these rights shall not be abridged by anything contained herein.

Where does a discharged employee get a chance under that?

This plan shall be and remain in full force and effect during the term of the National Industrial Recovery Act and thereafter may be terminated by the management or by a majority of the duly elected employees' representatives upon three months' notice.

Hastily set up, conceived in the minds of shrewd business executives to serve as a shadow without substance during the operation of the emergency National Recovery Act, and then to be terminated if they so desire.

During the fall, when the Bethlehem plan celebrated its fifteenth birthday, there was great jubilation that now the N.I.R.A. recognizes the value of such a plan under its provisions for collective bargaining. In Steel for October 2, E. G. Grace, president of Bethlehem Steel, reports:

The principles of our plan have been adopted by all other important steel companies, and by many large organizations in other industries. Meeting the

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requirements of the N.I.R.A. our employees' representation plan continues to serve as the medium of representation just as it has in the past.

Apparently that was a premature boast, for during the last 2 months the steel companies have found it necessary to change this time-honored plan. Steel for February 26 recorded that employees of the Carnegie Steel Co., the Jones & Laughlin Steel Corporation and other large producers in the Pittsburgh district voted favorably on February 22 and 23 on proposed changes liberalizing their employee representation plan adopted in June. Steel for March 5 stated: "The pressure for outlawing company unions is being counteracted by a liberalization of the plans already in effect at many steel works." A concession.

A union member out in Ohio sent me a copy of a letter revealing how this change was being made. You will see that according to the interpretations of the N.I.R.A.:

Our present plan has some clauses that make it illegal. The proposed amendment to our plan will meet the requirements of the law and make it acceptable to the Labor Board. The plan as amended has the approval of our company officers and the local management. It also requires the approval of the employees to make it legal. The failure of the employees of Guernsey Works to give this approval would mean that our plant could not be legally operated unless some other plan was found. At present there doesn't seem to be any other plan that would meet the requirements of the law and be acceptable to both the employees and the management.

Let us stop a minute and see what the steel companies have done. Obviously, they have had no change of heart; only a change of tactics. When they found that features of their plans are being interpreted as illegal, did they say to their employees:

Apparently the employees relations plan which we adopted last summer is not legal; we can tell from the decisions in Labor Board cases that certain features of these are contrary to the spirit of the N.I.R.A. It will undoubtedly make trouble to continue these plans. Let us have free discussion as to what kind of plan you want. Let us have an election to vote as you want.

They had this opportunity, but alas, they did not take it. They posted notices or wrote form letters saying: Our plan is illegal, but if we change it thus and so it will meet the letter of the law. Of course you will have to approve it first, but that is a mere matter of form. Vote on the dotted line. As Steel for March 5 makes clear, employees voted on the dotted line. Why not? The new plan was better than the old one, anyhow.

Since the Carnegie Steel plan has served as a model for so many other plans, let us see what sort of plan it is, both before and after these changes. The purpose of the plan is stated as follows:

In order to give the employees of the Carnegie Steel Co. a voice in regard to the conditions under which they labor, and to provide for effective communication and means of contact between the management and employees on matters pertaining to industrial relations, the following plan of employee representation has been adopted.

At least they have not pretended that it gives the employees an equal voice. In fact, they have specifically reserved to the management the last word and the loudest voice, as we have already seen. It is significant that the paragraph that management is vested exclusively in the management in not touched in the amendments.

The original plan provides:

1. Employees of 60 days' service vote for representatives.

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2. Only employees with a year's service, 21 years of age, and United States citizens can be elected as representatives.

3. These employee representatives meet annually with the representatives appointed by the management, who may equal but not exceed the employee representatives in number. The plan functions currently through a series of committees meeting monthly; every other month the employees' committees are to meet with an equal number of the management representatives. Meanwhile, the management appoints a "management's representative" to "keep the management in touch with the representatives, and represent the management in negotiations with the representatives, their officers, and committees."

4. The company pays for time necessarily lost at actual attendance at regular meetings or at special meetings of conferences jointly approved.

5. A representative shall be deemed to have vacated his office upon termination of employment, transfer from one voting unit to another, or promotion to a position having a right to hire or discharge employees, as well as by recall from his constitutents.

6. The management which started the plan reserves the right to end the plan. The workers have no choice. It does not expect to do so so long as the National Industrial Recovery Act makes machinery for collective bargaining necessary, but after that the plan may be terminated by the management or a majority of the company's representatives on 3 months' notice.

After all the fuss and feathers, the following changes have been made.

1. The age, service, citizenship qualifications for voters and representatives are removed. All employees on the company pay rolls may vote excepting company officials and persons having the right to hire or discharge. And "there shall be no restriction or limitation in the choice of representatives."

2. With the qualifications for election changed, the situations in which a representative shall be deemed to have vacated his office are reduced to "appointment to such a position as would bring him within the meaning of company officials and persons having the right to hire or discharge."

3. The provision for recall of a representative is changed from "approval by the committee on rules of a petition signed by two thirds of the voters in his department" to "a two-thirds majority vote by secret ballot of the voters in his department or unit, following approval by the committee on rules of a petition signed by two thirds of the voters in the unit."

4. Conference of all the employees' representatives of the plant or of these employees' representatives and the representatives of management may be held from time to time as determined by the employees' committee on rules or the joint committee on rules as the case may be. At such conferences negotiations may be carried on between the representatives of the employees and the representatives of management on: Rules, ways and means, safety and prevention of accidents, economy and waste prevention, wages, piecework, and tonnage rates, hours of employment and working conditions, housing and living conditions, health and works sanitation, education and

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publications, athletics and recreation, continuity of employment and conditions of industry.

This may mean a change in frequency of meetings, since originally only an annual meeting was scheduled and nothing was indicated concerning the meeting excepting that the joint committee on rules would be in charge of the procedure of the conference.

5. The right of termination of the plan is taken from the management. The announcement in one mill explained, "The plan is now binding on the company unless and until a majority of employees voting at a regular annual election vote to terminate it."

Thus the steel companies' plan, 1934 model, is "liberalized" over the 1933 model, but it is still the steel companies' plan. After the publicity of these changes, we have here an employer-dominated plan.

Now look for a moment at the way this plan has spread. I do not confess to have a complete file of company-union plans. Among those which members of our affiliated unions have sent in are the following like the Bethlehem Steel plan:

Green Bay Drop Forge Co., Pittsburgh Steel Co.

Other older company plans which are similar in many respects are:

Swift & Co., Standard Oil of Indiana, Cheney Bros., Goodyear Tire, Youngstown Sheet & Tube, Armour & Co.

A much larger number are like the Carnegie Steel plan, a 1933 version of the older Bethlehem plan:

Alan Wood Steel Co., American Rolling Mills Co. (slightly more liberal in details), American Steel & Wire Co., Illinois Steel Co., Inland Steel Co. (this plan provides specifically that officials of labor organizations are not eligible as representatives).

United States Pipe & Foundry Co. (this plan has its own merit clause, as follows:

> It is clearly understood and agreed that nothing contained herein shall impair * * * constitutional rights of employee * * * to bargain collectively * * * nor to operate an open shop * * *. Nothing contained herein is intended to prevent the selection, retention, and advance of employees on their individual merit without regard to their affiliation or nonaffiliation with any labor organization.

Weirton Steel, other industries following the same plan are: Lyon Metal Products Co., Inc., Continental Can, Michigan Limestone & Chemical Co., Philipps Packing Co., Pittsburgh Plate Glass Co.

Many other plans differ in a few details. Among those which we have observed are the following:

American Steel Foundries Co., E. I. duPont de Nemours & Co., General Cable Co., Hoode Co., Newport Rolling Mills Co., Standard Sanitary Manufacturing Co., Viscose Co.

Notice that the Carnegie Steel plan is printed in a little gray-covered pamphlet. This is not significant at all. But it is interesting that there are so many gray-covered black-bordered pamphlets sent in from employees in other steel companies, many with the same square underneath the name of the company and the same provisions inside excepting for a change of date or place or number of representatives. Bethlehem and a few other steel mills have used a tan-covered pamphlet. Other companies following the content of these booklets have used a variety of sizes, shapes and colors.

Now, then, I want to refer just briefly to company unions in the automobile industry.

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As examples of how employers have initiated plans through which they sought to influence the operations of the company unions, take the situation in the automobile industry. Here there were no company unions when the National Recovery Act was passed. They started at scratch.

They were aided and abetted by their trade paper, Automotive Industries. They ran an amazing series of articles.

July 15, "Is the Open Shop in Jeopardy?" by L. W. Moffett.

July 22, "Works Council Plan Won't Work as Negative or Defensive Expedient," by Norman G. Shidle.

September 30, "Works Councils for Automotive Workers?" by Norman G. Shidle.

October 21, "The Employee Representative Plan for Which Chrysler Workers Voted 5 to 1" (including the Constitution).

December 2, 1933, "A Critical Look at Article 7 (a) from the Employer's Viewpoint," by Joseph Geschelin.

December 9, "Have Employee Representation Plans a Place in the New Deal?" by Joseph Geschelin.

December 23, "meeting N.I.R.A. Requirements in Employee Representations Plans," by Joseph Geschelin.

The last article is, in many ways, the most interesting, for the author suggests how to make a company union plan legal, in these words:

It is evident after listening to the experience of those who have experimented in this field that while a successful employee representation plan primarily must meet the immediate practical needs of the situation, it must also be skillfully drafted so as to comply with the legal aspects of the plan as a contract between the employer and his employees. Of course, so far as to legality is concerned, it is recognized that under present conditions the employer is the only responsible contracting party and is the only one rigidly bound by its provisions. Nevertheless from a strictly practical point of view if the plan is drawn up so as to meet certain interpretations of article 7A of the N.I.R.A., the employer at least has the semblance of right on his side and is placed in a better strategical position in his dealings with regional labor boards or the National Labor Board.

The following additional suggestions are given:

In the light of interpretations of article 7A of the N.I.R.A., some experts in this field recommend the following guiding principles in the drafting of any new plan:

1. That the plan must first be sold to the employees.
2. That employees must be given time to study and consider a tentative draft of a plan before it is adopted by the company. Moreover, the employees should be given the opportunity to make suggestions and recommendations as to changes.
3. That it would be advisable to set up a constitutional convention to ratify the draft of the final plan and then submit the plan to a vote of all eligible employees.
4. That the plan should provide definite machinery for collective bargaining and make provision for a final decision on questions brought up before the conference. This definitely demands machinery for arbitration.
5. Restrictions on the qualification of employee representative should be very limited to avoid discontent.

Qualifications such as a long period of service, American citizenship, and so forth, may meet with considerable resistance.

After observing that there is no unanimity among personnel men as to the preferred type of plan, he states:

It is thought to be bad policy to permit employee representatives to meet privately since there is no control over the issues that they bring up and, also, because the group forms a majority opinion on any given issue, which is hard to change in subsequent arbitration.

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But let us look at the plans themselves, the much publicized Chrysler Motors plan for employee representation, for instance. Mr. W. P. Chrysler "sold" this plan to his men with a long letter. Here is a telling paragraph:

I have enough confidence in the fairness of men to believe that when they know the facts and have an equal voice in deciding matters that concern them they will come to decisions that are fair and reasonable. It is for that purpose that I am proposing for your consideration a plan of employees' representation in our plants. This plan is described in a leaflet which each one of you will receive.

This plan sets out as its purposes:

This is a plan which provides an opportunity for the employees to have an equal voice with the management in deciding jointly all matters affecting wages and working conditions.

Now, how do the employees exercise that equal voice? There is no provision for the employee representatives to meet alone; they must meet with an equal number of management representatives appointed by the management in a joint council established in each of nine divisions of the company, or in joint committees of the council. All shop employees on the pay roll on the day of election are entitled to vote; they must, however, select as their representatives persons who are at least 21 years of age, United States citizens, are employed in the same election district of the shop, and have worked for the company 1 year. Otherwise, they vote for representatives of the workers' own choosing.

Now, suppose these Chrysler employees wished to elect some friend not employed in the Chrysler motor plant as their representative to meet with the management and present their grievances, as we understand they have a right to do under the provisions of the National Recovery Act, they are prohibited from doing so because of these limitations placed upon the selection of representatives.

Nominations (by secret ballot) and elections (from the two receiving the highest vote on the nomination ballot) are conducted by the employees themselves in accordance with the rules and regulations laid down by the joint conference (employees and management) and with only such assistance from management as may be requested.

A labor union for collective bargaining, between employees' representatives and management! It contravenes absolutely all the principles and provisions of the National Recovery Act.

These chosen representatives of the employees "shall be deemed to have vacated their office" upon severance of relations with the company, upon transfer from one voting district to another, upon appointment to supervisory position, or upon being absent for more than two consecutive meetings of the joint council or a joint committee unless such absence has been excused by the chairman of the meeting. This seems to be ample provision for disposing of any "troublemaker" among the representatives.

As in the steel company plans, the company appoints a special representative, known as "management's special representative", whose duty it is to keep in touch with both the employee represen tatives and the management and who represents the management in negotiation with such representatives.

This management's special representative acts as chairman of the joint council, but has no vote.

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Employee representatives and management representatives have equal voting power. A two-thirds vote is necessary to decide any question. Obviously, then the employee representatives could be blocked in any action which they initiated. But, as if that were not enough, the constitution provides as follows:

To preserve the equal voice of employees and management at meetings of the joint council or its committees at which a quorum is present both employee representatives and management representatives shall be entitled to cast an equal number of votes.

The company provides "suitable meeting places for meetings of the joint council and its committees at its expense". Imagine the task of a plaintiff in a case when his lawyer is paid by the defendant. What chance has he to win?

Senator WAGNER. Mr. Green, I suppose the American Federation of Labor would object if in their conventions they could not pass any resolution affecting any economic situation, or their rights as workers unless that resolution both received the approval of the employers?

Mr. GREEN. Why, certainly. It is ridiculous, absurd, and yet that is in their representation plan. You have developed a perfect anology. That brings it out exactly. The company provides—

suitable meeting places for meetings of the joint council and its committees at its expense, and employees serving as members of the joint council or its committees receive their regular average pay from the company for the time actually spent in serving on the council or the committee.

The route outlined for the adjustment of any matter which in the opinion of any employee of the company requires adjustment is:

(1) To the foreman in charge of the work;

(2) To the employee representative of his voting district who takes it up again with the foreman;

(3) To the management's special representative, who will help the employee representative and the foreman prepare a joint statement to be taken up with—

(4) The foreman's superior officers;

(5) To the joint council who may call the employee before it to give information regarding the matter under consideration and may go in a body with the management's special representative to any part of the plant to make an investigation "after making arrangements for so doing with the management's special representative." After complete investigation and full discussion, the joint council votes. The employees representatives and the management's representatives have equal voting power and a two-thirds vote is necessary to reach a decision. If a decision is not reached by the joint council at the second meeting following the meeting at which the case was first brought up, the matter goes—

(6) To the president of the company, who may confer with the joint council or any committee or any group of employee representatives. Within 10 days he must propose a settlement or refer the matter to—

(7) Arbitration; this consists of an employee representative selected by the employee members of the joint council, the president himself, and an impartial and disinterested arbitrator selected by these two. If the president and the employees' representative cannot agree upon an arbitrator, each selects one. If these two arbitrators agree, their

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decision is final. If they do not agree within 20 days, they select and call in a third arbitrator, and a decision of a majority of these three shall be binding in the matter.

It has been estimated by an officer of the compliance division of the W.R.A. that this procedure would occupy at least 100 days after the employee originally presented a matter for adjustment. Note, too, that at every stage of the procedure representatives of management are present, exercising that subtle control over decisions which is inherent in the power to pay and the power to discharge.

Senator DAVIS. From hearing the statements that you are making, Mr. Green, I take it for granted you are opposing that form of collective bargaining?

Mr. GREEN. Senator, I could be arrested for what I think about it and for what I would like to say about it.

The Nash plan in Kenosha, Wis., is exactly like the Chrysler plan, and the Nash plant is closed down today just as tight as it is possible to close a plant, where they had their company union plan in effect.

Mr. Nash, like Mr. Chrysler, sent a letter to the employees to sell this plan to the men. It is a long, 2-page letter with many of the same paragraphs as the Chrysler letter, but a more persuasive beginning and ending. The letter begins:

> Having earned my living by working in the factory in my earlier days, I believe puts me in a position to better understand the workmen's problems than the average person.

and ends.

> After familiarizing yourself with the proposed plan, I hope your decision will be to vote "yes," I am positive that if I were again at the bench in the factory and had an opportunity to join in this plan I should most certainly vote "yes."

I shall file a copy of the whole letter for the record if you wish it.

The CHAIRMAN. Very well, Mr. Green.

Mr. GREEN. Here it is.

(The letter referred to by Mr. Green is as follows:)

THE NASH MOTORS CO.,
Kenosha, Wis., October 26, 1933.

To all Nash factory employees:

Having earned my living by working in the factory in my earlier days, I believe puts me in a position to better understand the workmen's problems than the average person; and in these days of unusual conditions, when there is possibility of misunderstanding and misrepresentation on matters of joint interest to you and the Nash Motors Co., I feel it important that you should know the truth at all times about everything concerning your welfare and happiness and your relations with the company.

I am proud of the cordial and friendly relations having always existed between our company and its employees, and I am very anxious that the same shall continue.

I would not be fair to you if I did not see to it that you got the real facts, and therefore, I am now proposing a plan which I believe will serve to do that thing and give you and the company a chance to sit down together and discuss and decide matters of mutual interest to all of us. I always have believed that if we could do this in a spirit of friendly understanding and confidence in each other, we would accomplish a great step forward in promoting and maintaining the kind of relationship we all want in this industry.

It seems to me that this company has now reached such a degree of understanding and mutual respect between employees and mangement that we can consider together practical means of giving effect to a plan which I believe will assure lasting cooperation, goodwill, and prompt, fair settlement of any questions that may arise.

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I have sufficient confidence in the fairness of men to believe that when they know the facts and have an equal voice in deciding matters concerning them that they will come to decisions that are fair and reasonable.

It is for that purpose that I am proposing for your consideration a plan of employees' representation in our plants. This plan is described in a leaflet which each one of you will receive. I ask you to read it carefully, to study its mutual advantages, and then decide by secret ballot whether or not you want to adopt it.

You will find that this plan enables the individual employee to get a fair and prompt hearing by his supervisors, and if he cannot get a satisfactory settlement from them, then a review by joint council to which his fellow employees have an equal say with the management in disposing of the case.

The whole purpose of the plan is to promote such a relationship in our plant as to assure employees a square deal and encourage their willing cooperation in advancing the company whose interests concern every one of us.

Read the plan carefully. I am going to ask you to vote "yes" or "no" whether you want it.

In order that this election may be held under employees' auspices, entirely independent from management, the Ke-Nash-A Club, which as you know is an organization of the employees themselves, and has their confidence, has kindly consented to conduct election on the plan. If the plan is adopted, the first election of employees' representatives under the plan will also be conducted by that club. The elections thereafter will be conducted by the joint council.

If the majority of the employees say "yes" the plan will be put into effect and you will have an opportunity to nominate and elect representatives to deal with the management on an equal basis in discussing all questions that may arise.

This plan is a simple and clear method whereby we can mutually consider as equals all questions that vitally concern us in our relations with each other.

In offering this plan, I want it distinctly understood that every employee, regardless of his membership or nonmembership in any organization, has a right to participate in it.

After familiarizing yourself with the proposed plan, I hope your decision will be to vote "yes." I am positive that if I were again working at the bench in the factory and had an opportunity to join in this plan, I should most certainly vote "yes".

Respectfully,

C. W. NASH.

The Packard Motor Car Co. amended an oil aid association by having its employees vote on an additional R or representation membership. All employees of the company are eligible for this representation membership, but only those who have been on the pay rolls for 60 days may vote for representatives. The separate aid membership is concerned with insurance. The plan adopted by the Packard Co. is quite similar to the plan of the steel companies with a joint council and special committees. The plan is limited in that "The rules committee shall act only in matters especially provided for therein." This plan—printed in a blue booklet—was adopted in Detroit on September 22, 1933. Then the same plan was printed in a salmon-colored booklet for the seven plants in the vicinity of New York City. Pasted on the Detroit booklet was a statement:

> It is your privilege to go to your unit voting place in ——— department, on ——— afternoon on company time to apply for "R" membership and nominate candidates for representatives of your unit.

The Packard plan has an elaborate provision for guaranteeing the independence of representatives:

> Representatives shall be free to discharge their duties in an independent manner without fear that their individual relations with the company shall be affected in the least degree by any action taken by them in good faith in their representative capacity. To insure this result a representative shall have the right to take the question of an alleged personal discrimination against him, on

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account of his acts in his representative capacity, to the management representative, to the joint general committee, and to the president of the company.

A representative, having exercised his right in the consecutive order indicated n the next preceding paragraph and failing a satisfactory remedy for such alleged discrimination, shall have the further right to appeal to the Administrator of the National Recovery Administration or his designee. The company will furnish said Administrator with every facility for the determination of the facts, and his findings and recommendations shall be final and binding.

It will be observed that this refers to the workers' individual rights, and that it does not include the time-honored shiboleth in company unions that there shall be no discrimination because of union membership.

The General Motors plants have adopted employee associations. The Pontiac plan may be examined as a sample. This provides for voluntary membership of all employees of the manufacturing department; that is, voluntary for all employees 21 years or more, with at least 90 days of service and at least first papers. These employees choose their representatives from among the members of their own division with at least 1 year's service. They meet alone, but the factory manager must be notified of all meetings. Management is present only when requested. The meeting place is established by the works council subject to the approval of the plant manager. The company pays the representatives their regular earned rate, prints the ballots for elections, and elections are held on company time. In addition, the company will furnish a stenographer for any meeting on request.

The plan emphasizes that membership is voluntary, but it provides that only members of the employees association have the right to make a complaint to the works council with reference to wages, hours of labor, working conditions, or other appropriate subjects. Only members have a right to take out insurance and to participate in the company savings and investment plans.

There is a feature that I wish might be developed and considered in detail. Along with their company union plans in many instances they set up their group insurance plan and their death benefit plan, and, I think, in some cases, unemployment benefit plans, and they provide that members of this company union only will have a right to participate in the group insurance plans, death benefit plans, and so forth. In other words, they offer an inducement to the workers to come into their company union, and say that he cannot be a beneficiary under these plans otherwise. Then it specifically provides that only members of the employees association have the right to make a complaint to the workers council. If a man refuses to join their company union he cannot take up a grievance; he is out.

In cases of disagreement, appeal is possible all the way up to the general management of the company, who, it is said, "will take up the subject for consideration." That is what it says. When it is taken up with the management he will take it under consideration.

The Pontiac plan is one of the few which provides some regional organization. A general works council, consisting of the chairman of the works councils of all plants, will be formed to consider matters affecting all plants. They will meet in Detroit upon call issued by the management.

The Buick plan is much like the Pontiac plan but some provisions are more rigid. For instance, all expenses of the employees' committee are to be borne by the company but before they are incurred

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they are subject to the approval of the factory manager. This plan may be amended by a two thirds vote of the employees' committee, but it cannot be dissolved; as long as the N.I.R.A. remains in force, the plan is "subject to the act and to all codes or regulations promulgated therewith." This plan contains the statement that membership in the Buick Employees' Association is purely voluntary, and "not discriminatory in any form, as provided for in the N.I.R.A."

The plan of the Motor Wheel Corporation is much like the Buick plan, with appeal to the general manager of the Motor Wheel Corporation. Its two divisions meet separately every month and together the next day. This plan provides:

> If any person discontinues his or her position with the company by request or for personal reasons, and is not satisfied that he or she has been treated fairly, he or she may make a complaint direct to the employees committee or to the personnel director.

The Kelsey-Hayes Wheel Corporation plan is much like the Motor Wheel plan, but minutes of all meetings of committees must be approved by the chairman of the factory council and also by the works manager or his representative. The plan may be amended by a two-thirds vote of the factory council, subject to the approval of the management. Appeal in this company runs from the employee to the employee representative to the foreman to the plant superintendent to the standing committee to the management to the president or vice president, whose decision shall be final. This is one of the few plans to date that "Any agreement entered into between the factory council and the company and any determination of any matter within the jurisdiction of the factory council shall be binding to all members of the association." On the other hand, this plan includes a statement that there shall be "no discrimination under this plan against any employee because of race, sex, political or religious affiliations, or membership or nonmembership in any organization."

The plans of the Fisher Body Corporation and the Ternstedt Manufacturing Co., a unit of the Fisher Body Corporation, contemplate an employees' association with no provisions for employee representatives elected to the works conference in each plant to meet alone. Informal meetings with a plant manager may be held at any time, regular meetings of the workers' conference are held once a month, and the plant manager or his representative will sit in in an advisory and consultant capacity.

Minutes of all meetings and transactions are kept by a secretary whose expenses are paid by the company. The company control extends to elections also; the plant manager appoints the temporary election committee and the management will furnish the temporary election committee a secretary upon request. Ballots are counted under the direction of the election committee and a representative of the management.

The plan may be amended only on the unanimous agreement of the works conference and the plant manager.

This plan includes the no-union discrimination provision, but it has become a "right to belong or not to belong to any lawful society, fraternity, union, or other organization."

There is an appeal to the central office in Detroit, but no provision is made for a joint meeting of the representatives of the 14 units of the Fisher Body Corporation.

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The Chevrolet plan is much like other General Motors plans. Matters affecting all the Chevrolet plants will be referred to a general works council consisting of the chairmen of all the works councils.

The Hudson Motor Co.'s method of enlisting members in its company union was much resented by the workers. All men relieved after the seasonal shut-down had to take out company insurance. The card through which they signed up for this insurance automatically made them members of the company union. Can anyone say that these workers had a free choice?

In all of these plans the companies pay the representatives of the workers to attend the meetings. They pay the cost of administration. They pay for fees and clerical expenses, and they pay for the maintenance of records. I repeat again, what chance has a plaintiff submitting a grievance to the court to win his case when his attorney is employed by the defendant?

Senator WALCOTT. Mr. Green, are there any company plans that you think come under the regulations of the N.R.A. that you would approve? Take the General Electric, for instance; what would you think of that?

Mr. GREEN. The General Electric plan is a company-union plan that perhaps, if you would make comparison between that plan and others, might be a shade better, but it is just as objectionable because it is a company-controlled union directed by the company and company influenced.

Senator DAVIS. What is the difference between the General Electric plan and the Standard Oil plan?

Mr. GREEN. I do not think there is a great deal of difference. There may be a little difference, but I could not tell you, Senator, at the moment. I would have to make a careful comparison in order to determine it.

The CHAIRMAN If any of the witnesses have luncheon engagements they are excused until 2 o'clock

You may go ahead, Mr Green Dr. Haas will be the next witness at 2 o'clock, and following him will be Mr. Hillman.

Mr. GREEN. Other automobile and parts companies mentioned by our members as starting company unions since the N.I.R.A. are: A. C. Spark Plug Co., Auto Car Co., Beaver Roller Bearing Co., Bendix Aviation Co. in South Bend, Ind., Cadillac Co., D. L. Auld, Hudson Motor Co., Seaman Body Corporation, Studebaker, United Motors, Warren Nash Co., Wilcox Rich plant.

I think I have talked enough about automobile company unions for you to see that they are much alike in spirit and purpose but not altogether alike because different groups seem to think up different diabolical ways of control.

After all the plan is a small part of the story. This is best illustrated in the Budd case. This is a very interesting case and has attracted wide attention The company union adopted in this company as soon as the Automobile Workers' Union started its organization drive was an innocent-looking plan. Five management representatives were to attend all meetings with no vote but subject to call for advice or consultation. Officers would be glad to attend on occasion. Each employee representative was to be paid $2 per month for attendance at such meetings as might be found necessary.

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The procedure for adjustments was couched in flowery language: "The democratic traditions of the company", and the expectation "that shop executives will give employees complete adjustment." Of course the following paragraph could not be taken very seriously by any workers, but then it is to be said that they signed up for this plan without knowing what the plan was to be.

> Recognizing the serious and delicate responsibility which lies with management concerning the maintenance of an efficient working force in adding when we increase business and decreasing when there is shrinkage of business, and the disciplinary responsibility that arises from any dereliction of duty on the part of employees, it is understood that employees will cooperate to the fullest of their ability with the management in improving the personnel and in maintaining the highest standards of character and efficiency among our personnel.

What has happened in the working out of this Budd plan has been emblazoned in every newspaper in the country. I am discussing it in another part of my testimony.

Like the automobile companies, the rubber tire companies have been active in starting company unions. Goodyear has had a well-known plan for many years. Many others have started plans since N.I.R.A. I have not time to discuss them today, but I want to call your attention to the matter of the Goodrich Co.'s provisions for compensation of representatives. So far as I know, this is the most exaggerated financial provision of any company-union plan. I do not wonder that it has created serious problems of divided loyalties for many workers. The Goodrich Cooperative plan provides "compensation" for services under this plan as follows:

> To a representative, $15 per calendar month.
>
> To the vice president of the general committee, to the secretary of the general committee, and to each member of the wage committee, $20 per calendar month.
>
> To the chairman of the wage committee and to the chairman of the welfare committee, $25 per calendar month.
>
> To the president of the general committee, $30 per calendar month.
>
> A representative serving as a committeeman or officer shall be entitled to receive only one salary compensation.
>
> A representative shall receive, in addition to the amounts stipulated, compensation for the time spent in attending an approved or regular committee meeting held during his regular working shift and necessitating his absence from work. The amount of this compensation shall be at the rate of 75 cents per hour.

Would you expect a representative earning $15 to $30 per month in addition to hourly pay for time spent at meetings to vote against his company in the interests of his fellow workers? The company is gambling that he will not. This is the sort of thing that makes the provision in section 5 (4) necessary. It certainly should be made unlawful for an employer to contribute financial support to any labor organization by compensating anyone for services performed in its behalf.

Here is a case, Senator, where the money of the corporation is being used lavishly, as I have quoted, to finance, foster, establish, and maintain company union. What hope have the workers under such a plan? Is it any wonder social unrest is arising, that discontent is evidenced on every hand, and that the workers are insisting upon exercising the right to strike against such intolerable conditions?

To anyone at all familiar with the labor history of the United States, it is not surprising that opposition to section 7 (a), to independent organization of the workers, to free choice of representatives, and to collective bargaining, is concentrated in the largest plants, in the

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industries most closely organized in trade associations. In other words, those industries in which the workers have never been able to gain real bargaining power are now most determined to prevent such gains under the recovery program.

The most conspicuous refusals to cooperate with the entire labor policy of the recovery program have come so far from two of the most powerful industries in the country—steel and automobiles. Both these industries have always been definitely and aggressively anti-union. Their antiunion policies are maintained now notwithstanding the provisions of the National Industrial Recovery Act.

This allegation is supported by the facts recorded in the already notorious Weirton case. Let me review that case very briefly. It tells the story and proves the point, that the National Labor Board, if it is to meet such a powerful adversary with any hope of success, must have the legal powers and the legal strength the bill introduced by Senator Wagner proposes to confer upon it.

The Weirton Steel Co., as you doubtless know, has plants in Weirton and Clarksburg, West Virginia, and in Steubenville, Ohio. In June, the company suddenly announced the formation of an employee-representation plan; copies of the bylaws of the plan were circulated and the employees were urged to vote, under the supervision of the employers, for officers of the newly formed company union. The code resulted in a reduction of wages for many of the men in the plant and in protest one department went on strike.

A committee from the Amalgamated Association of Iron, Steel & Tin Workers, an affiliate of the American Federation of Labor, attempted to meet the management, only to be met with the statement that the company would not receive anyone associated with that organization. At this direct refusal of the company to comply with section 7 (a) a strike occurred in the various plants of the company. The case came to the National Labor Board in September 1933. That Board was told by the company that "the settled policy" of the company was "to maintain an open shop, and not to contract with the Amalgamated Association of Iron, Steel & Tin Workers."

Nevertheless, the company agreed, through Mr. Weir, that the National Labor Board might supervise an election among its employees to determine whether the independent or the company union had a majority. The company demanded, however, and secured a delay of some 2 months before that election was to be held. Upon the assurance of the Board and the company that the election was to be held, the strike was ended. The men went back to work—at least those who were permitted to do so went back to work. So far they had gained nothing. But they had faith in the National Labor Board and in section 7 (a).

Mr. Weir gained a peaceful settlement of the strike and a long delay in further action. Mr. Weir knew what he was doing. In a recent issue of the Business Week (issue of Dec. 16, 1933, p. 9), under the caption of "Labor Board Challenged" it was stated:

> Nobody concerned is very naive about the advantage that Weirton has taken of the 2-month interval. * * * Mr. Weir knew that, if he could put up a good company union front, he was in a strong defensive position to meet any attack through N.I.R.A.'s collective bargaining section, source of all the mandatory power the Labor Board can claim.

But when the time came for the election, Mr. Weir had changed his mind. He was no longer willing that the National Labor Board

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hold the election which would give his employees the right to express their own desires on the persons who should represent them for collective bargaining. He was unwilling to comply with the law, despite his signed agreement that he would comply.

True to the traditions of the steel industry, Mr. Weir informed the Board he would conduct his own election. Despite this, the Board sent representatives to Weirton in December, at the time agreed upon. But Mr. Weir did not see fit to permit the representatives of the Board to act. He held his own election and, naturally enough, elected his own representatives. In defiance of the law, in complete disregard that the law required of him a different course of action than that pursued by the steel industry in the past, Mr. Weir pursued his own way.

President Roosevelt issued an Executive order strengthening the National Labor Board after a group of workers from Weirton had come to Washington to lay their case before the President himself. The steel industry, as an industry, protested publicly the action of the President, and made known its support of Mr. Weir's position. Steel joins issue, in other words, with the administration.

Since President Roosevelt had said that, if a substantial number of Weirton employees desired an election under the supervision of the National Labor Board, one should be held, the Board sent representatives to Weirton, W. Va. Every chance was given to Mr. Weir, and through him, to the steel interests to play fair.

Early in February the Board requested access to the company's pay rolls, as in no other way could they secure the names of employees eligible to vote, which was essential to the holding of an election. The company refused the request of the Board, an agency of the Government. The refusal concluded with the statement:

> We must decline to furnish you with any pay rolls and will not permit company property to be used for the purpose of holding an election.

This case was finally turned over to the Attorney General on March 1, 1934, some 5 months after it came to the National Labor Board. How long must workers wait for the realization and enjoyment of their ordinary, common place, inherent, legal rights? These men, starved, persecuted, driven from pillar to post, what must be their state of mind?

The case was turned over to the Attorney General on March 1 by Senator Wagner. Presumably, the Weirton Steel Co. still displays the Blue Eagle—think of that. What must a corporation do in order to forfeit its right to display the Blue Eagle.

Presumably, it still enjoys all the benefits which the steel industry itself has proclaimed has been conferred upon it by the recovery program, and if there is one industry in America that has conferred upon it great benefits, that has profited perhaps more than any other by the National Recovery Act, it is the steel industry of the Nation.

Now, the National Labor Board, because it lacked power to deal with just such cases of stubborn, reactionary employers, who are determined to maintain the old order despite all appeals, has been forced to a long series of hearings, and attempts at mediation, with a tremendous loss of time, and consequent losses to the workers involved. The Weirton Co. (and the entire steel industry) proclaims by this case that it has no intention to permit its employees to enjoy the rights conferred upon them by section 7 (a). This industry can

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never be expected to yield to moral suasion. It has demanded a showdown. The answer of the Government to that demand must be the adoption of the bill we are discussing today.

If no other argument were offered in support of this bill, for the enactment of this measure into law, than this one page, it ought to be sufficient to inspire and influence the Members of Congress unanimously to vote for the enactment of this Wagner bill.

This is a notorious case. It has been supported by the steel industry. It is the steel industry's case. Let me point out that Mr. Weir made his agreement for an election with the members of the National Labor Board, and upon that Board at the time that he made this agreement sat the representatives of industry, Mr. Walter Teagle, of the Standard Oil Co. of New Jersey; Mr. Gerard Swope, of the General Electric Co.; Mr. Kirstein, representing a large merchandising company; and every one of these men voted unanimously with labor and the Senator, who is the chairman and myself, that this election should be held and Mr. Weir made a solemn agreement with all of these men and then flaunted it and refused to carry it out.

If I had my way I would pillory Mr. Weir as a public enemy, broadcast it throughout the land, for his refusal to carry out his agreement and abide by the law of the land, which has brought intense suffering into the homes of families. It has caused children to go hungry, women to suffer mental agony as well as physical distress.

At the present time he stands as a challenge to the Government and it is inconceivable to me that in accepting that challenge the Government will surrender to one corporation or one industry.

But what will happen before the courts finally decide? Where will be the cases of these workers who under section 7 (a), in the exercise of their rights, joined a union, committed no other crime, if that could be called a crime, no other offense, if that could be called an offense——

The CHAIRMAN. "Asserted no other right would be better."

Mr. GREEN. We would better never have passed section 7 (a) than to delude men and women into the belief that they could exercise certain rights and then pursuing that policy bring suffering into homes of working men and women.

A second powerful industry to challenge the entire recovery program is that of automobiles. This industry, like steel, is traditionally and fanatically antiunion. The automobile challenge comes in the form of the Budd case. I want to give you a brief outline of that case.

In July, the workers of the Budd plant formed an organization which is known as the "United Automobile Workers, Federal Labor Union, No. 18763," also affiliated with the American Federation of Labor. With a union formed, they asked the company to deal with them. This was entirely logical in view of the provisions of section 7 (a). But Mr. Budd did not conform with the act. He refused to recognize the union's right to speak for his employees and instead proceeded to set up his own employee representation plan, in a planned and deliberate attempt to defeat the act.

He asked his employees to vote for representatives under his employee representation plan before the plan itself was revealed. By no stretch of the imagination can this be considered free choice of representatives. The employees had no chance to vote upon this plan. They voted in the dark, because they had jobs which they

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must keep as long as possible. Even in view of this, however, a strike occurred in the plant in November because of the continued stubborn refusal of Mr. Budd to meet the representatives of his employees who were freely chosen by those employees.

A decision of the Philadelphia Regional Labor Board was ignored by the company; the case came to the National Labor Board, which decided that an election should be held within 30 days, and that the striking workers should go back to work at once. Again, on the faith of the Board's decision, the strike was ended.

It is pathetic, it is tragic, the faith that these workers have in the Government and in the National Labor Board. They believe implicitly in it. They hoped that justice would at least be done. They gave up the advantage they had gained.

But Mr. Budd refused to rehire the vast majority of the men. Some 800 of them are, in fact, still unemployed, although many new and inexperienced men have been added.

A statement issued by Senator Wagner on the position of the National Labor Board was, in part, as follows:

> The essential part of our decision was that the men should be reinstated and an election held within 30 days, supervised by the National Labor Board, to choose representatives for collective bargaining. This would have been the same sort of election as the Board has supervised in many plants and mines. It is a method of settlement against which there can be no valid objection by any employer sincerely desirous of carrying out the letter and spirit of section 7 (a) of the Recovery Act. Mr. Budd's excuse for an objection was that he had an election on September 7 through a plan of representation, which he had posted up in his plant on September 1, the day after a substantial part of his workers had enrolled in a labor union.

That election to which Mr. Budd professed such loyalty was the one which was arranged by the company without consulting the employees, and without informing the employees on what they were voting. The election itself may have been fair—that was never the question. The issue was whether or not the men should enjoy the freedom conferred upon them by section 7 (a). Mr. Budd was and is, apparently, determined that they shall not.

I need not remind you that after 4 years of incredible suffering and hardship, after 4 years of job hunting and unemployment, workers are today in a position in which it is difficult, if not impossible, to defy the employer, no matter what his demands may be. That is why section 7 (a) must be made clear, unambiguous, and enforceable; that is why company unions must be placed outside the law; that is why the National Labor Board must be given the enforcement powers which it has not yet had, and which the present bill will give it. We must have a law which cannot be defied as Mr. Budd has defied section 7 (a); we must have a National Labor Board which cannot be ignored, as Mr. Budd has seen fit to ignore the National Labor Board.

Where is any desire for fairness or cooperation either with the employees or with the administration to be seen in any of the actions of Mr. Budd? Is there anywhere an indication that the Budd Co. wants to play fair with its employees? That it wants to play fair with the administration? And the entire issue is that the company refused to meet and deal wth union representatives; that it denied the workers the right specifically granted them in section 7 (a). Four months have been spent in delays, heartbreaking to the employees concerned, and to the union. This delay is due very largely to the

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fact that the National Labor Board does not have the power to enforce the decisions which it considers right and fair in the case.

Meantime, the Budd Co., like the Weir Co., displays the Blue Eagle, the symbol of the "new deal"; meanwhile, it enjoys Government contracts and Government protection and the benefits of the code. Meanwhile, a tragedy has taken place in Philadelphia directly traceable to the stubborn, unyielding, uncomprising attitude of this country, a tragedy that touches the infant as well as the mother, a tragedy that stalks abroad through the business sections as well as in the home. Eight hundred men walk the streets because they tried to take advantage of their legal rights.

Can a government, so big and democratic as this, permit such a condition to exist? We believe that this bill proposed by Senator Wagner will at least go a long way to remedy such situations as this.

Now, I must hasten. I do not want to give the impression that steel and automobiles are the only industries in which open violation of the National Industrial Recovery Act has occurred. If this were true, the situation would not be as serious as it is. Unfortunately, there are many employers only too willing to follow the lead of the powerful industries in the evasion of the law. I want to give you brief outlines of two other cases, to show how far the intention and the purpose to evade the act has been carried.

One of the two cases I want to cite is that of the Harriman Hosiery Co., of Harriman, Tenn. On July 1933 a union was formed among the employees of this company. On the same day a number of the employees active in the formation of the union were dismissed—many of whom had been with the company for a long time. The representatives of the union attempted to meet with the management, to establish some kind of working basis of cooperation with the management in what they considered, rightly, to be the spirit of the N. R. A.

They were met with a statement from the general counsel of the company to the effect that "we will not agree at any time to recognize the union, arbitrate on propositions we are unable to agree upon, or to enter into contracts individually or collectively" with the workers. Of course, a strike occurred. There was no other alternative for the workers but to strike. The walk-out occurred in October. Since that time, the Atlanta Regional Labor Board and the National Labor Board have made every possible effort to bring about some kind of agreement. The company has blocked every move by its unwavering refusal to cooperate in the attempts to find a solution of the problem.

The employees have tried to cooperate with the administration. At the request of the National Labor Board, and upon assurance that some kind of settlement could and would be reached, the strike was called off. The company refused to take back most of the strikers. They secured an injunction against picketing or any other activity of the union, and prohibited their striking employees from congregating on the streets or in any way getting together. Some 100 men and women employees were arrested and thrown into jail under the injunction. The representatives of the union who came before the National Labor Board to present their case were, upon return to Harriman from Washington, immediately put in jail. Five days after the National Labor Board had asked that the strike be terminated, upon an understanding that the company would attempt a settlement, the general counsel of the company, in a letter to Senator Wagner, stated:

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The company has consistently taken the position that it would not recognize a union in its plant; that it would not enter into written contracts, either with individuals or representatives of a group of its employees; and that it would not submit any question on which it and its employees or their representatives could not agree, to arbitration.

Meantime, the workers were forced to depend upon the Federal Emergency Relief Administration for food and clothing and fuel. Because the industry refused to support the recovery program, the Government was forced to assume responsibility for its employees. These men and women and children suffered hunger and cold because they demanded their rights under section 7 (a). Harriman is a town in which the employees of the company still live in a state of feudalism. They enjoy few of the privileges of freemen and free citizens. They cannot win their battle alone. The odds against them are far too great. They must be freed, they must be protected in their rights. On February 2, the National Labor Board denounced the Harriman Co. as determined "to perpetuate discord, foster industrial unrest and obstruct the forces of recovery." It is such companies at which the bill under discussion today is aimed. It is such companies who will respond to nothing but legal force, resolutely applied. It is such companies who are doing all in their power to destroy the entire recovery program and reduce us to the chaos out of which we are struggling. As a further proof, if further proof is needed of this, let me quote one last statement of the Harriman Hosiery Co. The general counsel for that company, on January 4, 1934, before the National Labor Board stated the position of the company as follows:

We are perfectly willing to enter into a unilateral proposition * * * and will then post it on our own bulletin board as a rule of regulation of our plant, enforceable against us.

Could a more perfect example of failure to comply with either the spirit or the letter of section 7 (a) be found? Could any better argument be found than the statement that I have just quoted for the amendment of section 7 (a)?

There is one other case I wish to describe very briefly. This is the case of the National Lock Co. of Lockport, Ill. On August 31, 1933, some 800 workers in this plant refused to work unless their rights to organize were recognized. The company immediately obtained very drastic injunctions against the employees, and set about the formation of a company controlled and instituted union. When the Chicago Regional Labor Board attempted to intervene and find a basis for settlement, the company proceeded to secure an injunction against the members of that Board restraining any member of that Board from conducting a hearing, making a report, or making any statement on the case. They did that. They restrained an instrumentality of the Government. The injunction was granted and the Board was forbidden to function and did not function.

Senator DAVIS. Was that a board appointed by the National Labor Board?

Mr. GREEN. That was a board created by the National Labor Board, the Regional Labor Board located at Chicago, a board made up with an equal representation of employers and employees and an impartial chairman.

Senator WAGNER. Under the Recovery Act?

Mr. GREEN. Under the Recovery Act.

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Senator WAGNER. Mr. Robert Hutchins, president of the Illinois University——

Mr. GREEN. Mr. Robert Hutchins, president of Chicago University, is the impartial chairman of the board.

The CHAIRMAN. Did the legal proceedings which terminated in the injunction raise any question of jurisdiction and authority?

Mr. GREEN. Senator, I am unable to tell you because I have not a copy of the application here, but it was granted by a local judge.

The CHAIRMAN. What was the ground?

Senator WAGNER. A question of jurisdiction.

Mr. GREEN. I think it was a question of jurisdiction.

At any rate they got it, and the regional labor board was prevented from functioning. The 800 people are still out and starving unless they are fed by the Federal and State Governments.

Senator WAGNER. What was the date of that injunction approximately?

Mr. GREEN. It was shortly after August. I think it was in September.

The CHAIRMAN. We would be pleased to have a reference to it in the record.

Mr. GREEN. The company secured this injunction restraining the members of this board of conducting a hearing. The employees on strike were prohibited by one injunction from coming within one half mile of the plant. Surely the action of the company in securing the injunction against the regional labor board cannot be looked upon as in any way consistent with the spirit of the recovery program.

Then the company secured an injunction against the regional labor board restraining it from coming anywhere near the plant.

Now, they were guilty of deception, too. The company, in an effort to mislead its employees, posted on its bulletin boards a garbled quotation of section 7 (a). Their version of section 7 (a) omitted that portion of clause 1, which states that the employees choice of representatives shall be free from the interference, restraint, or coercion of the employers, and clause 2 of section 7 (a) was quoted as saying that "no employee" shall be required as a condition of employment to join any "organization" instead of "any company union." The entire action of the company, indeed, shows studied hostility to the purposes of section 7 (a). The general counsel of the company in a letter to the National Labor Board said, among other things:

> We realize, as this Board must, that you have no jurisdiction to do anything with the company. But this company ought not to be subjected to the annoyance and humiliation of having a report made in any way criticizing it. It will create industrial discord in the plant and in the city of Rockford.

And this company flies the Blue Eagle, notwithstanding the fact that the injunction was granted restraining the regional labor board from functioning, the National Labor Board called them in, employers and employees, to Washington. We tried our best—honestly and sincerely tried to settle that controversy, offered to let them hire these people back as they needed them, creating a preferential list of the employees and selecting new employees from this list, and until all of these old employees who had worked for them for years were returned.

They positively and absolutely refused even the mediation services of the National Labor Board.

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If industrial peace means only that employers of labor are free to deny the law in any manner they see fit, if it means that employees are not to have freedom of action, then we do not want, and we most certainly shall not have, industrial peace. There is nothing to any industrial peace, as far as I am concerned, so long as these workers are denied the exercise of their rights under section 7 (a) of the National Recovery Act.

What we do want is real industrial peace founded upon freedom from restraint or coercion on the part of either employer or employees, founded upon the cooperation of employers and employees, and guarded and—when necessary—enforced by the Government.

Now, I have submitted the case. It has been submitted as an argument in support of this bill. I have tried as best I could to present to this honorable committee the underlying reasons why this proposed bill should be enacted into law. Remember these men who are suffering, persecuted, discharged, because they will not join these company unions, are red-blooded men; they have pride; they are the men who make the munitions when we go to war; they are skilled workers of the country; they are the men who bear their breasts for our Nation; they are red blooded; they are proud; they resent fraternalism. They want nothing conferred; they are workers, human beings; they want to stand on a basis of equality with the management, with industry, and face them across the table and talk to them straight in the face about their common problems.

They know they cannot do it if they are submitted to the conditions of the company union; they do not want a suit put to them, brought to them, and placed on them. Their destiny is in their own hands and they want to be free, and I urge with all the authority I possess, speaking for millions of working men and women, that Congress enact this measure into law.

Now, if I may, I wish to offer a statement here that was presented by our attorney in which he defends the constitutionality of the act absolutely, and some minor suggested amendments.

(The statement referred to by Mr. Green is as follows):

SUGGESTIONS CONCERNING SENATE BILL 2926 AND HOUSE OF REPRESENTATIVES BILL 8423 TO CREATE A NATIONAL LABOR BOARD, ETC., AND AMENDMENTS THERETO

I. CONSTITUTIONALITY

It may be urged that the bills now pending in Congress to create a National Labor Board (being not of emergent but of permanent nature) are unconstitutional because their provisions are not limited in applicability to interstate commerce but are applicable to purely intrastate commerce and industry; that is to say, commerce and industry confined within an individual State.

It seems to be clear, however, that the power of Congress to legislate in matters of this sort arises out of provisions of the Constitution other than the interstate commerce clause.

Section 4 of Article IV of the Constitution provides that: "The United States shall guarantee to every State in this Union a republican form of government * * *."

Recent history and present conditions in many countries of the world, all of them within the knowledge of well-informed men (and of which the courts and legislatures will take judicial notice), clearly show the tendency toward, either (1) the preservation of a republican form of government; or (2) creation of dictatorships.

It is also perfectly clear, from recent and present experiences, that the preservation of industrial democracy is essential to the preservation of a republican form of government.

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The whole purpose and tendency of these bills are to preserve industrial democracy; and if this be admitted it is clear that the Congress has the right to enact these bills into law and that they are valid and constitutional.

NOTE.—Examples of present conditions are to be found in Russia, Germany, and Italy, where absolute dictatorships have been created. The creation of such dictatorships has been coincident with the complete destruction of labor unions and the rights of laborers as recognized in republican countries and even in monarchies. The clearest example of this is found in the recent developments in Germany, where labor unions have been destroyed by the ipse dixit or edict of the sole dictator, Hitler.

See also preamble to Constitution that it is adopted "in order to * * * promote the general welfare * * *."

SUGGESTED AMENDMENTS

In section 2 of the bills (lines 10 and 11, p. 2, S. 2926 and lines 9 and 10, p. 2, H. R. 8423) it is declared to be "the policy of Congress" to do certain things.

It is suggested that this should be changed so as to read "the policy of the United States."

It is further suggested that section 2 of the bills be amended as follows:

After "Sec. 2", strike out the word "The" and insert "Whereas the", and continue the section as contained in the bills to and including the word "welfare" on line 10 of page 2 of S. 2926 and line 9 of page 2 of H. R. 8423.

Strike out the following words, namely: "It is hereby declared to be the policy of Congress", and insert in lieu thereof: "It is hereby declared to be the policy of the United States."

Then continue the said section as contained in the pending bills.

It is further suggested that this entire section be redrafted (there being no substantive changes) by inserting at the beginning of section 2 of the bills the following paragraph, based upon the so-called "Anti-Injunction Law" (U. S. C., title 29, sec. 101) and also embodying the first above-suggested change, so that the whole section will read as follows:

"SEC. 2. *Public Policy in Industrial Disputes Declared.*—In the interpretation and application of this act and in determining the powers, jurisdiction and authority of the National Labor Board hereby created, and of the courts of the United States, as such powers, jurisdiction, and authority are herein created, defined, and limited, the public policy of the United States is hereby declared as follows:

"Whereas the tendency of modern economic life toward integration and centralized control has long since destroyed the balance of bargaining power between the individual employer and the individual employees, and has rendered the individual, unorganized worker helpless to exercise actual liberty of contract, to secure a just reward for his services, and to preserve a decent standard of living, with consequent detriment to the general welfare and the free flow of commerce; and inadequate recognition of the right of employees to bargain collectively through representatives of their own choosing has been one of the causes of strikes, lockouts, and similar manifestations of industrial strife, obstructing commerce and imperiling the general welfare; therefore, in order to remove obstructions to the free flow of commerce, to encourage the establishment of uniform labor standards, and to provide for the general welfare, by removing the obstacles which prevent the organization of labor for the purpose of cooperative action in maintaining its standards of living, by encouraging the equalization of the bargaining power of employers and employees, and by providing agencies for the peaceful settlement of disputes, the following provisions are hereby enacted:

(The amendment proposed by Mr. Green is as follows:)

"*Provided further*, That no provisions of said acts or of the so-called 'Prevailing Wage Scale Act' approved March 3, 1931, shall be construed to be repealed by any of the provisions of this act."

Mr. GREEN. Now, in addition, I wish to suggest an amendment to the section which provides for the creation of the National Labor Board.

The CHAIRMAN. The amendment may be printed in the record also.

Mr. GREEN. It is this, I have not got it prepared but I will submit it.

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Instead of the Labor Board being composed of 2 representatives of employers, 2 representatives of employees, and 3 from the public, I suggest that it be balanced on the basis of an equal representation of employers and employees with an impartial chairman, a man of the caliber of the distinguished Senator from the State of New York.

Now, I believe that that will create a better state of mind among the working people and the employers of the Nation.

The CHAIRMAN. In other words, you would have the Board constituted with one man who would be the chairman and representing the public interests?

Mr. GREEN. Yes.

The CHAIRMAN. And 2 or 3 representatives of the employees and 2 or 3 representatives of the employers?

Mr. GREEN. That is right; equal representation.

The CHAIRMAN. Would they all be full-time officials?

Mr. GREEN. That is a matter that I leave to your discretion. As it is, Senator, those of us serving on the National Labor Board give our services free and we are glad to do it.

The CHAIRMAN. You may draft an amendment along that line and we shall be glad to have it for our deliberations.

Mr. GREEN. It appears to me also that the selection of these men ought to be carefully safeguarded. I am not sure as to how that can be done, but I understand that under your proposal, Senator, members of the Board, the appointees, are to be confirmed by the Senate?

Senator WAGNER. Yes.

Mr. GREEN. That is a very fine safeguard. We are thinking about the future and we want to be sure that members of the Board are really representative of industry and really representative of labor.

Now, there is one other section, and that is where you limit wage agreements to 1 year.

Senator WAGNER. I myself am already going to suggest to the committee that that limitation be eliminated.

Mr. GREEN. That completes my presentation of the case, and I thank you sincerely for your patience.

The CHAIRMAN. We thank you, Mr. Green; you have made a comprehensive presentation.

Senator DAVIS. How many have joined company unions since the passage of the National Recovery Act?

Mr. GREEN. Well, the report is, Senator, that the company unions have increased 169 percent. That is the most recent report, and that means about between 1,600,000 and 2,000,000.

The CHAIRMAN. I think that is in the record, Senator.

Senator DAVIS. What has been the gains to the unions affiliated with the American Federation of Labor since the passage of the National Recovery Act?

Mr. GREEN. The membership of the American Federation of Labor has increased to perhaps in excess of 3,000,000 since the passage of the National Recovery Act.

Senator WAGNER. From what low point, Mr. Green? What was your lowest point in membership in the American Federation of Labor?

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Mr. GREEN. I think we had gone down to a paid-up membership—you see, our membership is always on the basis of paid up. Of course there are always a large number of the members of the American Federation of Labor who are not represented in the paid-up membership, but I am referring to paid-up membership. Our lowest point, as I recall it, was 2,400,000 or 2,500,000 in that neighborhood.

The CHAIRMAN. Mr. Green, I want to know if I understand the background of your agitation in favor of this bill.

The National Recovery Act was a law passed by Congress for the purpose of bringing about industrial recovery and was characterized at the time as a partnership between Government and industry to help industry, is that correct?

Mr. GREEN. Yes.

The CHAIRMAN. In that act were many concessions made by the Government to help industry, and concessions were made which industry was demanding to remedy the ruthless competition that was then prevailing?

Mr. GREEN. Yes, sir; that is right.

The CHAIRMAN. Now, then, there was not only a definition of what the Government was ready and willing to do to help industry by permitting it to organize and suspending the antitrust laws in order to bring about general prosperity, but there was an enunciation of the rights of employees in industry?

Mr. GREEN. Yes.

The CHAIRMAN. And those rights are contained in section 7 (a) of that act?

Mr. GREEN. Yes, sir.

The CHAIRMAN. Those rights can be summarized as follows: First, that in every agreement, code, or license issued under the N. R. A. there should be asserted the right of employees to organize and bargain collectively?

Mr. GREEN. Yes, sir.

The CHAIRMAN. Very well, and do it through representatives of their own choosing?

Mr. GREEN. Yes, sir.

The CHAIRMAN. That was the outstanding and notable right enunciated in favor of the employees in that legislation?

Now, in addition to that, it was agreed and asserted that the employees should be free from interference and coercion of employers or their agents in three particulars; first, in the designation of their representatives?

Mr. GREEN. Yes, sir.

The CHAIRMAN. Secondly, in self-organization; and, thirdly, in their concerted activities for the purpose of collective bargaining?

Mr. GREEN. Yes, sir.

The CHAIRMAN. All right. Now, you say, as a member of the Labor Board, authorized to interpret and promote and protect these rights, that your experience has been that these provisions have been violated and that the rights granted by the Congress have not been generally exercised because there was no power in the act to punish or to bring force upon any employer to protect the rights granted in this act in favor of the employees?

Mr. GREEN. You have stated the case, Senator.

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The CHAIRMAN. Yes. Now, you say that this pending bill protects these rights that Congress has already defined, reiterates them, and tends to put teeth into the law that will compel employers to defend and protect these simple but valuable rights that were named in section 7 (a)?

Mr. GREEN. That is right.

The CHAIRMAN. I think I understand the background.

Senator WAGNER. May I just ask one other question? Under the law, as the Senator stated, industry has the right to organize and to perform such organizations which before the anactment of the act they were not able to organize for the purpose of exchanging economic information and agreeing upon certain business practices which heretofore have been prevented by the antitrust law?

Mr. GREEN. Yes.

Senator WAGNER. They were given those extraordinary privileges and they were allowed to organize, which they have done, so that they are better organized than ever, and I want to ask whether labor has interfered with business in business organizing?

Mr. GREEN. Certainly not, but on the contrary, we have stated that we believed that employers of labor were entitled to and should be permitted to exercise all their rights under the provisions of the National Recovery Act. As you know, the procedure is that industry must organize first in order to present a code, an industrial code of fair practice, because the code submitted must be a code submitted by an organization truly representative of the industry.

Then, when the code is adopted a code authority is created, made up of representatives of the industry, to administer that code, to punish those in the industry who engage in unfair trade practices, and maintain prices, if you wish.

The CHAIRMAN. And the unfair practices were rampant and threatened the destruction of industry?

Mr. GREEN. Yes.

Now, they have appropriated to themselves all the benefits of organization, and we hold that the Government has been the organizer of industry. Now, industry says, "Yes, we enjoy all the rights conferred by the Government, even to the suspension of the antitrust laws, but labor shall not organize, as provided for in section 7 (a)."

The CHAIRMAN. Again, Mr. Green, we thank you, and I think it is quite a compliment to you that so many people in the room here have remained until you finished your lengthy address.

We stand adjourned until 2 o'clock.

(Whereupon, at 1:15 p. m. a recess was taken until 2 p. m.)

AFTERNOON SESSION

The CHAIRMAN. Dr. Haas.

STATEMENT OF DR. FRANCIS J. HAAS, NATIONAL LABOR BOARD, WASHINGTON, D. C.

The CHAIRMAN. Your full name for the record, please.

Dr. HAAS. Francis J. Haas, Director of the National Catholic School Social Service; member of the National Labor Board since October 6, 1933; a member of the Labor Advisory Board, National Recovery Administration, since June 20, 1933.

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The CHAIRMAN. What group do you represent on the National Labor Board?

Dr. HAAS. I am a labor representative, so appointed.

The CHAIRMAN. Doctor, we will be very glad to have your views in regard to this bill.

Dr. HAAS. Before beginning, may I say a word with reference to the question that you raised this morning, Senator Walsh, regarding the word "initiate" in section 5, paragraph 3, of the bill before you. As I recall, you stated that a professor yesterday testifying said that the word "initiate" was open to objection.

The CHAIRMAN. The gist of Dr. Slichter's testimony was that he could conceive of employers really rendering a valuable service to their employees by saying, "Now, men, you are not organized and you ought to organize." That is the thought. This bill, he feared, would prevent a right-minded and sympathetic employer from making even the suggestion that you ought to organize.

Dr. HAAS. It is to that point, Senator Walsh, that I should like to address a few remarks. In my opinion, the word "initiate" is very essential to this section. It is inconceivable that a right-minded employer would initiate a labor organization which would run counter to his interests. It seems to me that we need not have any fear about that kind of an employer. What the bill proposes to do is to meet a natural situation where a large number of employers—taking employers by and large—seek to start a labor organization that will promote their own interests, and it is that condition that the bill wants to outlaw and definitely to prohibit.

I do not know of a single case coming before the National Labor Board in which an employer initiated a labor organization that was lawful. I do not know of a single case where an employer initiated a labor organization that was not to his own interest and that he could not control, and inasmuch as that particular passage is directed at the movement known as the company union movement, and inasmuch as that is a very menacing condition, it seems to me that this section should not be weakened by the elimination of the language in paragraph (3) of this section.

The CHAIRMAN. We are pleased to have that observation.

Dr. HAAS. The bill before you seeks as its ultimate purpose to increase purchasing power. There is no recognized authority who does not hold that inadequate purchasing power caused the precipitous business decline from June, 1929, to June 1933, and that increased purchasing power is essential both to recovery and permanent prosperty. With the aim of the proposed legislation, there is unanimous agreement.

To effect increased purchasing power, the bill defines certain acts as unfair labor practices and sets up machinery to prevent or restrain them. There are, of course, persons who object, and strenuously, to the proposed machinery, but, in my opinion, this machinery is the only possible method of increasing buying power now and of maintaining it, and thereby putting the country on a lasting basis of prosperity. Briefly, the machinery is necessary first for the emergency and second for the long pull.

First, the bill should be made a law because at present workers are exercising their rights under section 7 (a) of the National Industrial Recovery Act and, because they are exercising them, in numerous

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establishments, they are being discharged individually, and in some plants in whole sections. The normal result is a strike. Since June 1933 over 900,000 workers went on strike and at least 9 out of every 10 strikes had their origin in organization activity under section 7 (a) of the National Industrial Recovery Act.

The obvious effect of strikes is decreased buying power. In a recent case before the National Labor Board, 600 workers went on strike because some of their number had been discharged for union activity. During the suspension of work, the total pay roll loss was over $100,000. And this, as you observe, is a very small case involving only 600 workers.

In passing, may I say that my observation in different parts of the country and my experience as a member of the National Labor Board have convinced me that the almost unanimous support which the Nation is giving to President Franklin Roosevelt is due mainly to the enactment of section 7 (a) of the National Industrial Recovery Act. When that law was passed, workers could not do other than they did. They turned with confidence to a Government that had the courage to break with the past and give legal sanction to the inherent rights which all possess to participate in making regulations to govern them.

Section 7 (a) of the National Industrial Recovery Act declares that workers may exercise rights which nature gives them, the same as our Federal and State constitutions declare that they may exercise rights which nature gives them to elect their representatives in Government, whether local or national. Now, the fact is that since June 16, 1933, some employers have by evasions and subterfuges voided the plain meaning of section 7 (a), and, by precipitating strikes and lockouts, curtailed purchasing power and helped to retard recovery. The bill before your honorable committee would outlaw and restrain such evasions and subterfuges and by giving section 7 (a) the meaning and effect intended by the Congress, would consequently accelerate recovery. So much for the emergency feature of Senate bill 2926.

Second, the bill should be made a law because we must look to the future. We dare not merely pull the car out of the ditch and run it for a year or two to go into the ditch again for another 4 or 5 years. As responsible authorities we may not take this short range view of things.

In laying the foundation for permanent industrial peace and prosperity, the dominant aim must be to increase purchasing power constantly. This result, in my judgment, can be obtained only by assuring workers a larger and larger share of the national income, and this in turn can be obtained only by unhampered, unrestrained collective bargaining. This is the long run purpose of the bill before you, and I beg to express the urgent hope that it will be enacted into law.

There is no better way of planning for the future than to look at the past. What was the typical employer-employee relationship from the beginning of our industrial history down to the enactment of the National Industrial Recovery Act? It was a contract, if it may be called such, which the average employer considered to affect only himself and his employee.

It could be represented by a straight line—A B. It was thought that no one had any interest in the wage contract except the employer and the individual employee. The larger interest of the public, including fellow employers and fellow employees, was not held to be at stake.

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Customarily, the wage relationship prior to June 16, 1933, was referred to as an individual bargain. In point of fact, among the overwhelming number of 48,000,000 workers in the United States, there was no bargaining whatsoever. True, for approximately 10 percent there was union collective bargaining. Add to this the individual bargaining of a small percentage of nonunion skilled mechanics, but this was restricted for the most part to the busy seasons of the year. Outside these two groups, there was no bargaining at all of whatsoever nature.

The great mass of workers were, at the time they were hired, simply told what they would get. Very frequently, they were not even told. After employment, when piece rates were changed, the foreman simply announced the new rates. He could announce rates as low as he chose, limited only by the shortage of workers standing ready to take jobs. Briefly, the typical employer-employee relationship did not have even the appearance of trading or bargaining. The employer simply notified the worker what wages he was to get and the hours he was to work. The result was that competition ran riot and workers were without sufficient means to buy the goods they produced. Depression was inevitable.

To repeat, the relationship was a strictly bipartisan one. No account was taken of the effects of the unregulated hours of one worker on all others. No account was taken of the effects of the low wages of one worker on all others. No account was taken of the relation between low wages and general consuming power. The result could only be what it was—every 7 or 8 years, the machine systems practically stopped and the heavy hand of depression was on the people for 3 or 4 years.

Add to this fact that during the last two decades there was a tremendously increased productivity of machines along with totally inadequate power to buy their output, and the picture is complete. This was the condition in which the Nation found itself in the summer of 1929 and through which it has passed with bitter suffering and privation for over 4 years.

Turning to the future, it is necessary to take a totally different concept of the wage contract. We must abandon the notion absolutely that the wage contract concerns only an employer and an employee. It concerns everybody else. The amount of wages that a man is paid and the hours that he works certainly affect him, but they affect every other worker both as worker and as buyer. They affect the employer hiring the worker, but they affect also other employers. In other words, instead of regarding the wage contract as an A B relationship represented by a straight line, it is to be regarded as an A B C relationship represented by a three-sided surface.

The practical question is: How can the three parties at interest in the wage contract be adequately protected? The answer is: Either by government, primarily, or by collective bargaining primarily. The first method, that of government, which in practice means minimum wage and maximum hour laws, is, from a practical standpoint, utterly inadequate. The outstanding defect of government as an instrument of social justice is that it cannot get enough money appropriated to police and enforce proper labor standards. Other defects are present, but this it seems is the principal one.

The alternative is genuine collective bargaining. Here we have the certain and assured method of increasing and maintaining buying

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power. The proof is universal experience and observation. It is not necessary to compare earnings of organized workers with those of the unorganized. Invariably those of the organized are higher. Even in cities where there is only one unionized trade the earnings of the unskilled in those localities are much higher than those of the unskilled in cities where there is no organization at all.

Mr. Chairman, I do not want to appear to be reading a lecture to the committee, and if you feel so inclined to interrupt I would be glad to consider your questions.

The CHAIRMAN. Thank you.

Dr. HAAS. What are employers most opposed to and what do workers most want? Employers are by no means opposed to company unions. In fact, they foster and finance them. They are most opposed to unions officered by representatives freely chosen by employees. On the other hand, employees looking to their true interests, want genuine unionism more than anything else. With the exception of workers who have a property interest in pension and beneficiary funds under company unions, workers are emphatically opposed to employer-dominated organizations. The answer, then, to the question: What will best protect the legitimate rights of workers and increase purchasing power, is unhindered, free labor organization. When we have the courage to accept this answer and proceed on the basis of it we will be on the way to industrial peace and permanent prosperity.

I have come now to the provisions set forth in the law—in the bill, the law as I hope it will be.

True collective bargaining has certain essential qualities. It requires certain conditions to be met. They are: (1) Freely chosen representatives are to be recognized and dealt with for the purpose of coming to an agreement; (2) representatives of workers are to be chosen free from company domination; (3) no means may be used to undermine the worker's organization; and (4) agreements entered into are to be respected. These conditions are defined and safeguarded by the bill before you for consideration.

(1) Clearly, collective bargaining requires an employer to recognize and deal with representatives of his employees. The bill before you declares refusal to do so an unfair labor practice. Section 5, paragraph 2, meets the most common evasion of section 7 (a) of the N.I.R.A., which has been resorted to during the past 8 months. The section reads:

> To refuse to recognize and/or deal with representatives of his employees, or to fail to exert every reasonable effort to make and maintain agreements with such representatives concerning wages, hours, and other conditions of employment.

Again and again cases have come before the National Labor Board in which the employer flagrantly violated section 7 (a) but took refuge in the claim that he observed the language of the statute. He made the defense that he met, received, and conferred with representatives of his employees. In one extreme instance an employer came to the National Labor Board and held that he had observed the law, although it was clear that he has had no intention of coming to an agreement. He had held conversations with the workers' representatives extending over several weeks and climaxed a 2 days' negotiation with them in Washington by throwing them along with their attorney in jail on their return home.

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Paragraph 2 of section 5 of the bill is therefore of utmost importance, especially that passage which requires the employer "to exert every reasonable effort to make and maintain agreements" with representatives of employees.

The CHAIRMAN. Doctor, as a member of the Labor Board, I assume you dealt only with cases where there were controversies between employers and employees?

Dr. HAAS. That is true.

The CHAIRMAN. Have you had any opportunity to observe the extent to which employers really are striving to carry out the spirit of section 7 (a)?

Dr. HAAS. Yes, we have had examples of employers before the National Labor Board who labored under a misunderstanding and through mediation of the Board, after a half-day, or a day, or two days of explanation and conference, they saw the point and signed up the agreement. Outside of the National Labor Board, of course there are many employers who are observing the law.

The CHAIRMAN. Did all kinds of agreement, industrial agreements, come before your Board, or only those where there were controversies?

Dr. HAAS. I am not sure that I understand your question, sir.

The CHAIRMAN. Your Board only dealt with controversies that arose between employers and employees?

Dr. HAAS. That is correct.

The CHAIRMAN. You did not deal with the incorporation in the agreements of the Codes, the labor provisions?

Dr. HAAS. The National Labor Board did not.

The CHAIRMAN. You did not. So you were continually hearing——

Dr. HAAS. Trouble.

The CHAIRMAN. Trouble, yes; misunderstandings and difficulties between employers and employees. Are you able to give us any information as to the extent to which employers are really living up to the spirit of section 7 (a) and cooperating with their employees so that they may enjoy the rights prescribed therein?

Dr. HAAS. Well, if I were to speak only as a member of the National Labor Board, from that standpoint, apart from my experience outside of the National Labor Board, I should say that in numbers the majority of employers want to observe the law. I say that from the standpoint of number of employers, because some employers employ very many more workers than others, and consequently the number of employers is not so important. I dislike to make this comment, but I am entirely convinced by the facts before me, that the important, the powerful employers of the United States are not complying with or showing a proper attitude toward the labor provisions of the National Industrial Recovery Act.

The CHAIRMAN. That sentiment seems to coincide with that of other members of your Board who have testified.

Dr. HAAS. (2) To make collective bargaining adequate, workers must be free to choose their representatives. This is so elementary that it requires no proof. Surely no one would say that a trade association may not choose whatever representatives they wish, either members of the association or persons outside the association. This is all that workers ask for in asking freedom to choose whatever representatives they wish.

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The commonest restriction on workers' freedom to choose their representatives is that practiced by the company union. The impropriety of the company union system is clear when it is remembered that the typical company union scheme requires workers to choose as their bargainers persons who are paid, in whole or in part, by the employer with whom the workers' case is being bargained. In a recent case before the National Labor Board involving over 4,000 employees, the labor adjuster and the two attorneys for the workers—that is, representing the welfare or the company union scheme, on its property, these persons received half of their compensation from the company and half from the employees.

Incidentally, this particular welfare company union plan is regarded in the community as a very successful and proper arrangement between employers and employees. I do not want to take your time going into the other defects and injustices involved in the company union plan. I mention this point only, that is, that the bargainers for the workers are paid by the man with whom the workers' case is being settled. The ineffectiveness of such representatives in bargaining for workers is apparent. The need of freedom from employer domination is patent and this freedom the bill before you seeks to guarantee.

(3) Collective bargaining to have any real meaning requires the employer to refrain from all discriminatory practices which would undermine organization. The most effective weapon which the employer possesses to disrupt a union is of course dismissal. Others of a more subtle character include discrimination as to wage or hour differentials, advancement, demotion, hire, tenure, reinstatement, division of available work. All these, the bill declares to be labor practices which are unfair, and provides means for their prevention.

(4) Collective bargaining requires that a contract entered into should be carried out. This statement may sound like a truism, but within it lurks a slightly controversial question. It is the matter of the union shop. The bill provides, and in my opinion very properly, that when a union contract is agreed upon between the employer and a union, this contract with necessary safeguards, is to be regarded as a lawful contract.

So much for the purposes of the bill. But it does not stop with a recitation of purposes. It sets up machinery to carry them out. There is provision for new powers to be conferred on the several District Courts of the United States. On these there is little need to dwell. The main consideration here is the establishment of a national industrial tribunal, to be known as the National Labor Board.

The National Labor Board as proposed is necessary to make collective bargaining an actuality. Only such a Governmental agency can prevent unfair labor practices and maintain equality of bargaining power in the wage contract.

The functions of the proposed board are two: conciliation and mediation, and limited arbitration. The first is of utmost importance. The parties to an industrial dispute can come to the board, and with the advice and experience of trained conciliators, have their respective rights clarified and composed and thereby avoid what may result in costly industrial warfare. Moreover, title III of the bill creates in the Department of Labor the United States Conciliation Service.

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The object of this title is to strengthen the existing services in that Department, which since last August has been of tremendous assistance to the National Labor Board created by Executive order on August 6, 1933.

The second function is arbitration. It is to be indicated that the Board is given no compulsory arbitration power, but one rather of a voluntary character. It will be competent to act as arbitrator in labor disputes only when the parties submit their controversy to the Board, and when the Board accepts their submission. The bill in no way abolishes or curtails the right to strike.

Another function of the Board is one that is nowhere provided for in the bill, but one that it will exercise with uncalculable benefit to the public interest. It is the silent preventive work that the Board will do in the way of educating disputants to settle their differences between themselves rather than go to the expense and inconvenience of appearing before the Board. Moreover, in the course of time, the Board will develop a body of precedents and these will act as guiding principles in effectuating mutual agreements.

In the immediate present and perhaps for some time to come, two important problems must be met. One is the matter of bringing collective bargaining negotiations to a conclusion. The other is the determination of workers' representatives. The National Labor Board is necessary to meet both.

As already indicated, since last June not a few employers have, by unduly protracting negotiations and even by refusing to do anything more than talk with employees' spokesmen, clearly violated the National Industrial Recovery Act. Manifestly, this is an unfair labor practice and should be dealt with accordingly. The National Labor Board is necessary to correct and prevent this evil.

Again, the question of the identity of workers' representatives, who they are, and what authority they have is full of complications and large with strife and controversy. The common-sense expedient is to settle such questions through the medium of the secret ballot. The National Labor Board has in the brief period of its existence held more than 97 elections for such purposes. Identical powers are to be vested in the Board provided for in the present bill.

In conclusion, therefore, the bill before your Honorable Committee should be enacted into law because its ultimate effect is to increase purchasing power both in the present emergency and in the future, and because it establishes the means to effectuate these necessary results.

The CHAIRMAN. Thank you, Doctor, very much. I appreciate your assistance in this matter. We will try to hear Mr. Hotchkiss, Mr. Ogburn, and the present witness, Mr. Hillman. The others are excused until tomorrow morning.

STATEMENT OF SIDNEY HILLMAN, PRESIDENT, AMALGAMATED CLOTHING WORKERS OF AMERICA, AND MEMBER OF THE LABOR ADVISORY BOARD

The CHAIRMAN. State your full name for the record, Mr. Hillman.

Mr. HILLMAN. Sidney Hillman, president of the Amalgamated Clothing Workers of America, and member of the Labor Advisory Board.

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The CHAIRMAN. How many workers are there among the Amalgamated Clothing Workers?

Mr. HILLMAN. About 135,000.

The CHAIRMAN. How long has that organization been in existence?

Mr. HILLMAN. Since 1914, as a national organization.

The CHAIRMAN. How many branch unions have you?

Mr. HILLMAN. Probably about 120 local unions.

The CHAIRMAN. Affiliated with the American Federation of Labor?

Mr. HILLMAN. Yes; affiliated with the American Federation of Labor.

The CHAIRMAN. You may proceed.

Mr. HILLMAN. Mr. Chairman, and members of the committee.

Senator WAGNER. I think before you begin, Mr. Hillman, if it does not take too long, I would like to have you explain to the chairman some of your social activities outside of the ones you have indicated.

Mr. HILLMAN. I am director of 2 labor banks, 1 in New York and 1 in Chicago. Off the record, we have not applied to the R.F.C. for any assistance all during the depression. I am also associated with the Amalgamated Housing Corporation, which comprises cooperative housing in the city of New York for close to 1,000 families, and also, so far, we have met all our obligations and there is no receivership in sight.

The CHAIRMAN. How large are the banks that you referred to? What is the number of depositors and what is the amount of deposits?

Mr. HILLMAN. We had at one time in the New York bank over 120,000 depositors.

The CHAIRMAN. That is larger than the Chicago bank?

Mr. HILLMAN. Yes; that is larger than the Chicago bank.

The CHAIRMAN. We would be very glad to have your views on this bill.

Mr. HILLMAN. I will be brief. The splendid presentation by Mr. Green, president of the American Federation of Labor, really covers the ground as far as the factual case is concerned in reference to the need of this additional legislation.

I am wholeheartedly in support of the bill, because this bill, when enacted into law, will give section 7 (a) reality. Section 7 (a) of the National Industrial Recovery Act, in my judgment, is the very heart of the whole National Industrial Recovery Act. The purpose of the National Industrial Recovery Act is to increase the purchasing power and give a more equal distribution of income among the large masses of the people. It is my judgment that if not the whole reason for the depression, at least the major part of it is caused by the low level of wages that has prevailed even during the time of prosperity.

As a member of the Labor Advisory Board, sitting in on the hearings for the promulgation of Codes of Fair Practice for industries, I have found that wages have gone down as low, in many industries, as 5 cents an hour. We found in some cases they went down as low as 2 cents an hour.

The CHAIRMAN. Was that prior to 1929?

Mr. HILLMAN. No; this is since the N.R.A.

The CHAIRMAN. I do not follow you to the extent of your observation that the depression was caused by low wages.

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Mr. HILLMAN. Lack of purchasing power.

The CHAIRMAN. I always thought the depression was caused more by the extent of ruthless speculation and gambling and the inflation of capital.

Mr. HILLMAN. It is my judgment that viewing the total amount of money that went into wages in this country and that was spent, that we could not possibly support the mass production that we are equipped for.

The CHAIRMAN. You certainly could not support the extent to which capital was inflated and expanded. I refer particularly to the extent to which industry consolidated and reconsolidated, and piled up enormous capital, which of course affected the workers in their wages, and also affected the value of the securities.

Mr. HILLMAN. Of course that is quite effective, but taking the current industry, the information available is that the average person of over 18 years of age bought less than one suit of clothes a year.

The CHAIRMAN. Are you talking about prior to 1929?

Mr. HILLMAN. Prior to 1929.

The CHAIRMAN. Yes.

Mr. HILLMAN. Which obviously shows the lack of purchasing power in the country.

Senator WAGNER. And the reason they did not buy is because they did not have the wages.

Mr. HILLMAN. Of course we all love to be well dressed, if nothing else. It is the lack of purchasing power. I have been sitting in as a member of the Labor Advisory Board in one industry just a few days ago, and the figures presented showed that in 1929 the average wage for the whole industry was 25 cents an hour. That was a very substantial industry, employing probably between 50,000 and 60,000 workers.

Now, the National Industrial Recovery Act is for the purpose of at least putting a bottom to the low wage levels, and, through the provision for maximum hours, to create employment.

Taking out section 7 (a), I am satisfied in my own mind, especially with the experience of the last 7 months, there will be no enforcement of the labor provisions of the Code, and if section 7 (a) is not properly backed up, I am very fearful that the whole N.R.A., the great achievement of the last 6 or 7 months, may degenerate into purely monopolistic organizations, protecting themselves against unfair competition, and that the main purpose of the National Industrial Recovery Act, providing for the labor provisions of the Act, will fall down just because of lack of enforcement.

I would like to go on record and say to you, Mr. Chairman, that in my experience with the men in industry, the largest number are anxious to cooperate with the Government. They want a constructive way in dealing with the problems of industry.

The CHAIRMAN. You mean the employers?

Mr. HILLMAN. The employers. They all recognize that the old method must mean ultimate bankruptcy for all of them. But the trouble is that a small group can always create a situation where the people who would like to do the decent thing are helpless. We are getting today a great number of complaints from a number of employers that the codes are not properly enforced, and because of that it creates again unfair competition.

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Now, section (a) in my judgment, should have been sufficient. The language is clear, and anyone who desires to cooperate with the Government can just read the language of the section and know that it gives labor the right to organize. But our experience is that starting with the minority today, but spreading and becoming soon the majority action in the industry, that they are trying to find ways of violating the letter and the spirit of the law.

The bill to me—I would not say that every word is perfect and that there isn't any room for changes or amendments, but it gives substance to the law, it creates a board that will be an impartial board, three impartial representatives of the public, which will work toward the proper confidence of industry and labor, and then two representing industry and labor, so as to give, as the Secretary stated yesterday, proper contact and intimate knowledge of what is going on in industry.

The people who are opposing it know what the purpose of the law is. It is the same group of people who have opposed and denied labor the right to organize in the past. I represent, as president of the Amalgamated Clothing Workers of America, an industry where 75 or 80 percent of the employers are under a contractural relationship with our organization.

There has not been a single strike or disturbance, to my knowledge, since the N.R.A. in that 70 or 80 percent of the industry. But you find a great deal of strife in that 20 percent who are still opposing not merely the N.R.A., the law, but would like, in my judgment, to have a situation where they do not have to live up to the labor provisions of the code. Only yesterday, 1,200 or 1,400 people walked out in the city of Cleveland in one plant, merely on account of section 7 (a). Now, here is a company that had a company union 15 or 20 years ago; then the depression of 1928–29 came and they wanted to reduce wages, so they abolished the company union. They did not ask for any vote on it. Then they proceeded making reductions. Since the N.R.A. they called the company union back again. Discharges have taken place, and a couple of days ago another person was discharged because of activity in organizing the people into an independent organization, and as a result there was a walkout of about 1,200 to 1,400 people.

I can see a real danger ahead of us, as President Green has pointed out this morning, unless we can establish governmental agencies that will give protection to labor, and protect their rights under the bill, that we are heading for a great deal of industrial unrest that is uncalled for..

I believe that the act, when enacted, and when the employers will recognize that they have to deal with the law as is, that we are going to enter into an era of cooperation in industry instead of strife, when this bill becomes a law. It is because of that, and because the bill makes proper provisions for guaranteeing labor the right to strike, a right that labor cannot possibly give up under any conditions, when it is given the proper governmental machinery, I believe the strikes will be very much minimized, just because there will be a relief for the workers when they have grievances to take up.

I conceive that the bill at this time is necessary and it ought to be treated as an emergency measure, as emergency legislation, to protect and safeguard the workers under the Industrial Recovery Act,

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The CHAIRMAN. As I understand your contention, Mr. Hillman, it is that you, as an observer, and as a member of the Labor Board, have observed about 20 percent of the industries of this country seeking to avoid the provisions of the N.R.A., and in obtaining that objective to avoid the provisions of the N.R.A. they have given the appearance of supporting section 7 (a) by organizing unions in their plants, but they did it solely for the purpose of appearing to support the law, and not for the purpose of giving the employees the independent rights that that provision gives them.

Mr. HILLMAN. The real purpose is to maintain their own open-shop policies under the cloak of company unions.

I don't know of any company union—I say I don't know of any, but there may be some—where the basis for the whole organization is not coercion. These people have got control of the men's jobs. Of course, any indication is a threat, a coercion.

The CHAIRMAN. It is gratifying to hear you state that in your judgment the largest percentage of the employers of the country desire to live up to the spirit of the law and would welcome legislation that would compel all employers to treat their employees equitably and justly.

Mr. HILLMAN. Exactly, Mr. Chairman. But I insist that the whole industry be required to do the same thing. After all, the basis of unfair competition, in a major part of the industry, is low wages that some manufacturers can enjoy because of their power to control labor, and because of that it creates an unfair competition. If competition is to go on, and I believe there is room for it, it ought not to be done at the expense of labor.

The CHAIRMAN. A well-organized union in an industry would insist upon the provisions of the code which relate to hours and wages being enforced.

Mr. HILLMAN. Of course.

The CHAIRMAN. And therefore it would make for uniform wages and uniform working conditions in all industries and remove the element of ruthless competition that has been so injurious.

Mr. HILLMAN. Exactly. Many instances have come to me where people have complained about the violation of the labor provisions in the code which is the law for the industry, and then they have come pleading to the people that they lodged the complaints with to withdraw them because they knew they were going to be discharged.

The CHAIRMAN. Thank you, Mr. Hillman. Mr. Hotchkiss.

STATEMENT BY WILLARD E. HOTCHKISS, PRESIDENT, ARMOUR INSTITUTE OF TECHNOLOGY, CHICAGO

The CHAIRMAN. Mr. Hotchkiss, will you give us your full name?

Mr. HOTCHKISS. Willard E. Hotchkiss.

The CHAIRMAN. Your present occupation or profession?

Mr. HOTCHKISS. I am President of the Armour Institute of Technology, Chicago. I do not represent anyone except myself.

The CHAIRMAN. What is that institute?

Mr. HOTCHKISS. It is an engineering school, a 4-year undergraduate engineering college.

The CHAIRMAN. You are here in your personal capacity?

Mr. HOTCHKISS. I am here on an invitation. I do not know who suggested that I be invited, but I am here.

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Senator WAGNER. I did.

Mr. HOTCHKISS. I am very thankful, Senator.

The CHAIRMAN. Mr. Hotchkiss, we will be glad to have your views.

Mr. HOTCHKISS. I hope being here with Mr. Hillman will not induce me to make a speech. I have quite often, as he knows, made one after he made one.

I think I ought to give a little excuse for being here. I was secretary of the Shipbuilding Labor Adjustment Board during the war. I was executive secretary of President Wilson's Second Industrial Conference in 1920. Between 1920 and 1925 I was director of the National Industrial Federation of Clothing Manufacturers, whose business it was to carry out the agreement with Mr. Hillman's union. So in that capacity I have represented employers that were working with the union. Last April, I think it was, Mr. Green did me the honor to write me. I think he wrote a great many other people in reference to this section 7 (a), which everyone, of course, recognized, anyone who had any dealings with the labor movement, was a very important part of the act, naturally, and he expressed anxiety in reference to the actions being taken, and I think the answer to the letter that he wrote was counseling caution. I raised the question at that time whether the labor movement, as it was at that time constituted, was prepared to digest an extremely rapid unionization of that part of the industry which was not then unionized.

Now since that time things have happened that have removed a part of my anxiety, by all odds the most important part of it. My peace of mind on that subject is the incorporation of the Almalgamated Clothing Workers of America into the A. F. of L. movement. Another one is the revival of membership in the United Mine Workers. Now there is a reason for that aside from the benefits which I think will come from injecting such leadership as represented by Mr. Hillman into the movement.

It seems to me that the bulk of the industries that are open-shop industries, so-called, with or without company unions, at the present time are industries in which unionism will have to be on the basis of an industrial union as distinguished from a craft or trade union. I just cannot see the automobile industry working with the carpenters on one issue, and right next door the machinists and all of the different craft organizations it would be necessary to work with. I think the tendency, while it has not gone as far as I would like to see it go, I think the tendencies toward recognizing that fact within the labor movement itself, has been very noticeable during the past 6 months, and I sincerely hope it will continue.

Now I realize that a man who had his active connection with labor 7 or 8 years ago is likely to seem like a bit of ancient history, when it comes into the discussion of this. I remember when we were working over this industrial board, Mr. Oscar Strauss was a member of this commission of which Secretary Wilson was chairman. Mr. Strauss is one of the finest men in the world, but he was always talking in terms of 1912, and it was 1920 at that time, and sometimes it was not quite in keeping. He was a delightful man. I am just afraid I may be talking in terms of 1920 or 1925, when I was working with Mr. Hillman, but I am going to be very frank.

I would like to see the main issue to which this question is addressed, absence of compulsion, settled. I do not think there should be coer-

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cion. I would like to see it settled in such a way that it would commend itself to the great body of employers represented in this 80 percent that Mr. Hillman speaks of, and all those who are dealing with unions at this time. I am just fearful if this act passes in its present form, that the result may be to precipitate more strikes than it will save necessarily, during the next 6 months.

It occurs to me that if there could be complete inquisitorial authority given to find out, in a given situation, whether there was coercion or not, and you could have a body of people representing distinctly organized labor with competent scholarship at the present time—and I have that man in mind, namely Mr. Wolman—a board that would have at its disposal a man like Mr. Wolman—let us take another professor, I am more or less of a professor myself—take a man like Mr. Slichter of Harvard University, and then let us take somebody that has been associated with an open-shop industry, whose opinion the community values on this subject, like President Stanley King of Amherst——

The CHAIRMAN. I am glad you have faith in Massachusetts.

Mr. HOTCHKISS. Mr. King is not a citizen of Massachusetts, he is a citizen of the world—if they could have power in the meantime under the Board—I am not trying to rule you out, Senator, I think it ought to be under your Board—but if they could have full power to get a deliberate, well-developed orientation in all the facts, and then bring this bill up at the next session of Congress, with such modifications as might come in the meantime, I would be frank to say I would feel a little easier about it. Maybe I am old fashioned. Maybe my reaction is the result of working in a situation that was current 5 or 6 years ago. I know how very fast we have been going. I think we are going in the right direction, but I am very, very solicitous about the same thing Mr. Hillman is solicitous about. I am solicitous about the N.R.A. program, and I think we have got to find some way or other of trying to avoid what seems to me is likely to be an epidemic of strikes this spring. Of course, we probably shall not be able to avoid it altogether. We hope we can do things better than our fathers did, but usually when recovery starts there are strikes. There have been in the past.

Now I am a little solicitous about this particular measure. I do not pretend to have studied it, Senators, in its entirety. I received the copy you sent me on Saturday. I read it with a good deal of care—and I am not a lawyer—but I should dislike to see the group of people who are represented by men like Mr. Hillman, come to look to the Government instead of to Mr. Hillman's organization for their primary protection.

Government standards must, in the nature of things, be minimum standards, and when you enforce minimum standards there is a great danger that you will have maximum standards. I am solicitous not for the present, but for the future, in some regards, in respect to the definition of an employee.

We have a right wing and a left wing in our labor movement at this time. I think it is wholesome that we should have a right wing and a left wing. I do not think there is any particular reason why we should not have a wing that is considerably a left wing. Suppose we have a left wing strike and those people are refused by people who are in good standing with the regularly constituted unions? I

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am a little afraid that definition of "employee" leaves room for a little change to protect them. Not being a lawyer I say that with a good deal of hesitancy, but I think that point should be safeguarded with a good deal of care to be sure you do not get a different kind of coercion there that will not permit a normal evolution of the labor movement.

Now, as I say, these are just impressions that come out of the long handling of situations somewhat similar to these that we are talking about. Certainly it would be well for the clothing industry, if it were possible that the other 20 percent could be represented by Mr. Hillman's organization.

I do not think there is any question but what we have industries here in this country that are in that condition. Certainly there were a great many so-called company unions long before the N. R. A. was ever passed that were phoney. There is no question about that. I think there were some that were sincere. I think there were some that represented a constructive effort, that might have been ill-advised, that might have been trying to get something that they could not get.

I think I know the firm to which Mr. Hillman refers in Cleveland. The management of that firm has a good deal of different orientation today than it had 10 years ago, or 15 years ago. It had a sort of idealistic orientation at that time.

It seems to me that we want to make haste, but we want to make it not too rapidly. So I am frank to say, if we could get some way of dealing with the subject effectively, the subject of coercion, so that section 7 (a) could be enforced as reasonably well as these things are usually enforced—I do not expect perfection, and I do not believe anyone else does, in the enforcement of a law—and I think we should spend a little more time on the drafting of such sections as the employee sections, and the sections that have to do with what constitutes fair practice.

It is a ticklish thing to create a new set of offenses in the law. It seems to me a little more time should elapse, and a little more study should be given to it. I do not claim to be an authority on the subject. I came here because I was invited, and I am glad I came.

The CHAIRMAN. It is gratifying to have you feel free to make any suggestions you choose.

Mr. HOTCHKISS. Certainly.

Senator WAGNER. Mr. Hotchkiss, you suggested a sort of an inquisitorial body. May I ask you to explain this?

Mr. HOTCHKISS. Sometimes when the law does not pass in the form it is originally intended some very good results are secured by starting something going.

Senator WAGNER. We welcome constructive criticism, as you know.

Mr. HOTCHKISS. That is my concrete suggestion.

Senator WAGNER. This is what I am not clear about. Supposing this committee does investigate, and discovers that in a plant there are 10,000 workers, and the 10,000 workers claim they have no opportunity to organize, they are not afforded the facilities for organization, the moment they join an outside organization they are dismissed, their job is in jeopardy, and they want a free election in which they can determine their choice. Now you inquire, when you find that to be a fact, "without any power what can be done?"

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Mr. HOTCHKISS. Hasn't the Board at the present time power to supervise an election?

Senator WAGNER. Yes; but supposing the employer says, "You cannot hold an election, we will not permit you to hold an election?" I am giving you actual cases now.

Mr. HOTCHKISS. I think it should have authority to see that a fair election is held.

Senator WAGNER. That is one of the powers provided for in this bill.

Mr. HOTCHKISS. I am not saying I would throw the whole bill in the wastebasket pending further investigation. My opinion is that you have power to supervise an election. I do not think the time has come to attempt outright to put the power of the Federal Government behind the condemnation, willy-nilly, of the company unions. I think you have got to focus attention, for the present, at least, on the question of whether the employees did have opportunity to express themselves, and I would like to see the power of the Government put in to ascertaining the matters of fact, and seeing that fair administration does take place. I think it is somewhat shorter than going on to the details.

Senator WAGNER. If you want to keep the workers reasonably satisfied and do not want to intensify this unrest, you cannot leave these things suspended in the air. I have in mind four large employers of labor now, all of whom say, "No," to a mere election which the workers ask so that they may determine their representatives, and I know one instance where there were over 100,000 men involved.

Mr. HOTCHKISS. I think you have either got to repeal 7 (a), or else give the workers complete power to hold elections without coercion.

Senator WAGNER. Do you think there ought to be a repeal of section 7 (a)?

Mr. HOTCHKISS. I say in testing out these things you have got to see that there is a fair election. I will grant you that, but I think there is a good deal more in the bill than that.

Senator WAGNER. Now you take the case where the company-dominated union exists, the worker would have no choice. This legislation only affords a worker an opportunity to make a choice. It is up to him to choose. As a matter of a social and economic problem, do you think it is desirable to have the employer dominate the instrumentality that is set up to protect the worker?

Mr. HOTCHKISS. I think if you have a fair election he cannot dominate it, but it seems to me at this time the thing has to have a chance to grow. Now the company union movement has had a mushroom growth since the N.R.A., but there were a lot of company unions before that time. Of course, as I said before, some of them were phoney—most of them were. I think more of them, perhaps, did not think the problem through. They said, "We want to get along with the employees."

The CHAIRMAN. You mean "employers."

Senator WAGNER. You heard this morning a number of employee representative plans, as they call them, under which the worker is limited in the choice of his representative to one that has been employed there for a year, of a certain age, and all that.

Mr. HOTCHKISS. No; you cannot do that here.

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Senator WAGNER. Then it provides in the end, if you ever want to amend this constitution, you have got to get the assent of the employer.

Mr. HOTCHKISS. That was fought over in 1920. The language "representatives of their own choosing," means anyone they choose.

Senator WAGNER. I know what it means. I am trying to have you see our side of it. These workers and the masses come to us and they say, "What are we going to do? We are helpless here. We have got to work or starve here. You say we have the right, but we are not permitted to exercise it. What are we going to do?" They went to the President here the other day.

Mr. HOTCHKISS. Isn't a question of speed there an important consideration, whether the board can have authority to go in there and act speedily?

Senator WAGNER. Yes; but then we have the other situation, after the election is held the employer says, "I won't deal with these men. I don't care who they elect. I won't deal with them."

Mr. HOTCHKISS. I realize it is a big issue there, I realize it perfectly well, but I still feel and fear that bad leadership will result in unfortunate reactions on the employer's side as well as any side.

Senator WAGNER. I understand that.

Mr. HOTCHKISS. I do not feel that anything should be done that will precipitate that at this time, if the issue can be met.

Senator WAGNER. Mr. Hotchkiss, here is one case I know of, here is one instance where 30,000 men will be satisfied if they are simply permitted to have an election where they can, without any coercion, intimidation, or anything, select their representatives. A strike is threatened because that is denied to them. The employer says, "We will not permit these elections to be held." Now we are powerless to do anything about that. Do you say that ought to remain that way?

Mr. HOTCHKISS. No; I don't say that.

Senator WAGNER. In other words, we are trying to prevent strife here which is imminent, if there is not some improvement in the law.

Mr. HOTCHKISS. I think the law at this time could concentrate on the question of the freedom of election, the enforcement of the result, it could concentrate on that one point and cut out considerable detail at this time, and then get something of the picture from a somewhat longer range than the few months. After all, there has been a lot happening in the last 6 months. In the long run I would like to see a labor movement in which the workers would look to their unions for support, rather than the Federal Government. I would like to see that, because I think, in the first place, that not only will the Federal Government not be perpetually as efficient in doing that final job as probably the unions can be themselves—probably I have got a little too much Mr. Gomper's philosophy there—but I think in the long run the tendency will be for standards imposed by the national organization to be minimum standards. I do not think that should be done.

Senator WAGNER. Mind you, we do not intend to interfere with their freedom, we simply say as American citizens they are entitled to be free men, they are entitled to be on an equality in their bargaining power with the employers. It seems to me that is the duty of the Government, to see the citizens have their freedom.

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Mr. HOTCHKISS. But I think there is real danger that some of Mr. Hillman's friends might be looking to the Government instead of to Mr. Hillman.

Senator WAGNER. We are not giving them anything except to see that their rights as American citizens are protected. Your apprehension is not directed to the entire bill, it is only the features that attempt to enumerate the labor practices.

Mr. HOTCHKISS. I think it is unnecessary to go into great detail at this time.

Senator WAGNER. How about the Labor Board as a permanent institution?

Mr. HOTCHKISS. I think the Board should be given power at this time. I must say that I look with a little bit of misgiving on the creation of this formidable body as a permanent feature, with all due respect to you, Senator. You have done a good job, but it does look a little bit formidable. Of course I don't know how much water has run over the dam in the last 6 months.

Senator WAGNER. Don't you think it is advisable to have a forum to compose these differences, rather than have a strike as the only weapon?

Mr. HOTCHKISS. Of course, Mr. Hillman has been very successful in setting up boards in one industry. You speak of the permanent board. I do not think the Government will get into this and get out of it again. I do not feel that we want to set up a formidable organization like the Interstate Commerce Commission at this time. I do not think we are quite ready to do it. I do not think we have thought the thing through quite far enough. The next session of Congress, I think, will be much better.

Now I realize that the situation you speak of is intolerable, where the Government says they shall elect officers, and they elect them, and they do serve. I realize that perfectly well. I do not think they should adopt something and then be powerless. That makes the Government ridiculous.

The CHAIRMAN. Thank you.

The next witness is Mr. Ogburn.

STATEMENT OF CHARLTON OGBURN

Mr. OGBURN. My name is Charlton Ogburn, and my address is 120 Broadway, New York City.

The CHAIRMAN. What is your business or occupation?

Mr. OGBURN. I am a lawyer.

The CHAIRMAN. You are listed here as counsel of the Amalgamated Association of Street and Electric Railways Employees of America, in New York City. Is that true?

Mr. OGBURN. Yes; I am the general counsel for the Amalgamated Association, which is one of the largest unions affiliated with the American Federation of Labor.

The CHAIRMAN. How long have you been general counsel?

Mr. OGBURN. Only since last summer and I have not represented any labor organization subsequently to last summer. Therefore, I feel that in presenting my views I am taking somewhat a more impartial view than might otherwise be the case.

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The CHAIRMAN. You are presenting your views in your individual capacity, as a citizen?

Mr. OGBURN. Yes; and as counsel for the Amalgamated Association. I might say that my ideas are not related entirely to 1920, as Dr. Hotchkiss feared his were. I was an adviser of the N.R.A. last summer in one of its principal roles, and I have had a number of cases before the present National Labor Board, and I welcome the opportunity which I have of appearing in behalf of this bill.

During the few minutes in which I shall have the honor of addressing you, I want to stress what to my mind are the two salient features of the bill. I consider—I might say at the outset—that the provisions of this bill constitute the most desirable and needed legislation the Congress today could very well entertain. It meets the needs of labor. I go further and say it meets the needs of industry. It meets the needs of the good of the people as a whole. It is a milestone in American legislation. It is a cornerstone of industrial justice.

What Congress has done for the railroads and for railroad labor in the enactment of the Railway Labor Act and in setting up the United States Board of Mediation it ought also to do for industry generally and labor as a whole by passing this labor disputes act.

I envisage the National Labor Board created under this act as a great national labor court, a great national board of arbitration. For a number of years there has been an arm of the Government for the conciliation of disputes under the extremely capable and effective director of conciliation, Hon. Hugh L. Kerwin. The public knows little of the great achievements of this conciliation service. It should be continued where it is—in the Department of Labor.

But this National Labor Board is to my mind something else entirely. It is to be a great labor tribunal, a court of arbitration, with both labor and employer members and with impartial chairmen or public members of such high repute that both labor and industry will voluntarily consent that it arbitrate their differences, whether they be wages, working conditions, or disputes about self-organizations of workers.

The arbitration must be voluntary by the two sides; therefore this board could not be an appendage of the Department of Labor, because employers would have an apprehension—unjustifiably I agree—that the awards might be favorable to labor and not impartial. The board should be independent like the Interstate Commerce Commission, and like it should be quasi-judicial and administrative. Surely the proper settlements of labor disputes, peaceably and without strikes, the proper determination of wage levels ought to be as important a governmental function as fixing railroad rates or discovering unfair trade practices.

There are three precedents for such a national board as a Government body.

First was the National War Labor Board named by President Wilson, with a right to organize guaranty similar to 7 (a) of the Recovery Act, of whom the joint chairmen were ex-President Taft and Hon. Frank P. Walsh. If you will pardon a personal reference, I can make clearer to you my opportunity for observing the workings of a national labor board. I was in charge of the public-utility division of the National War Labor Board and in that capacity con-

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ducted more than 100 labor arbitrations on the electric railways of the United States, who with their employees voluntarily submitted their disputes to this Board. Subsequently I have acted individually in about 30 more arbitrations as impartial arbitrator on electric railway labor disputes. I have come to believe ardently in the principle of arbitration as a means of determining labor controversies. On railways, steam and electric, the strike is exceptionally costly. There would be more arbitration and fewer strikes, if the permanent board set up in this bill be created. The fact that such a board was avilable would mean a great deal. Several years ago I was selected as impartial arbitrator by the company and the men on a wage question on the Boston Elevated, but the Governor of Massachusetts declined to ratify my appointment on the ground that I was not a citizen or resident of Massachusetts. It then took 4 days for the trustees of the company and the employees to select another impartial chairman. During those 4 days the men were on strike and not a street car or a rapid-transit train moved in Boston or its environs. Had a national labor board been in existence, the controversy would have been immediately referred to it, without stoppage of service.

The Amalgamated Association of Street and Electric Railway Employees and Motor Coach Operators, for whom I am counsel, which is one of the large unions affiliated with the American Federation of Labor, has built its great success partly on its famous arbitration clause in its labor contracts, and its regard for the sanctity of those contracts. Mr. Mahon, its international president, one of the three greatest labor leaders ever produced in this country, is one of our forestmost apostles of labor arbitration.

The second precedent for such a national labor board is the United States Board of Mediation for the railroads, created by Congress.

The third precedent for such a board is the present National Labor Board, of which the author of this bill is the chairman, created and functioning under the Executive orders of the President, and performing an essential and highly important work under serious handicaps. It needs to be recreated under an act of Congress with power to enforce a labor code such as is provided for in this bill.

Such a national labor board under this labor disputes act would furthermore take the strain off the courts to a great extent in settling labor questions—and that strain if continued and accentuated may be none too good for our judicial system.

Congress last June passed a highly important law, signed by the President on June 16. It may become the most important act ever passed by an American Congress. It is the National Industrial Recovery Act. The N.R.A. created by it has proved highly beneficial to industry, especially to large manufacturers. But it will surely place burdens on labor in its role as consumer. It holds out one compensating advantage to labor—the famous section 7 (a). And if this proves a vain hope to labor, there is likely to be a catastrophe. Labor's rights to self-organization have been recognized by the courts since 1842. The right to bargain collectively through representatives of their own choosing was inserted by President Wilson in the policy of the National War Labor Board. Congress put this right in the Railway Labor Act. And now this Congress has guaranteed it to labor generally by making it a part of all codes. The Supreme Court has upheld the Railway Labor Act and this right it

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guarantees to labor. Hundreds of workers, who read 7 (a) of the Recovery Act with joy and new hope, relied on its portection and went out to organize. I believe in every case which has been brought to my attention the workers themselves sought the American Federation of Labor rather than the American Federation of Labor seeking the workers. They soon found themselves discharged for these organization activities and are today walking the streets with nowhere to turn for help. Senator Wagner's bill is needed for these men of great faith who believed on their Government's promise.

The right of employees to self-organization as a means of equalizing the bargaining power of their employers should be complete and undisputed. An effective means of impairing and denying this right has been found by employers in the "company union", which they set up.

Now, I shall not discuss the company union, as I had intended to do, as a result of the long discussion by President Green this morning.

The CHAIRMAN. If you have any reference to it in the manuscript from which you are reading, it may be inserted in the record.

Mr. OGBURN. Thank you. I think it might be desirable to send for your record an excerpt from a rather full report made by the Russell Sage Institute in which the workings of company unions are discussed, and I think it would be very desirable to insert in your records a copy of an extremely excellent article by Senator Wagner which appeared in the New York Times on Sunday, the 11th. I would like to insert that article, if I may, if you have no objection.

The Chairman. Will you do so?

Mr. OGBURN. Thank you.

There is one phase of the company union that I would like to point out, and that is that I feel sure that before these hearings are over you are going to be told by some people that "there ain't no such animal." Economists—I have already heard more than one—say that they have searched the country in vain for the company dominated union. They have actually made that statement.

Now, these company unions are sometimes hard to recognize. They are cleverly disguised. They are like the puppet shows one sees in Italy, which so delight the children by their illusion. They go through all the motions, they swat one another over the head; but it is all done by an unseen person behind the screens who pulls the strings. It fools even some adults. These puppet shows and these company unions are very cleverly manipulated. One such company union before the National Labor Board on Tuesday of this week even fooled its own attorney who thought it was real.

The employees in these company unions have no real independence, no equal bargaining power. Participation by employers in such organizations, including financial participation, must cease. The companies usually match the men's payments and then manage the whole fund. I can supply this board in confidence with an accurate statement of one such company dominated union which lost millions of dollars belonging to its employees. And the subtlety of indirect management of company unions by employers has become a fine art.

Another result of the enactment of this bill will be greater prosperity and a more even distribution of wealth. There is no better means of raising wage levels than through collective bargaining of workers with equal bargaining power and directed by capable leaders. Higher

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wages mean greater purchasing power, greater markets, greater prosperity. Had unionization of workers continued its growth during the twenties with the result that more profits went into wages and less into plant extensions and speculation, the depression would have been greatly lessened.

May I address one sentence to the southern Senators, members of this honorable committee, and perhaps through them to the body of southern Senators who will have to pass on this bill if it is reported out. Southern labor is to a great extent unorganized. The N.R.A. is called on constantly to establish lower differentials on wages in the codes for the South. The South has a mistaken idea that low wages are best for it. If collective bargaining existed to a greater extent in the South, and consequently if wages were slowly raised to the national levels, it would mean more to the prosperity of the South than any other factor, except tariff adjustments. Suppose the pay rolls of South Carolina, as an instance, were increased through higher wage levels by $50,000,000 in a year, there would be that much more for the welfare and the education of its people.

This bill furthermore is a bulwark to our democracy. The A. F. of L. is the only active opponent, carrying on effective work against communism in this country. The way to keep labor conservative is to give it the right of self-organization and collective bargaining, and a just tribunal to hear its complaints. It is the few executives of industries here and there who still live in the dark ages who are causing the real bitterness among workers and who are the despair of the enlightened employers.

We therefore respectfully urge the retention of section 5, pages 5 and 6, of the bill in its entirety, and we urge the retention of section 303, reserving the right to strike.

I beg to differ with Mr. Hotchkiss, again, that delay in this matter is possible. We have no time to delay, and I think, Mr. Chairman, that you will have one of the most exceptional opportunities of your career in advocating in this committee such a bill as this.

Thank you very much, sir.

The CHAIRMAN. We appreciate having your views.

Is there anyone else here who cannot be here tomorrow? Mr. Panken?

STATEMENT OF JACOB PANKEN

Mr. PANKEN. My name is Jacob Panken, of New York City.

Senator WAGNER. I think, Judge, you might put down a little bit of your background to show your opportunity to observe.

Mr. PANKEN. I have been connected with the trades union movement for about 35 or 36 years as counsel at one time to probably the major portion of the trades unionists in the city of New York.

I am personally the attorney for trades unions such as in the men's neckwear industry, in the baking industry, and in the taxicab situation. I had the pleasure of appearing before the distinguished Senator from New York in the silk situation which arose subsequent to the approval by the President of the United States of the Silk Textile Code, involving some 60,000 or 70,000 workmen who went on strike.

I represented these men and women, and, at the same time, I want to put it on record that I represent the Socialist Party in the discussion of this bill which is now before the Senate or before Congress and upon which this committee is now sitting.

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There was one suggestion made by Professor Hale, which I think should be given a great deal of weight, and that is the change of phraseology in order to avoid the possibility of an interpretation which might endanger the very purpose of the bill.

Senator WAGNER. What is that?

Mr. PANKEN. It has already been inserted. Professor Hale and I got together and I think we found the proper language which would meet that situation.

To me, Mr. Chairman, the most menacing threat, not only to the workings out of the National Industrial Recovery Act but to the very freedom of people, is this manifestation of company unions. I have had some experience with company unions. They are an interference with the very elementary rights of American citizenship. I remember reading a decision handed down, I believe, sometime in the seventeenth century under the common law of Great Britain, and I think I quoted from that decision in an opinion that I wrote. In that opinion the court said——

The CHAIRMAN. I must leave, but Senator Walcott will preside and I will have a chance to read the record later.

Mr. PANKEN. I am very grateful to you for giving me the time today so I can leave.

In that opinion the highest court in England said, among other things, that the duress may be the result of compelling the entrance into a contract where there is no possibility of refusal to enter into the contract. You do not have to use force, you do not have to use coercion; if you are in a position by reason of control of circumstances to make it impossible for the other contracting party to refuse to enter into the contract, the courts would hold that to be duress.

If you want me to do so, I shall send you that decision. I am quite sure Senator Wagner is probably acquainted with it and the other lawyers on the committee.

The company unions are a result of an imposition upon the workmen. You have this situation: The employer does not have to tell the men, "You must join the company union." All he has to do is to tell the foreman or the superintendent or the personnel manager to tell the men it is good for them to be members of the brotherhood or the company union, under whatever name it may be organized, and immediately the people find themselves in the position, by virtue of the force of economic circumstances, where they must comply, not with a demand, but with a suggestion that it would be well for them to join the union.

I have one instance in mind, and I made a personal investigation. The superintendent or the personnel manager in that particular industry, as the people were receiving their pay, told them, "You sign this application to join the brotherhood and pay 10 cents." When somebody refused to do that, all that was told to that person was, "It would be a good thing for you to do that. If you do not do it it will not be so well for you."

As a matter of fact, in that particular industry there were people discharged because they refused to join this company union, and, as a result of it, the people have been on strike.

Let me suggest this to you: Company unions mean nothing more than what has been attempted to be established by edict in the dictatorship which is now functioning in the German Reich. By edict

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the employer becomes the leader and the workmen constitute a shop organization. The employer fixes the wages, the employer fixes the hours, and the only recourse that the workmen have against any determination on the part of the employer is by an appeal to what they call a "Court of Honor." Now, what that can possibly do for labor I do not know, but one thing this edict does, and that is to deprive labor in that particular country of any sign of independence. It has practically reduced labor to a situation of involuntary servitude, and where you have company unions imposed by the employers upon labor because of economic circumstances, because of the force of economic conditions, you are visiting upon labor, in my judgment, a species of involuntary servitude. It is because of that fact that I say that these company unions are not only a menace to labor from the economic angle, but they are a menace to labor from the point of view of American citizenship, the rights of freedom, and the rights of liberty.

It is because of that that we favor this measure, not so much because of what the National Labor Board can do in adjusting disputes, but as a measure protective of the rights of Americans to organize themselves and to give expression to their opinions without interference, intimidation, or coercion on the part of any individual because of his economic strength or the economic conditions.

Of course, we are interested also in the bill from the point of view of what it can do by way of avoiding prolonged strikes, by way of possibly avoiding strikes which are imminent. The National Labor Board can do that.

As it is presently constituted, you have a splendid body of men but you have a body of men who have no power to enforce their determinations, their decisions, and I want to call Senator Wagner's attention to the experience that I have had before the National Labor Board in the silk workers' situation.

The Senator has spent, not literally but figuratively, night after night. We got into session at 3 o'clock in the afternoon and sat through until 5 o'clock the next morning. We had the employers agree to certain minima and certain maximum hours, and after they agreed they simply laughed at their agreement, laughed at the decision, and I might say that their maneuvers were designed for the purpose of starving the silk workers back into the shops, because the National Labor Board had not the power to enforce that which was agreed to between the employers and the employees in the presence of the National Labor Board.

It seems to me that under this bill the National Labor Board will obtain the power to compel compliance with decisions handed down by it, after the submission of disputed questions to the Board for adjustment.

Now, then, there is another reason why we are in favor of this bill, and I personally urge its passage for that reason, and that is the question of increasing the purchasing power. The minima established under the codes, because of the right of the employers to organize trade associations and the promulgation of the codes of ethics—codes which would prevent unfair competition—result in the natural consequence of these codes in an increase in price levels. The increase in price levels or cost of living, came subsequent to the promulgation of the codes. The minima established under the codes, insofar as wages

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are concerned, unfortunately have thus far been so low that they are less than the requisite wages to make possible, not luxuries, but the necessities of life.

It may surprise some of you gentlemen to know that there are provisions in codes for as little as 20 cents an hour, or 21 cents an hour. Almost every code that I have—not almost but every code—that I have read, has a minimum wage scale of $12 per week.

Now, with a minimum established on a basis of $12 a week, with an increase in the price levels, labor cannot meet the increase in the price levels and hence there is no real increase in the purchasing power.

If there are coerced unions, company unions, there is no possibility of increasing the wage levels beyond the minimum and the minimum becomes the maximum wage.

The only protection that labor has, the only hope that labor has, to increase the wage levels to meet the increase of price levels is through free organization of labor.

There was some talk here about independent unions and the talk about the American Federation of Labor unions. Of course, I should like to see all of the trade unions of New York and in the United States under the banner of one organization, of the American Federation of Labor, but there is a sharp distinction between free trade unions and company unions, and what we stand for and what this bill is established for is to protect American labor in its right to organize freely, organize free trade unions.

This is a measure, in my judgment, which is imperative if the Industrial Recovery Act is to have any effect at all upon the prosperity or the recapture of the prosperity of the country.

Senator WALCOTT. Do you mind a question at that point?

Mr. PANKEN. I do not mind at all. I will be glad to answer it.

Senator WALCOTT. We hear occasionally here in Washington that the American Federation of Labor is trying at different points, notably Detroit, in the automobile business, to compel the local unions to come with the American Federation of Labor. Do you think there is any truth in that? Do you find it true anywhere?

Mr. PANKEN. I will say this, that all labor organizations try to bring all of the trade unions—local trade unions, into the fold of the industrial-trade-union movement because the philosophy of the trade-union movement is that if there is unity, if there is consolidation, if there is solidarity, there is a greater possiblity of advancing the interests of labor, and often a trades union will require of a local union to become affiliated with the international body. Whether the American Federation of Labor is doing it in Detroit now or not I am not sure, except that I will say that President Green this morning said quite definitely that what the American Federation of Labor desired is to conserve to American labor the right to free organization into trades unions regardless of whether they belonged to the American Federation of Labor or belonged to some other free trades union.

Senator WAGNER. Let me ask you something right there? You have had a good deal of experience with labor unions and members of labor organizations; is there any way of forcing a labor organization to do something against the will of the members of that organization?

Mr. PANKEN. I have never heard of a labor organization being forced to do something which its membership does not want to do except by force of economic conditions.

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Senator WAGNER. I am not speaking of economic conditions.

Mr. PANKEN. You see, there is a strike and the workers will be out 6 months, and they do not want to go back to work, but because their children are starving they are compelled to go back and work and they do something they do not desire to do.

Senator WAGNER. What I meant was, you walk into a labor organization and say, "You have got to affiliate yourselves with a certain organization."

Mr. PANKEN. No; that is a matter which is presented by way of resolution and a vote taken and the majority decides as to what should be the action of the party.

Senator WALCOTT. You answered my question now, and I have just one more question on that point and then you may go on with your statement.

Do you agree with the last speaker in this statement, which, as I recall it, is this: That the American Federation of Labor is the greatest body in this country opposed to communism?

Mr. PANKEN. I did not say that the American Federation of Labor is the greatest body opposed to communism. I should say that the American Federation of Labor is one of the bodies that is opposed to communism and, of course, we would have to define what we understand by the term "communism."

Senator WALCOTT. I do not care to get into that.

Mr. PANKEN. I do say that the American Federation of Labor has fought quite strenuously communistic tendencies within the ranks of labor.

Senator WALCOTT. But do you admit that communism is in any sense synonymous with socialism?

Mr. PANKEN. No, I should not, because I am a socialist.

Senator WALCOTT. I understand that, but I wanted that to appear at this point. I do not care to go into it.

Mr. PANKEN. There is a great deal of difference between us in methods. Socialists do not believe in dictatorships, and because we do not believe in dictatorships we do not want company unions because company unions are an expression of the dictatorship of employers to the employees as to what they shall do. We want them to have freedom of the right to organize.

Senator WALCOTT. Then would you reason from that, perhaps, that the company unions are closer to a form of communism than no company unions?

Mr. PANKEN. I would not reason it that way. I would reason it this way, that the company unions are close to dictatorship, close to the method of organizing labor in countries where dictatorships rule. That is true of Italy, it is true of Germany, and I think it is now true of Austria. All the free labor organizations in Germany, Italy, and Austria, have been liquidated, and have been substituted by the forms that I have discussed with you.

If there are no other questions——

Senator WALCOTT. Proceed with your statement.

Mr. PANKEN. I think I have said all that I want to say.

Senator WALCOTT. Then this hearing is adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 4:15 p.m. the committee adjourned until 10 a.m. tomorrow.)

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TO CREATE A NATIONAL LABOR BOARD

FRIDAY, MARCH 16, 1934

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The committee met at 10 a.m. pursuant to adjournment, Senator David I. Walsh presiding.

Present: Senators Walsh (chairman), Borah, Walcott, La Follette, and Davis.

Also present: Senator Robert F. Wagner.

The CHAIRMAN. The committee will come to order. Is Mr. Lewis here?

STATEMENT OF JOHN L. LEWIS, PRESIDENT UNITED MINE WORKERS OF AMERICA

Mr. LEWIS. Yes, sir.

The CHAIRMAN. Mr. Lewis, you are president of the United Mine Workers?

Mr. LEWIS. That is right, Senator.

The CHAIRMAN. Also a member of the National Labor Board?

Mr. LEWIS. That is right.

The CHAIRMAN. And have been interested for years in the labor problems?

Mr. LEWIS. Quite so, Senator.

The CHAIRMAN. We will be pleased to have your views on this matter.

Mr. LEWIS. I speak in endorsement of Senate bill 2926, introduced by Senator Wagner.

Mr. William Green, of the American Federation of Labor, has made a most comprehensive and illuminating statement of the entire subject which will enable me to be comparatively brief in my own remarks.

I concur entirely with Mr. Green's views as expressed by him. Unfortunately, I was not here at the conclusion of his address and did not hear the precise amendments which he suggested for the bill, and I will assume the liberty later, if the committee will let me, to make a suggestion or two of my own.

The CHAIRMAN. They will be welcomed.

Mr. LEWIS. The basic principles of this bill have been recognized by Congress in at least statutory enactment; namely, the Norris Act and the National Recovery Act.

This bill undertakes to put in precise form certain of these rights and privileges in a manner that will protect the purpose of the bill and prevent workers from being denied in their application the privileges accorded by the enactment of the measure.

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In the main, the bill provides and specifically sets forth six unfair labor practices, and each of those practices are based upon principles already recognized by Congress in previous legislation. In my judgment those several defined labor practices are entirely meritorious.

The right of organization and collective bargaining is now understood by all industrial workers, but the continual denial of that right and its evasions by company unions is creating unrest and will breed revolt among the workers in industry, apart from any question of wages. This is especially true in view of the fact that the Government through legislation is encouraging organization of industry.

The National Industrial Recovery Act encourages the organization of trade associations, groups of employers, and employers' associations of all character. Employers and industries are the beneficiaries of that act; they are thus enabled to do under the National Recovery Act what they were formerly not able to do in the formation of these associations, and in the definition of trade practices and the formation of selling pools and agencies, because of the provisions of the antitrust laws with which formerly they would have come in more or less conflict.

If the Government is to encourage organization upon the part of employers who primarily are more able to protect themselves than are the workers, then it does seem to be entirely logical for the Government at least to give the workers the necessary degree of protection in the formation of their own voluntary forms of trade unions.

The bill introduced by Senator Wagner does not presume to make the Government a party to the formation of unions of the workers but it does undertake to protect the workers in the formation of such unions if they elect to take that action.

The Industrial Recovery Act has been taken by the employers and by the leaders in industry to mean that they are free to take advantage of all of its provisions in favor of industry and finance and also free to deny to the workers any privileges that they may esteem to be due them by the enactment of that legislation by Congress.

In the policy of forming company unions the employers undertake to deprive labor of the rights to be represented in any broad or any national way by representatives whom they may elect to employ. The constitution of the average company union provides that the workers are not free to elect representatives except those employed in the plant of such company. The workers are deprived of the opportunity of availing themselves of skilled counsel in the form of economists, representatives of national labor organizations, attorneys, or any other agents if they are not employed in the plant. The employers attempt to localize the growth, formation and administration of so-called "labor unions" in this precise fashion while, at the same time, reserving the right and the privilege in their own forms of organization to hire the best talent available in our country for the presentation of their viewpoint to the public press, in wage negotiations, or in any of the councils of the Nation.

Senator WAGNER. And does not industry, too, organize upon a national scale?

Mr. LEWIS. Industries do organize on a national scale, Senator, and the Industrial Recovery Act encourages such organization on such scale.

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The CHAIRMAN. And gives them rights that they did not heretofore enjoy?

Mr. LEWIS. That is right, Senator; it gives them rights that they did not heretofore enjoy, and, in fact, gives them rights which were specifically prohibited prior to the enactment of this bill.

The CHAIRMAN. Exactly. These suspended rights were partly on condition that they would extend to labor the rights which are enumerated in section 7 (a)?

Mr. LEWIS. Labor so understands, Senator, and labor is deeply grieved because of the bad faith evidenced in the attitude of the major industries of the country.

At the present time the National Association of Manufacturers, the Iron and Steel Institute, and other associations representative of employers of industry are giving out statements in opposition to the enactment of the Wagner Bill. This is to be expected. The National Association of Manufacturers appeared before Senate committees in opposition to the enactment of the Industrial Recovery Act. It is but natural that the National Association of Manufacturers should now oppose the Wagner Bill which seeks merely to define unfair labor practice in industry, and to protect the workers against the imposition of such unfair labor practices.

The iron and steel industry opposed the enactment of the National Recovery Act. I recall that Mr. Lamont, at that time president of the Iron and Steel Institute, formerly Secretary of Commerce of the United States, appeared before a Senate committee and vigorously attacked section 7 (a) of the Industrial Recovery Act. Since that time the iron and steel industry has been one of the greatest beneficiaries of American industry of the effects of the Recovery Act. The code of fair competition in the iron and steel industry is esteemed to be one of the best codes that have been promulgated or approved by the President. It amounts almost to an iron-clad contract between producers of iron and steel products in this country, and it gives to the iron and steel industry an absolute and positive closed shop in industry as regulating the practices, acts, and commercial dealings of those who manufacture iron and steel products.

The iron and steel industry fulminates in the public press in favor of the so-called "open shop" and in favor of company unions, organized, maintained, administered, and financed by the industry, while at the same time the iron and steel industry within itself imposes the closed shop upon iron and steel manufacturers.

The iron and steel industry has profited tremendously from the passage of the National Industrial Recovery Act and from the beneficent provisions of the iron and steel code. May I point out that in 1932 the United States Steel Corporation reported a loss in operations approximating some $91,000,000 or $92,000,000, a terrifying financial statement. Under the ratio of loss taking place in 1932 it was merely a question of time, which could easily be computed on a mathematical basis, when United States Steel Corporation would have been compelled to go out of business, because its cash resources were being depleted so fast and no credit being available, the corporation was facing dissolution at a comparatively early date.

The report of the steel corporation for operations in the year 1933, only recently released, shows that its losses were cut to but about $41,000,000 or $42,000,000 this year, still substantial losses, but still

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a substantial improvement in operating income and earnings for the company in 1933 as against 1932, and without question that was due almost entirely to the passage of the National Industrial Recovery Act and the operation of the new deal under President Roosevelt's administration.

And yet the United States Steel Corporation, after having profited from this legislation to the extent of $42,000,000 in a year, with exceedingly fair prospects for the current year, has the brazen effrontery to join with the Iron and Steel Institute in denouncing the labor sections of the Industrial Recovery Act and in calling upon the public to impose the enactment by Congress of the Wagner bill now passing before your honorable committee, a ghastly picture, destructive of confidence and good faith, and indicative of the hypocrisy in modern American business.

The steel corporation, like the automobile industry, and like others, is willing to take unto itself all of the advantages that may come from legislative enactments by an intelligent Congress, but, like the dog in the manger, they ask this privilege be held from the working people in America who make possible the operation of industry and the maintenance of our democratic institutions of Government.

The iron and steel industry from time to time fulminates about its desire to maintain and protect and perpetuate the sacred principle of the open shop in that industry. Time after time it makes these pronouncements in public places and the public press. The term "open shop" implies that the shop is open to the workers to join any form of organization that they may desire or elect, and yet the contrary is true, and the steel industry within the lifetimes of most of us has never been open to the workers to join a union except that form of union foisted upon the workers through so-called "plans of employee" representation in the various units of the steel industry.

In proof sufficient of this statement I point out that in all of the plants of the Carnegie Steel Co., a subsidiary of the United States Steel Corporation, there are no legitimate union men. In the plants of the American Bridge Co., a subsidiary of the Steel Corporation, there are no members of legitimate unions. The same is true of the National Tube Co. The same is true in all of the subsidiary plants of that company with the exception of their coal properties, and there are union men in the coal properties of the United States Steel Corporation because the United States Steel Corporation, with all of its power and influence, has not been able to prevent it, and that is the only reason.

In their steel plants they have an espionage system that reports and rapidly weeds out any man who joins a union or who talks as if he wanted to join a union or who attends a meeting of a labor organization or who is seen conferring with representatives of organized labor, and the only union to which he can belong is the so-called "union" promoted by the steel corporations and set forth in their plans of employee representation.

I do not know why a corporation thinks it has the right to organize, administer, regulate, operate, conduct, and finance a labor union of its employees. From the sheer standpoint of ethics I do not know why the United States Steel Corporation or the automobile industry, or any other industry would say to itself, "We will prevent our workers from having the kind of an organization which they desire

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to represent them, and we will prevent them from employing the kind of agents,the type of agents that they desire to represent them, and we will so arrange it that they can only have the kind of an organization that we wish to give them and they can only employ the type and character of an individual to represent them which is pleasing to us."

There is not even an element of sportmanship in that sort of a policy. Our British cousins would say that it is not even cricket.

Under the leadership of these great corporations like the Steel Corporation, the automobile industry, and others, the National Industrial Conference Board has been sending out in recent months propaganda encouraging employers to foist upon the employees in their plants modern company unions, company unions with all of the modern appurtenances of 1933 or 1934, company unions that will operate to the advantage of the company and the disadvantage of the workers, company unions that will neutralize the efforts of workers to improve their conditions, company unions that will not be unions in fact, but mere makeshifts and hollow mockeries deceptive in themselves and intended to divert the energies of the workers from their own self-protection to the protection of the corporation which employs them.

In my judgment this recent offensive of industry to gain control of American labor through the imposition of company unions is only akin to the efforts of gangsters in some of our larger cities to "muscle in" on labor unions and get control of those labor unions for their ownselfish benefits. I think that after the Wagner bill has passed Congress and it has been signed by the President that those veterans of the National Industrial Conference Board, the automobile industry, the steel industry, and other industries, ought to get together and form an association and call themselves "the muscle men of 1933". It would be an appropriate name because that is what they are trying to do.

I wish the Senators could have sat in on the hearings held this week in Washington before the National Labor Board on the conditions in the automobile industry. It was developed there from evidence that in the automobile industry in Detroit and other cities since the enactment of the Recovery Act, to which, in August and September of 1933, the automobile industry did by coercion and by intimidation form company unions; that the automobile industry did discriminate against numerous individuals and discharge them and deprive them of their employment, some of them after many years of service, for joining other unions than company unions and for talking of joining other unions than the company unions; that it did discharge certain of the elected representatives by company unions, elected in their shop unions, after those men found through experience that the company unions were but hollow mockeries and did join other unions; that the automobile industry, since the organization of the company unions, did deny the rights of collective bargaining to workers who had organized themselves into other groups and other unions by refusing to meet them in conference except under such conditions, such stipulations that they found they could not accede to, for instance, turning over the list of their membership to the company

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without any guaranty that their members would not be discriminated against or discharged.

What was the formula for organizing the company unions in one of the plants of the General Motors? On a certain day the foreman of the shop, or a shop foreman, would go to the men of strong character in his shop, men of personality, with some elements of leadership, and tell them they were called at a meeting in the office that afternoon. The meeting would assemble that afternoon in the company office and they would be addressed by a representative of the company, they would be told that the company wanted to form a company union, that the company expected these people to help them, that these men would be paid their regular hourly rates for such help by the company. They were then given copies of the constitution and bylaws of such company union, they were told that an election would be held, that the company would fix the date of an election, that the company would supervise the election, that the election would be held in the plant, that ballot boxes would be provided, that the watchers would be designated, and they were asked to help, and they were asked under such conditions and under such circumstances that they testified that their refusal to participate or their refusal to help would in their judgment have jeopardized their standing with the company, and their jobs.

The arrangements were thus made, the notices of the election were posted, each individual in the shop was canvassed by his foreman or his subforeman, and each of them was told that the foreman desired to have a 100 percent record in his shop and he insisted that he go and vote and that the act of voting in the company-held election would make them members in good standing of this newly formed company union. They had no investment in it, they had no duty in the matter to perform except the dropping of a ballot in the box under the eye of the foreman or shop representative, and that made them members in good standing of this form of company union.

Witnesses testified that they resisted voting, that they were opposed to such participation, that they explained to the foreman they did not believe in that form of union, but they were asked to vote anyhow, and, against their will, they voted, and the returns were published that so many thousand men in this shop and this plant participated in the election and that they elected such representatives as were designated. The company fixed the requirements of representatives to be elected. It designated how many should be elected, or regulated the election and threw all manner of restrictions around it, and, in addition to that, the company financed it. They paid for the printing, they paid for the time of those key men in forming this organization, and it was testified that they pay the regular hourly rates to all of the representatives of this union in carrying out the business of the union and in taking up the grievances of individuals that arise in the ordinary course of its operation.

In other words, the company unions in the automobile industry are merely subsidiary organizations to the General Motors and other corporations engaged in that industry. They are subsidiary organizations just as much as a subsidiary sales company in another city. They are subsidiary organizations just as much as a captive coal company operating a captive mine for the Wheeling Steel Co. is to that

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company, and yet they seek to impose upon the workers this form of economic repression and they seek to chide those who would undertake to change that condition in this modern year of 1934.

In a public advertisement on Wednesday, March 14, published in the Washington Star, the automobile industry, through the National Automobile Chamber of Commerce, with a list of its members attached, says as follows:

1. Under the law and the code the industry believes it owes a duty to its employees, not only not to coerce them in self-organization for the purposes of bargaining, but so far as it legitimately can to protect them against coercion from any source in to selecting representatives not of their own free choice.

That statement has been disproven by evidence adduced in the hearing of the National Labor Board on the same date as the publication of this advertisement. The evidence shows that, far from not coercing employees, the industry was coercing employees and did coerce them.

Their statement no. 2 is:

No employee shall be discriminated against because of his choice of representatives.

The evidence adduced before the Board showed discrimination after discrimination against individual after individual because he had exercised that freedom of choice, because he had elected to join a local union affiliated with the American Federation of Labor, or because he had become an officer of the union or a shop steward or a deputy shop steward, and individual after individual testified he was then discriminated against, discharged, and victimized, and the evidence remains unrefuted upon the records of the National Labor Board.

The third statement is:

3. The accredited representatives of any group of employees shall be free to bargain collectively in regard to matters of common interest.

The record of evidence after hearing of the National Labor Board is that groups of employees in practically all of the plants addressed communications to the company asking for joint conferences with the representatives of the union to which he belonged, and not in one instance was such conference granted. The employers in each instance set up conditions which the employees were not able to meet with any degree of security.

So, the automobile industry stands indicated before the National Labor Board, and the automobile industry under that evidence and before that Board stands indicated of misrepresenting the facts to the American people through the publication of advertisements of this kind on the 14th day of March 1934.

I do not know why the National Automobile Chamber of Commerce, with such members as Chrysler, General Motors, Pierce Arrow, Hudson, and others, should undertake to deceive the American people about the facts of this thing. Why publish in the daily papers things that are untrue and charge up the cost of such publication to the cost of producing an automobile and make the American people pay for the dissemination of false propaganda, because this propaganda is false, and I refer to the Senators the record of the National Labor Board in proof sufficient of that statement.

Senator WAGNER. May I ask a question here, sir?

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Mr. LEWIS. Certainly, Senator.

Senator WAGNER. Do you recall the testimony given by the so-called "representatives" of the workers elected at this election you described, as stating that they never had attempted to make collective bargaining agreements on behalf of the workers with the industry?

Mr. LEWIS. That is right, Senator. It was brought out in the hearing that these companies in the automobile industry, far from being organizations formed for collective bargaining, were rather organizations formed for the purpose of preventing collective bargaining because, in fact, there has been no attempt made to negotiate wage agreements or conditions of employment with the automobile companies, and, in fact, no such agreements had been negotiated and no such agreements are in effect in the automobile industry.

Senator WAGNER. May I ask another question here for the purpose of correcting apparently a misconception as to what the issue is in this particular case? I ask that because of some editorials that I have read this morning which apparently show that the editorial writer had no conception of what the issue was.

The automobile industry refused to negotiate with some representatives who called to represent the workers and also officers of an outside union upon the ground that they did not represent the workers? Is it not a fact that in answer to that the workers of that whole industry as represented before our Board asked simply this, this simple act of justice, as I see it—let us have an election, supervised by a Government agency, where every worker shall have a free choice to vote as he pleases and decide that question?

Mr. LEWIS. Senator, that is precisely correct.

Senator WAGNER. Is that not the only issue?

Mr. LEWIS. That is the only issue.

Senator WAGNER. I am asking that because in one of the editorials that I read, and it gets to be a little annoying sometimes, the misunderstandings, the suggestion was that the Government was attempting to impose some particular union upon the automobile industry when all that has been asked is that we hold an election like we do in our political affairs so that the workers themselves may determine whom they want to represent them?

Mr. LEWIS. That is entirely correct, Senator, and the evidence was that the workers there have indicated time after time that they would be willing to accede to the supervision of the National Labor Board to determine their rights to represent the employees through an election or otherwise.

The whole question of company unions and the attitude of these corporations toward legitimate organizations of labor is not based upon any principle. There is no dedication to a high purpose, there is no spirit of a crusade involved. The industrialists of America who espouse the cause of the company union do not possess any of the blood of the martyrs because it is merely a question of expediency, it is just a question of how much they can put across and how much they can get away with in their immediate and specific instance.

For instance, the representatives of the steel industry, and I pay particular attention to the steel industry this morning because of the statement of the Iron and Steel Institute published in yesterday's press releases—the statement of the United States Steel Corporation from time to time is that they do not deal with labor unions as such.

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They said that during the strike of the men in the captive mines last year and they have said it time after time since that date, and yet in all of the time that that phrase was being mouthed by representatives of that corporation, the United States Steel Corporation was dealing with the United Mine Workers of America, and had been dealing with the United Mine Workers of America for nearly a quarter of a century in its Illinois and Indiana properties. In other words, even that corporation dealt with the United Mine Workers and with a labor union as such when it was expedient to do it, and they refrained from dealing with legitimate organizations of labor as such in their steel plants when it was expedient to do it. There is nothing involved in the question except the element of expediency.

It is a Dr. Jekyll and Mr. Hyde policy. It is the policy of not letting your right hand know what you left hand doeth, if that is expedient for them to do.

We have another illuminating example of that. Mr. Ernest Weir, of the Weirton Steel Co., for some time past, has been giving an exhibition of opposition to the provisions of the National Industrial Recovery Act. He has defied the National Labor Board and has spurned the good offices of the President of the United States in order to settle this matter. In fact, he is conducting himself with the cold ferocity of a 5-year old defying his mother when he sets himself up as saying that a grave question of principle is involved, that he will not accede to the right of the National Labor Board, that he will not grant an election in his steel plants, and that he will not do this and will not do that, and yet even the ferocious Ernest Weir, of the Weirton Steel Co., on March 6, 1934, through his subsidiary, the Weirton Coal Co., operating the Isabella Mine near Brownsville, Pa., started a contract with the United Mine Workers of America for that mine and is working under that contract at this time. Near Brownsville, Pa., he deals with the United Mine Workers of America on his coal property; at Weirton, W.Va., a few miles away, in his steel plant, he holds up his hand in holy horror and refuses to deal with the Iron and Steel Workers Union and refuses to accede to the jurisdiction of the National Labor Board and spurns the efforts of the President in trying to make an adjustment of the matter.

Senator BORAH. I came in a little later, Mr. Lewis. Who are you speaking of?

Mr. LEWIS. Ernest T. Weir, president of the Weirton Steel Co. I am pointing out the hypocrisies of certain industrialists in dealing with this labor question, Senator, in saying that there is a principle involved when, as a matter of fact, there is no question involved except one of cooperation and expediency.

I am pointing out that the United States Steel Corporation, which for years has been one of the exponents of the so-called "open shop" in American industry, while maintaining that so-called "policy" in its steel mills, has been dealing during all of these years with the United Mine Workers, as such, in certain of its coal mines; and the United States Steel Corporation last year, in 1933, was refusing to deal with the United Mine Workers of America as such in its captive mines in Pennsylvania while dealing with the United Mine Workers in its captive mines in Illinois; and I am pointing out, sir, that under those circumstances there cannot be any principle involved but merely the requirements of corporation expediency.

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I think that it is unfair to the American people for industrialists and the captains of industry in this country to be guilty of such deception and hypocrisies in their labor relations. I think it is destructive of confidence on the part of the workers. I think it is provocative of unrest. I think it helps to crystalize discontent.

I think it has much to do with the alarming condition which prevails in the automobile industry as we sit in this meeting because it strikes down confidence, and if the workers can have no confidence in the managers of industry, and if the managers of industry are successful in circumventing the tribunal set up by the Government for the maintenance of stable relationships, then one can expect that the workers will come to believe that they have no recourse or no protection except perhaps through their own efforts, and for that reason hundreds of thousands of workers in the automobile industry, as I speak these words, are considering the exercise of their economic strength and the application of their collective energy.

Senator BORAH. What is the real issue in this automobile strike?

Mr. LEWIS. The real issue in the automobile strike, Senator, is that, contrary to the provisions of the—I speak from the evidence adduced before the National Labor Board in this city this week—contrary to the provisions of the National Industrial Recovery Act the automobile industry did by coercion and intimidation form company unions in those plants; that they are maintaining, conducting, and financing those company unions at this time; they are paying the expenses of such company unions; they pay the officers of such unions; they paid the organizers of such unions, and they are even paying the witnesses, some 38 in number, that have been in the city this week, that they brought down here to testify on behalf of the company union before the National Labor Board—that is the testimony before the board; that the companies did, contrary to the provisions of the National Industrial Recovery Act, discriminate against their employees for joining other organizations; they did discharge them; they did deprive them of their employment; they did continue to refuse to reemploy them, and the workers think that they are even conducting a blacklist although that point was not definitely proven, so far as my own opinion was concerned, in the evidence of the board.

Further, that contrary to the provisions of the Industrial Recovery Act, in violation thereof, the companies are refusing to bargain collectively with groups of their employees organized into unions affiliated with the American Federation of Labor; that such unions representing such employees from time to time through correspondence communicated with the company and asked for joint committees to bargain collectively, that in each instance the companies have declined to bargain collectively with the representatives of those unions, and those employees except under conditions which they set up, which the workers feel that they cannot meet, namely, the furnishing to the company of a list of the members of that particular union which would expose those members to discharge and victimization, in their opinion.

Senator BORAH. What proportion of the men working in the automobile industry are opposed to the company union?

Mr. LEWIS. As a whole, I do not know. With respect to the plants under consideration by the Board, which were certain of the General Motors plants, and the Hudson Co., and the Fisher Body, before the National Labor Board the evidence was that as a general

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rule in the plants the American Federation of Labor unions had more than a majority of the total number of employees. Now, those American Federation of Labor local unions contained a vast number of men who ostensibly were members of the company union because because they became members of the company union in August and September when the company required them to march up past a ballot box in the shop and drop a ballot in the box and that has made them a member in good standing of the company union..

Senator BORAH. That is——

Senator WAGNER. I think there is one step further that the Senator would be interested in; that in view of that controversy all the workers have asked of our Board was to have an election, supervised by some Government agency, so that the men would have free choice to determine that question of representation.

Mr. LEWIS. That is right, Senator.

Senator BORAH. Would this law remedy the proposition of the automobile companies refusing to recognize the American Federation of Labor?

Mr. LEWIS. That is not involved, Senator.

Senator BORAH. I know, but you say that is one of the points.

Mr LEWIS. No; not the recognition of the American Federation of Labor, but the bargaining, to meet in joint conference to bargain with those groups of employees who have joined local unions which are affiliated with the American Federation of Labor. The question of recognizing that union as the American Federation of Labor is not involved.

Senator WAGNER. It might be any other union or any other independent group. That is not the question.

The CHAIRMAN. It would compel them to recognize the representatives of the employees in that particular industry chosen by themselves.

Senator WAGNER. After they have been elected, exactly, and that is all the issue is in this case.

The CHAIRMAN. What I have been wondering about, and perhaps Senator Wagner can answer the inquiry, or you, Mr. Lewis, both being members of the Labor Board—in the National Recovery Act we had a good deal of discussion about the issuing of licenses and it was assumed that if that power was given the administration of the act it could enforce the provisions of the act. Why has not that power of issuing and taking away licenses been exercised in connection with the troubles you have had in getting action under section 7 (a)?

Mr. LEWIS. Senator, I am unable to give you an intelligent answer to your question. Like yourself, I think that as a matter of policy the licensing of corporations in certain instances should have been followed. To my knowledge it has not been done. There may be certain legal questions which involve the Department of Justice or other branches of the Government, with which I am not familiar. I have no other knowledge as to why that has not been done and I deeply regret that it has not been done, because I believe that the licensing feature of the Recovery Act is one of its very important elements.

The CHAIRMAN. It was included in the law for the purpose of giving the Administrator the authority to enforce the rules and regulations.

Mr. LEWIS. I so understood at the time.

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Senator BORAH. Perhaps it would raise some legal questions which have not been settled yet.

Mr. LEWIS. Perhaps so.

Senator WAGNER. That right, by the way, expires in June of this year.

The CHAIRMAN. Yes.

Mr. LEWIS. Continuing——

Senator BORAH. Before you go ahead, Mr. Lewis, what you people are contending for is freedom of these workingmen to do as they please about the union?

Mr. LEWIS. Senator, we think the workers have a right to form the kind of a labor organization that they desire and that the corporation which employs them has no right to dictate that form of organization and no right to subsidize that organization and no right to administer its functions.

Senator BORAH. You would concede that the working men had the right to a choice of the union?

Mr. LEWIS. Oh, certainly, Senator, certainly.

Senator BORAH. Without pressure from anybody, either from other union organizations or the corporation?

Mr. LEWIS. Precisely so, sir. We fully agree with the principle. In other words, if the workers want to form a union not affiliated with the American Federation of Labor they certainly have that right and, as a matter of fact, there are a number of very fine legitimate unions in this country that are not affiliated with the American Federation of Labor. The four railroad brotherhoods are not affiliated and yet they are recognized as the standard type of labor organizations in this country. The Amalgamated Garment Workers Union for 20 years was not affiliated with the American Federation of Labor, but within the last year have become affiliated with the American Federation of Labor by voluntary initiative on their own part and their own motion. They sought affiliation with it. There are other unions throughout the country, less in consequence, legitimate in themselves, that for reasons of their own have not seen fit to affiliate with the national movement.

The American Federation of Labor is merely a federation of labor unions and undertakes to act as the spokesman for those organizations, at the same time giving to the subordinate organizations the most full autonomy in the conduct of their affairs.

The Federation of Labor does not undertake to say to any of its affiliated unions that it shall do this or shall do that with respect to their own internal affairs or their relationships with their own industry or employees, and we certainly agree with you, sir, that the right indutiably exists for these workers to select their own form of organization.

That is what we are asking in this bill, and the bill sets up certain—the heart of the bill, as I understand it, Senator, is contained in the six unfair labor provisions set forth in the act, and the bill would forbid a powerful employer from calling his workers on company time into a shop meeting and saying, "Do this, do that, or do the other thing under our supervision as the form of union you shall have."

Senator WAGNER. Mr. Lewis, do you know a single instance where a company union has ever negotiated a collective bargaining agreement with its employers?

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Mr. LEWIS. I only know of instances where they imply some form of agreement. I do not know of any instance where there has been a negotiation and agreement or the formal execution of such an agreement.

Senator WAGNER. The reason I asked you is because you will remember we inquired of representatives that were selected under the representation plan of the company unions in the automobile industry if they ever attempted to negotiate collective bargaining agreements providing for wages and hours with their employers and they said they never had.

Mr. LEWIS. His answer was in the negative, and, undoubtedly, in the automobile industry by that testimony there are no such agreements and there have been no attempts to negotiate such agreements, and apparently the automobile manufacturers do not intend to permit their men to undertake to negotiate collective bargaining agreements.

As a matter of fact, if you get right down to it, why should a corporation permit its own privately owned union to do anything distasteful to the corporation? They pay the fiddler and undoubtedly they think they have the right to call the tune. They own it and they ought to regulate it if they have the right to own it, but it is the right to own it that we challenge now.

Labor does not undertake to regulate the internal affairs of a corporation. All the labor unions of this country give to the corporations the right to regulate their own affairs. Then why should not a corporation yield to labor the right to regulate its affairs?

Senator BORAH. Do the unions ever undertake to say to a corporation whom they shall employ?

Mr. LEWIS. Whom it shall employ?

Senator BORAH. Yes.

Mr. LEWIS. I have no knowledge of such a policy.

Senator BORAH. What I mean is, do the different labor organizations ever undertake to impose upon the corporations their union?

Mr. LEWIS. Oh, they ask for the recognition of their unions, yes. They ask for everything.

Senator BORAH. Of course they ask to be recognized, but do they ever undertake by strikes or otherwise to force the corporation to employ——

The CHAIRMAN. A member of the union?

Senator BORAH. Yes.

The CHAIRMAN. They sometimes require, do they not, a member of the union to be employed in some trade unions?

Mr. LEWIS. I have no doubt that certain contracts provide for employment of none but members of the union, the so-called "closed-shop" contracts.

The CHAIRMAN. It is particularly true in the building trades, is it not?

Mr. LEWIS. I do not have specific knowledge of the building trades but I do know that such contracts are in existence. May I say, however, that in the mining industry we do not press that point. In large areas of the mining industry every miner belongs to the United Mine Workers but we do not press that consideration as a matter of contract. We think that the average man who works for a living would like to join a union and have the services of that union to pro-

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tect him in his daily employment and represent him, unless he has some reason not to accept the services of the union, some interests, some reason, some motive, some purpose, some solicitation, some profit.

We find that the average man who refuses to join a union has some personal motive. It may be because his brother-in-law is a foreman and his brother-in-law asked him not to join a union and that is why he refrains from joining; it may be that he has a promise of preferment if he does not join a union; it may be any question of personal equation or personal ambition or personal relationship that keeps him from wanting to join the union. But, we find from experience in the mining industry, and I speak specifically of that because I am more familiar with it, that the average man likes to have the union protect him and represent him and he wants to be a member of the union. In exemplification of that fact, sir, may I point out that in 1933 in less than 6 weeks time in the mining industry after the passage of the National Industrial Recovery Act that 360,000 mine workers joined the United Mine Workers of America, an act which hitherto they had not been able to do because they were restricted from doing it by the conditions of their employment and the conduct of their employers by court injunctions, by armed guards, by living on private property, and a host of other conditions.

Before that time we told committees of the Congress that if you would pass legislation that would give these men freedom of action they would of themselves join the union. They join an organization because they know enough to know that the union is a beneficent influence for a man who works with his hands because it can protect him better than he can protect himself as an individual, and it does not need the impassioned pleadings of a fervent orator to convince the modern American workman that it is to his advantage to join a union; he will join a union and avail himself of its influence and its privileges if you give him conditions that will enable him to do it.

The same is true in the iron and steel industry. There is no particular organization right now in the iron and steel industry. Why? Well, because the steel companies imposed a plan of company union on the men, because they prohibit them from joining other unions, and because the men are not free; they maintain an espionage system, they discharge them if they join the union or if they look like they are going to join the union, and there is no organization there. But give the workers in the iron and steel industry freedom from certain ghastly company unions that are imposed upon them and they will join to a man the legitimate unions of this country. They are trying to protect themselves through the modern practice of collective bargaining and increase their wages and improve their working conditions.

Now, the United Mine Workers, which is one of the standard organizations of the country, of course, does not have to go out and ask for anything that will compel men to join the organization. We do not want that. All we ask is freedom of opportunity for the individual and we know he will join the United Mine Workers and we know he will pay his dues, and that is demonstrated by the fact that now, as I sit here, we have between 600,000 and 700,000 of the United Mine Workers of America in the bituminous and anthracite coal industry, practically all there is. We have a few little localities

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where we have a company union or two that are holding out, or something of that sort, but they are in themselves relatively insignificant and the matter is rapidly being adjusted.

Just the day before yesterday in one of the last strongholds of the Bourbon coal operators of this country, in the State of Alabama, 85 percent of the commercial coal operators of that State signed a contract with the United Mine Workers of America, and a convention is today meeting in Birmingham to pass upon and ratify that agreement with the United Mine Workers of America.

Not in the lifetime of any of us has there been any collective bargaining agreements in the coal industry in Alabama. There has been strike after strike all through the years and each time the workers undertook to organize they were discharged, and after they were starving they were finally allowed to go back to their underground working places. But now it has come even in Alabama, even in Alabama. Alabama is about to join the Union, about to become a part of the United States in that industrial sense, and it is due to the fact that the passage of the National Industrial Recovery Act created the opportunity for the workers of that State to exercise their economic influence.

Now, we are asking the Congress of the United States to pass the Wagner bill which does not contain any new principle, does not contain any principles not already recognized by Congress, because it has been recognized in the Norris Act and in the National Industrial Recovery Act, but it sets forth here these unfair labor practices, so that it will be impossible for the Tennessee Coal & Iron Co. in Alabama to continue to operate, finance, maintain, administer, and enforce a company union in the coal mines of that State.

I think that there is intense interest in this measure in the minds of all the workers of this country. I think the overwhelming sentiment of the millions of American workmen, American workers, whether men or women, is behind this measure. I think there is no one against it except the corporations who have selfish motives to serve.

The American workmen think the corporations are unfair in their attitude. They think it is a selfish attitude, they think they are trying to maintain rather a medieval relationship with their employees in industry, and they think they are trying to maintain it for pure questions of corporation expediency, and the corporations like the Steel Corporation which profited last year to the extent of $42,000,000 at the passage of the National Industrial Recovery Act, should certainly have no right in fact or in morals to join the Iron and Steel Institute yesterday in denouncing the Wagner bill.

Senator BORAH. How did the corporation experience a gain of $42,000,000 by reason of the National Recovery Act?

Mr. LEWIS. You were not here when I was discussing that matter a few minutes ago.

Senator BORAH. You need not go over it again.

Mr. LEWIS. Yes; I will briefly. In 1932 the United States Steel Corporation operated at a loss of about $92,000,000, which is some loss—12 months, $8,000,000 a month, more or less—some loss. The United States Steel Corporation could mathematically compute the life of the corporation at that ratio of loss. Its operating cash was being diminished at such a rate that it was merely a question of time

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until the United States Steel Corporation would face dissolution because under the banking conditions that prevailed at that time it could not borrow any money, and at that time the United States Government was not financing any corporations, and the complete, stark disaster faced America's premier corporation.

Well, with the coming of 1933 and the arrival, sir, of the "new deal", the passage of the National Industrial Recovery Act, the promulgation of a code of fair competition for the steel industry, which, in itself, is one of the most complete documents in American industry, the United States Steel Corporation began to do better, substantially better.

Senator BORAH. By fixing its own prices?

Mr. LEWIS. Through whatever advantage accrued to the industry through the code, and its losses were reduced to about $41,000,000 or $42,000,000 in 1933, a shrinkage in loss of $40,000,000 to $42,000,000. I will not attempt to quote the exact millions, but it was right in there.

Well, it is facing now what is admittedly better prospects in 1934 than was the case in 1933, and 1933 was $40,000,000 and odd better than 1932. That is certainly a substantial amount of advantage to derive from the code of fair competition in the iron and steel industry.

Senator BORAH. Are you speaking of the code of fair competition? The United States Steel Corporation has plants on the Pacific coast and when it sells its products from the plants on the Pacific coast it makes the buyer of the product pay the freight from Pittsburgh?

Mr. LEWIS. I so understand.

Senator BORAH. Do you call that fair competition?

Mr. LEWIS. I do not know, but evidently they have the right to do it under the code which obtains in that industry, and, of course, they were doing it for many years in advance of the enactment of the Industrial Recovery Act or in advance of the approval of the code of fair competion in the industry. It is merely a practice that has existed for many years which has not been eliminated and which cannot, sir, rightly be charged up to the Industrial Recovery Act.

Senator BORAH. It can be charged up to the Industrial Recovery Act if the Industrial Recovery Act does not stop it.

Mr. LEWIS. Well, sir, I think it is merely one of the things that has not yet been stopped or has not been corrected. There are many of them, sir, I have no doubt, and one of them, and more important to me, is this terrible practice of imposing company unions on their employees and prohibiting the exercise of normal individual personal rights in the steel industry by the employees of that industry, and the Wagner bill will free those people.

Senator BORAH. If the steel industry can fix prices and if the steel industry can maintain the Pittsburgh-plus prices, they can make the consumers of this country pay whatever they see fit to charge so long as the traffic will bear it.

Mr. LEWIS. They have been doing that ever since they have been organized. Never at any time since the organization of the United States Steel Corporation, and the throwing together of all those great plants, which were trusts in themselves before the organization of the holding company, never at any time has the United States Steel Corporation failed to do just that thing you have just uttered. It has been testified here before committees of Congress in investigations

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of the steel industry throughout the years that the Steel Corporation could make steel anywhere up to $5 a ton cheaper than the independents, but they refrained from selling at cheaper than the independents because of their benevolent policy, they did not want to put the independents out of business, and they took $5 a ton extra profit for not putting them out of business, and Congress year after year under the antitrust laws permitted that condition to prevail in the steel industry.

Senator BORAH. Congress had nothing to do with that, Mr. Lewis. The Congress passed the law and it was the business of the Department of Justice to enforce it.

Mr. LEWIS. Well, Congress did nothing about having the Department of Justice act upon it.

Senator BORAH. Congress had nothing to do with creating the Attorney General.

Mr. LEWIS. Oh, but Congress had the right to memorialize the Department of Justice to start suit against that steel company.

Senator BORAH. But it ought not to be necessary for Congress to memorialize a man to do his solemn duty.

Mr. LEWIS. Well, who was President about that time? [Laughter.]

Senator BORAH. May I ask you who is President now while it is going on.

Mr. LEWIS. Well, the only difference is that I understand that the man who is now President is in sympathy with every legitimate effort to stop this condition of which we are complaining.

Senator BORAH. Sympathy will not stop it.

Mr. LEWIS. No, but the enactment of this law will.

Senator BORAH. Then if this bill will do it I am for the bill.

Mr. LEWIS. You are talking of prices now?

Senator BORAH. Yes.

Mr. LEWIS. Oh, well——

Senator BORAH. I am in entire sympathy with your view with reference to the labor proposition. The American workman has the absolute right to choose where he shall work, whether he shall be in a union or out of it, and corporations have no right whatever to interfere with his voluntary choice; that is all right. But, what I am speaking of are these people who are now doing the same thing that you say they have always been doing.

Mr. LEWIS. Well, I think they are, Senator; I think they are doing the same thing now they have always been doing, and they are doing it under a closed-shop arrangement in the steel industry through their code of fair competition. The steel companies have imposed the closed shop in the steel and iron industry——

Senator BORAH. I am not censuring the N.R.A. under the National Recovery Act. What I say is that the enforcement of the Sherman antitrust law will aid the N.R.A. and not hurt it. The N.R.A. alone cannot do this job.

Mr. LEWIS. Well, of course, I am not this morning qualified to enter into a discussion on the enforcement of the antitrust laws.

The CHAIRMAN. Are there any other observations, Mr. Lewis?

Mr. LEWIS. Just briefly, Senator, I have the following suggestions and amendments to offer:

On page 7, section 201, relating to the composition of the Board, the Board "shall be composed of 7 members," beginning on the third

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line, 2 representatives of the employers and 2 of employees, and 3 dissociated with either, may result in subordinated representatives of the employers and employees to the rule of advisers or assisters, I mean the representatives of labor and the representatives of industry who should be charged with the responsibility of decisions.

The policy of the Recovery Act is declared to be:

> To induce and maintain unity of action of labor and management under adequate governmental sanctions and supervisions.

I think that the responsibility of these decisions should primarily be placed upon the representatives of industry and representatives of labor on this Board, rather than to put in three members from elsewhere than the ranks of labor and industry, and put labor and industry in as advisers.

Now labor does not want a chance to advise. The representatives of labor do not want to have to come in and hunt up three members of the National Labor Board to see what they think on a certain industrial situation in a certain city of industry. Labor wants a chance to participate on equal terms with industry, and it wants to assume the responsibilities of such participation.

So I would say that from every practical standpoint, from the standpoint of incurring greater confidence in the Board, from the standpoint of its action of administration and operation, a change to make an equally divided number of representatives of industry and labor, with a governmental representative as the chairman, would be preferable to the representation that is now set forth in the act.

The CHAIRMAN. Very well, we will give consideration to that suggestion.

Mr. LEWIS. On page 6, Senator, lines 14 and 15.

Senator WAGNER. That has already been taken care of.

Mr. LEWIS. I will pass that then. Section 206 on page 16, line 10, I think could be amended so as to authorize arbitration only on the joint submission of both parties to a controversy, rather than "any party."

Senator WAGNER. I agree to that. I was going to propose that change.

Mr. LEWIS. Thank you, Senator.

The CHAIRMAN. That is acceptable to you, Senator Wagner?

Senator WAGNER. Oh, yes; I was going to suggest that to the committee.

Mr. LEWIS. On page 9, Senator, section 204, it reads:

> The Board may, either by itself or through its agents, offer its services to the parties to any labor dispute as conciliator or mediator in such dispute, and may act as conciliator or mediator for the parties who accept such offer.

I think that is essential and necessary, insofar as the purposes of the Board relating specifically so the basic unfair labor practices are concerned, but I really think that the Board would be sort of overwhelmed and immersed with those duties, when they are taken on a broad scale and applicable throughout industry as a whole, and I really think that in a measure such a volume of mediation and conciliation might detract somewhat from the prestige of the Board and render a little less effective its general supervision over these basic unfair labor practices.

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Now, just in connection with that, I have a thought with relation to section 304 (b), on page 23, and in conjunction with counsel for the United Mine Workers have this revised to suggest for the consideration of the committee. It deals with the scope of authority of the Board, and seeks to preserve within industry those tribunals already set up there for their specific functions, without giving them, of course, any rights on the basic authority of the National Board. The proposed amendment is as follows:

SEC. 304 (b). Any term of a contract or agreement of any kind which conflicts with the provisions of this Act is hereby abrogated, and every employer who is a party to such contract or agreement shall immediately so notify his employees by appropriate action: *Provided*, That nothing in this Act shall be held to impair the right of tribunals established by codes of fair competition approved under the National Industrial Recovery Act or by collective-bargain agreements valid under the provisions of this Act, to hear and determine disputes concerning hours, wages and conditions of employment to the extent provided in such code or agreement, and where such hearing and determination does not involve recognition of any unfair labor practices.

I merely submit that for such consideration as the committee might want to give to it, as a matter of simplification.

The CHAIRMAN. We will appreciate that, Mr. Lewis. Does that finish your suggestions, Mr. Lewis?

Mr. LEWIS. I have nothing further except I do think this Board should not be attached to any governmental department. I think it should be an independent agency acting under the authority of the President, by appointment of the President.

Senator LA FOLLETTE. Mr. Lewis, I have just one question. What do you think will be the effect and the outcome of the failure of Congress to enact this legislation?

Mr. LEWIS. Well, I think it will be considered by industry as almost a validation of the company union, and I think it would, perhaps, increase their efforts to impose company unions in industry, and that resistance on the part of the workers would be rapidly crystallized and would flare up in a way that would be productive of a great deal of labor unrest by means of strikes of wide-spread nature. It would be detrimental in every sense of the word.

The CHAIRMAN. Thank you, Mr. Lewis.

Mr. LEWIS. Thank you, gentlemen.

The CHAIRMAN. I see Mr. Frank P. Walsh in the room. Mr. Walsh, will you come forward?

STATEMENT OF FRANK P. WALSH, CHAIRMAN NEW YORK POWER AUTHORITY, NEW YORK CITY

The CHAIRMAN. Will you give your full name for the record?

Mr. WALSH. Frank P. Walsh.

The CHAIRMAN. New York City?

Mr. WALSH. New York City.

The CHAIRMAN. You are chairman of the New York Power Authority?

Mr. WALSH. Yes.

The CHAIRMAN. Recite your activities in connection with labor problems, beginning with the war, your service during the war.

Senator LA FOLLETTE. Prior to the war, you were chairman of the Industrial Relations Board?

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Mr. WALSH. I will try to go along, if I may, Mr. Chairman, and gentlemen.

The CHAIRMAN. Yes.

Mr. WALSH. I am not going to undertake, of course, to make an analysis of this law. I am not going to do it, first, for the reason that I do not feel as competent to do it as others who have been here, or as you gentlemen who are sitting here, who have been the target of all sorts of argument and all sorts of propaganda, some of you, during this entire generation, I might say.

I am not going to analyze it for another reason. I am in favor of it from beginning to end, because I think it is the evolutionary outgrowth of enlightened education over my time and over the time practically of every gentlemen sitting upon this committee. I believe that it is another step forward, a great step forward in the realization of economic freedom, which I believe is as important, if not more important, than political freedom.

I am not going to analyze it for the reason that I think it contains all the principles which are great factors in bringing about industrial justice, and because, as a piece of bill drafting, I think it is most excellent.

I think, perhaps, I might make some contribution here today by recalling, perhaps, more than stating, refreshing your minds, if I may do so, on the evolution of which I have spoken. My attention to these questions was specifically directed 20 years ago in the act that was passed which bore the name of Senator Borah, and I do not recall the name of the Member of the House of Representatives, which created the Commission on Industrial Relations of the United States Government. There was $500,000 appropriated and spent on that investigation. I say this because I read in the papers within the last few days, that there are certain organizations in this country who think that an investigation ought to be made before this bill is passed. Upon that board there were 5 members representing the employers of this country that came from the National Industrial Conference and the Manufacturers' Association, 5 representing the employers drawn from the American Federation of Labor, and 3 representing the public. I happened to be the chairman of that commission.

I can speak with freedom about the accomplishment, if any, it made, because the report that has become the report of that Commission was designated, and properly designated, as the "Staff Report." We were required to bring to our assistance those in the United States that had made special studies of this subject, and we drew upon those acquainted with economics in all of the leading universities of this country.

We were required at that time, also, to hold public hearings so that the public mind might become educated upon the situation existing in industry and the cause of industrial unrest. In many respects the situation in this country was paralleled by the situation today. We were under the stress of no war, or threatened war. Efforts had been made for years and years, beginning in a very small and weak way, to educate the people along the lines of collective bargaining, and to bring about better conditions, or a more equal distribution of the fruits of industry, than had existed theretofore. Great friction had arisen in some parts of the country. We were almost in a state of armed industrial war. One of the largest railroads in this country

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maintained an arsenal at their headquarters. Conflicts were numerous. Private armies were common in some of the great industries in outlying districts, and in the centers of population even. The spy system was at its very height. The same efforts that are being made by the same persons, or their ancestors, I mean their industrial ancestors, were at work at that time to prevent collective bargaining, to abridge the right of a workingman to join any organization of his own choice and to act collectively through his own representatives.

Now I want to say this, that my experience in that Commission—an experience to which I will refer a little later on, if I can bring my mind to it at the logical time—has convinced me that the opposition to measures such as this Wagner bill, the opposition to the formation of that Commission on Industrial Relations during the Taft administration, the opposition to every law, Child Labor Law, for the protection of the life and limb of workers engaged in industry, for every law that diminished or had a tendency to diminish profits, the opposition came from a comparatively small number of industries and a comparatively small number of individuals in those industries. The potent influence was due to the fact that they were the large industries, they were the industries that were further away in management from the actual worker than the other industries, they were the industries that the diminution of 1 cent an hour might bring an immense fortune in a very few days on account of the great number of persons that were engaged in the industry, or the increase of a half-hour or an hour in a balance sheet at the end of the year might show millions of profits.

Therefore, as I say, I would pay no attention, and I do pay no attention to the assertions that are made in the newspapers today to the alleged fact that there are very few people or very few members of these large international unions, and that they should not get the consideration which they are demanding, vocally demanding, by such gentlemen as have been on the witness stand today, and as have appeared before you many times. They are the persons who have established, after struggle, whatever standards they have established, and through their early work have brought about a condition of the public mind that brings the Senate of the United States, through one of its important committees, here today, to listen to their voice and creating a forum, which we have had many times before, where we may hear both sides of the question, always, I say, with the same result.

Now that investigation, to make this as brief as I can, brought out all of the principles that are contended for here today. There was a division in that Commission, so far as the personal views of the members of it were concerned. It was diverse. There were hardly any two who agreed to all of the conclusions. Why? It came from the same reasons, it came from surroundings, birth, environment. Those who had to labor for a living perhaps had a different view. They got their practical political economy in the factory or on the streets of a great city. Their views were different from those of a person that perhaps was educated along the line of ancient or modern economics in the university. Self-interest, motive, and all those things, cut a figure, but when it came down to the fundamentals, such as you are considering today, there was no diversity of opinion.

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There was a diversity, perhaps, of machinery. There was a difference, perhaps, in the passion in which they spoke, but as for a real system of collective bargaining and representative democracy in industry, there was no diversity of opinion, and there cannot be, I claim, in any judicially, cooly considered body in a public forum where both sides can be heard.

I want to say just a word or two, to give you a little history of my experience and perhaps of a few of my views, in answering what has been said today. It sounds like an echo of the ancient past to hear the opposition to this bill. It would be almost foolish for me to warn you gentlemen against propaganda. I can look at Senator Wagner and see the dents in his forehead today because of the propaganda that has been going on in various spots in the last few weeks.

Therefore I say it is one of the reasons for a bill of this kind, that when a question of this sort comes up, where the public mind might be deeply affected, there is some person in Washington all the time—now you know they haven't gotten to any member of industry, any number of industrialists or to any number of corporations—but some gentleman steps up, he is generally a secretary, when he is talking about organizers, who would be ashamed to tell his own pay, his own emolument, but he tells you he represents 75,000 people who are opposed to your bill. They come down on this great subject where we ought to be getting together, where the life of the country makes it important that we should get together, going along the same old lines that they did in the preindustrial relations days. This important body passed a resolution saying that at this time you gentlemen ought to investigate, or a new investigating committee ought to investigate the salaries of organizers of labor unions.

Now I am here today on a message of peace. I believe you are going to pass this bill, and I believe it is going to be the greatest step forward in industrial democracy which has ever been taken. I believe it is going to be one of the benefits, one of the blessings—and there are a good many of them—that has grown out of our experience during this depression.

I notice the name of one of the gentlemen signed to that, to inquire into your salary, and I think the salary is about a dollar and a quarter an hour—we will take it by the hour, but we might take his by the minute—and this gentleman who protests and lends his name to the investigation in this momentous hour of hours, when we are trying to lift the whole Nation to an economic basis, when we are looked upon as setting an example for the entire world, this gentleman comes forward and says, "What we ought to investigate is how much an organizer for the union is getting." There was one of these gentlemen sitting next to me while Mr. Lewis was talking, and he figured it quickly for me, and that gentleman is getting $650 an hour. And he thinks there ought to be an investigation made. And so it goes along. It is the same old story.

The idea, for instance, that there is something in the labor union that causes them to get together. To do what? To destroy an industry. To destroy their own lives. To destroy the lives of their families. The basic thing that is always overlooked in these arguments, on the part of those who oppose such measures as the one before you today, is based upon that idea, that there is something almost criminal, something terribly wasteful in the idea of giving

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labor a free hand, a complete economic freedom in dealing with the employers, and in dealing with their own industry.

The basic thing is this: If that industry is retarded, if that industry is destroyed, they starve, they have no means of livelihood. If, on the other hand, the industry is not carried on in a way that is just and fair to those employees, the result is strikes, lockouts, and cessation of work. Why, then that great industry, from the employer's side is broken down in its profits. So there is a balance there in the law of compensation. That is so clear and so plain, unless it is retarded, that I do not see how any intelligent person can gainsay the argument—part of it I heard here today, and practically all of it I read in the record or the newspapers—it must depend upon that. It is found when free play is given that is accomplished to a very great extent, as far as it can be accomplished under our sustem of government and under our system of distribution, with which basically I do not disagree, but of which I am a sincere and vigorous critic, of some of its administrations.

Now after the Commission on Industrial Relations, I recall, as I say, the report upon that was made by the staff, and you will find the support of every principle that you have in here 21 years old. To this has been added the experience of that 21 years, because there has been a succession, and I am glad to say it, as a lover of this country and of my Government, I am glad to say the tradition has run true at all times in the Congress of the United States, there has never been a time that there has not been somebody battling upon the floor for administrations along this line. A La Follette; a Wagner; a Borah—I could mention very many of them who are here and who have gone, that have battled for that, and they have brought us down, in an educational way, to where we are today.

Now the best parallel I think we have for this is our experience in war time. The War Labor Board of course, had its basis in an Executive order of the President of the United States.

Now it has been stated, and it has been stated since this hearing has been in progress, that the only force that it had behind it was the force of public sentiment. That is a very great mistake. It had the most powerful force behind it, perhaps, of any organization that has ever existed in this country. It had the action of a courageous President behind it. It had an action that was quick and decisive. I might say this, in all of the 1,270 cases that were submitted to us, to this Board, there were decisions covering just under 1,000,000 of employees, not at all indicating the matters that were settled, because perhaps the settlement in one factory would be a settlement of the whole industry, they would go along with it, so that those who have attempted to analyze it, to produce certain statistics, say that there were probably over 2,000,000 employees affected by it.

Now, at the outbreak of the war, and in the early days of the war, there were a great many bodies that had to do with these industrial conditions, that is, in the Government itself. We had the Shipping Board, the Army and Navy, the Aircraft, the Railroad Administration, the Fuel Administration, and many others. There were strikes in shipyards, copper mines, munition plants, the packing industry. It came to the point where the absolute cessation of production of foodstuffs for this country and for a great part of Europe was threatened by a general strike in the packing houses, where they were paying

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men 30 cents an hour and working under conditions that were exposed as intolerable conditions.

Now I would like to say again at this point, I do not condemn these men that are the owners of these industries, nor do I condemn those that are the managers of them, but I do say that with our modern development of industry, the machine age, or whatever you call it, it calls for some interposition by the Government such as you propose here.

We hear arguments in favor of company unions and against regular trade unions. A trade union has some power. It can have a war chest perhaps, funds when a strike is called; it can do so many things, it can do what so many of them are so splendidly doing, operating laboratories to bring their craft and their art to a higher standard of efficiency, so that they may be more valuable to industry, so that they may have more of a share in its fruits, so it may be making laws to preserve the lives of these people, and, finally—and this is the greatest of all—it can educate them. These men who are appearing here, representing the unions of this country, have been the real educational force there. Their progenitors and those who are associated with them today are bringing the country to an education that makes possible such a law as this is today.

Now you could say, "Well, a company union is all right. We will have that in one factory." We have observed that. We have observed it in the investigations. We have observed it every day. When there is a scarcity of labor, why, the company man, the unorganized man, comes up closer all the time to the standards set by the others, as to wages and conditions. When there is a great inuflx of labor, or a depression, why, they just give them whatever they please. The standards set up and fought for carried us through this depression. Practically every labor union in the country was destroyed financially, or very much hampered, but they did carry through, and they are here, not only to speak for those of their own organization that pay dues and carry this burden, but they are here to speak for the millions of the voiceless ones that are trapped, or coerced, or fooled into company unions, or who are in remote places where they have not had the opportunity for education that the labor unions have had.

Now, the effort that was made to coordinate this thing was varied. I am giving you this from recollection, but it can be readily ascertained in the library. The first effort that was made to do something during the war I would call the Gompers-Baker agreement. That is Secretary of War Baker and Mr. Gompers. That is the agreement as to the maintenance of the pre-war status of labor. In other words, it was a sort of an implied arrangement that neither side should take advantage of the war situation. The unions of this country, far from being a subversive force, far from being a force that would destroy, were the ones that upheld that. They made the sacrifices. They went along with the Government. They entered into that agreement. It was not a workable agreement because it was found, very shortly afterward, that conditions in certain industries were at such a low ebb that the men were not getting a living wage, and the hours were so exhausting and fatiguing that the structure could not be depended upon to carry out the manufacture even of necessary war essentials.

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So I think the next thing that was organized was the President's Mediation Commission, a very fine commission, that went about through the country trying to find out the specific causes of unrest in particular localities and to make suggestions, general and specific for their alleviation.

Then there was a War Conference Board called. That functioned for a few weeks, made recommendations, some very good ones, but they were not carried out.

Now, the War Labor Policies Board performed a function, but it was not given power enough. It was only to declare policies. Some of the policies declared at an early stage in the war, before it could be anticipated exactly what was going to occur or the extent of our necessities for the protection of essential war industries or other factors of that kind, which left it practically rather an academic board.

Now, when the War Labor Conference Board was created, out of it came the National War Labor Board. It was created by a frank recognition of the American Federation of Labor. That is proper and you cannot do anything else at this time. You may be a critic of that organization, you may be a critic with the organizations which are affiliated with it, but at the same time if you are going to deal with organized labor you have to deal with the American trade-union movement. There are other side issues and they grow, they expand, they get different views. While necessarily you cannot avoid it, you are going to deal with the American trade movement as it exists today. Nevertheless, there is room for expansion, just as there is in other organizations.

Perhaps these questions that come up of craft unions, unions within industries, and correlative questions, those questions are less open to a natural development which must come through the intelligence, in my opinion, of the workers themselves.

Now the A. F. of L. was recognized, and the National Industrial Conference Board was likewise recognized, and the success that the National War Labor Board had was due to the fact that it had a principles such as you are setting up here, of principles that are definite but nevertheless elastic enough to meet all contingencies.

The code that was drawn up by the National Conference Board became the code of the National War Labor Board, and it was under that code, resisted by very few industrialists, it was under that code that our country was the only one that operated through the war without the cessation of 1 day in the production of essential war materials, which included everything that was not only necessary, like munitions and the like, but every cognate production that you could possibly imagine, even down to transportation, street car, urban and interurban transportation.

Now, I want to say here that I believe, under the broad terms of this law, with the provision that you have a right to make your own rules and regulations from time to time in conformity with the general principles of this law, that your education or our education since that time, has made this a much better code and a more workable code, than the code that we had during the war.

I would be very glad to give you the principles that were laid down there, so that you may have them before you. I do not have them with me now. If you want to compare them, I would be glad to give

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them to you. Upon comparison I find these principles to be fully as potent, they have all the strength, and are more flexible.

Now I think, if I may be allowed to give an opinion here, as I suppose I am asked to do, that this is the most important thing in my view that has been done or proposed for National recovery. The act we have here today I think goes to the very heart of the whole thing, it goes to the increasing of mass purchasing power, of allowing industry to go to its very highest point in the production of necessaries and even the luxuries of life. I believe that it is something upon which we can build, and I think we ought to go at it very bravely. I think it is highly necessary in this emergency, but I think it is highly necessary for all time.

We can all speculate on what might have happened, but I certainly believe that if this law had been put in force 25 years ago, perhaps, or longer ago than that, it might have been a very great factor in averting the calamity that has befallen us in the last few years, and therefore I think we ought to step out bravely without any apology for the law, and say, "Yes, the emergency makes this necessary now." Perhaps the emergency would not have been here if we had it a long time ago. I feel this is a law for ever and ever, except as we progress in thought and except as we progress in the determination to see that the people who produce the wealth of this country have a fair share of its fruit.

Senator WAGNER. Well, that was regarded by some critics as a perfectly vicious proposition.

Mr. WALSH. I know that.

Senator WAGNER. Lincoln had the same thought that you expressed. He said that way back.

Mr. WALSH. Did he?

Senator WAGNER. Yes.

Mr. WALSH. I think the same thing then. They tell me that Aristotle or Omar Khayyam, or someone else said it, but I am glad that it was Mr. Lincoln.

Senator WAGNER. Yes.

Mr. WALSH. I just want to say what occurred, briefly, after the war. Perhaps that would throw light on the necessity of this. Now, when the war was over, why some well-intentioned people, some of the organized labor people, many of them, and some of—what would I call them?—the ingenious uplifters had an idea that something like this should be carried along, which we are trying to do today. So a law was drafted and went to Congress. There was a kind of a blow-up in the discussion of it. I know the President at that time was in favor of it, but it just sort of went by the boards.

Now, then, he called, however, for an industrial conference. The first industrial conference was in 1919. The idea was at that time, the asserted idea, was an effort to perpetuate the general principles laid down by the War Labor Board, and to create some kind of judicial, or quasi-judicial and administrative body, such as you propose here, to carry them out, to furnish the machinery and carry them out. The Secretary of Labor and the Secretary of the Interior were joint chairmen of it. It was great. It was a great agency drawn from all over the country. It had representatives of employers, employees, and the public on it. I suppose there were probably 200 or more of the most prominent people in the country who attended that congress.

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Now that is the only effort, and I think that was largely because it was more like a political convention, a gathering of men of diverse and antagonistic views, simply impossible to amalgamate them. I wouldn't want to mention many of the names now. A good many of them are dead. But they split over collective bargaining. They split to the extent that it would have been necessary and futile to have any vote. It got no record and had no chance of doing it. The industrialists split and the members of the public representatives divided.

But later on they had another conference. Now that was the one over which presided Secretary Wilson and the late President of the United States, Mr. Herbert Hoover. They produced a code of principles and standards that was comparable with this. They went along the same line, in principle at least, and they created a board for their interpretation and application. They made a report on it. It was widely reported. No action was taken on it, either by the President or the Congress of the United States.

In the years 1920 and 1921 we had a depression where there was no forward action on the part of labor, no forward action on the part of those that believed in economic freedom. From 1923 to 1929, in those dizzy years, there was no forward advance. The industries were wallowing in profits and the only criticisms we heard then were on the part of the poorly paid laborers which were always present, that they were not getting their fair share, and the skilled laborers who knew they were not getting their fair share, and on the side of the industrialists, the bitter campaign that they made against the wearing of silk shirts and the use of Ford cars by employees to go to work with. 1923 to 1928, therefore, was practically a blank.

So we come up to today and we pick up, I hope, where we left off. I mentioned, when the Senator was not here, where we left off from the Borah bill of 31 years ago, and our recommendations down through the war, and the board that was made successful to carry us through that war industrially, down to today.

I simply wish to reiterate the thought that I am in favor of the principles of this bill. I believe that it is so well drawn although I could criticize certain parts of it, but it would do no good to do it here, that if this bill is passed as it stands today it will be such a step forward that there will be no difficulty in patching it up, either by legislation or by rules and regulations which you are entitled to make concerning anything that could be considered a substantial evil. I think that you will not only make it an approach to the accomplishment of the effort of recovery, but I believe you will lay down a principle that will cut a splendid figure in preventing these terrible depressions in the future.

I almost feel like apologizing for talking to this committee, because I know everyone on it, and every intelligent man who looks into this question of company unions and who has an atom of fairness in his make-up, will have no difficulty in answering any of the propaganda against this bill. Thank you.

Senator LA FOLLETTE. Thank you very much, Mr. Walsh, Mr. Frey.

Mr. DUNN. Mr. Chairman, I am representing the Trade Union Unity League. I would like some assurance that opponents of this bill will be heard at this hearing. So far there has been a very

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impressive array of opinion marshaled in favor of this bill. I would like to make it known that there are people who represent sections of the workers' rights, not representatives of corporations alone, that are opposed to this bill in toto. I want some assurance that we will be heard.

Senator LA FOLLETTE. I am only acting in Senator Walsh's absence as chairman of this committee, but I am informed by the clerk that the opponents of the bill are to be heard next week. I suggest that you get in touch with the clerk.

Mr. DUNN. Mr. Chairman, in answer to the representatives of the organizations that we are not excessively stocked with finances, it is very difficult to stay over here for a week or so. I have been here since Wednesday waiting to be called. I would like to be heard this afternoon.

Senator BORAH. Whom do you represent?

Mr. DUNN. My name is William F. Dunn. I represent the national committee of the Trade Union Unity League, which comprises some 125,000 organized workers in steel, coal, metal, and many other industries.

Senator LA FOLLETTE. Mr. Frey, will you please come forward?

STATEMENT OF JOHN L. FREY, METAL TRADES DIVISION, AMERICAN FEDERATION OF LABOR

Senator LA FOLLETTEE. Mr. Frey, will you please give your name for the purpose of the record?

Mr. FREY. John L. Frey, secretary-treasurer of the metal trades department, American Federation of Labor. The department includes all of the metal-trades unions in the United States. I am also a member of the Labor Advisory Board of the N.R.A.

Senator LA FOLLETTE. Now if you will proceed in your own way, Mr. Frey, to make any statement that you desire to make concerning this bill, or any suggestions you have to offer, and then at the conclusion of your statement, if any member of the committee desires to ask you questions, that will be done.

Mr. FREY. The international unions, comprising the Metal Trades Department, instructed me to present certain views which they held relative to this bill and the importance of enacting the bill. Just before I touch upon the specific subjects they desire to have me bring before the committee, I would like to refer very briefly to the statement that Senator Wagner made at the opening of this hearing to the effect that unless a better system of industrial relations were set up, the difference in the wages being paid and the prices being charged would greatly retard recovery.

I want to support the position which Mr. Hillman took yesterday to the effect that the failure to pay sufficient wages was one of the principal reasons for the depression overtaking us in 1929. The report of the Interstate Commerce Commission indicates that in 1929 there was $785,234,842 less wages paid than in 1920. In other words, although the railroads were hauling many more passenger-miles and ton-miles in 1929 than they were in 1920, there was almost $800,000 less in wages paid. The census of manufactures gives equal evidence of what was taking place. In 1933, the value of our manufactured

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products was $60,555,000,000. It had increased very rapidly when the census was taken 2 years later, for the census of 1925 indicates that the value of our manufactured products had increased to $62,713,000,000, or approximately $2,200,000,000. The census for 1927 indicated a further increase in the value of our manufactured products. The total volume of wages paid, according to the census of manufactures, in the manufacturing industries in 1923 was $11,092,000,000. In 1925, when the value of our manufactured goods had increased almost $2,022,000,000, the total volume of wages paid in the manufacturing industries was $279,328,000 less than in 1923. In 1927, when there had been an increase in the value of manufactured goods over 1929, the total volume of wages paid in the manufacturing industries was still $160,495,000 less than in 1923. So that as our industries were increasing the value of what they produced from 1923, the total volume of wages was actually decreasing.

The best authority we have on national income, Dr. Wilfred I. King's monumental work on that subject, the textbook of all of the economists in Washington at the present time, shows, in one of its tables, that the total volume of wages paid in the United States to wage earners, regardless of their occupation, in 1928 was $649,000,000 less than in 1927. So that the wage earners of our country were $649,000,000 less able to buy the products of American industry in 1928 than they had been in 1927. It seems to us that unless there is some method of having the volume of wages bear an economically sound relationship to the wealth produced by industry, that this attempt to effect recovery may be greatly retarded.

The CHAIRMAN. What is the percentage of decrease in wages during the years of depression as compared with 1928? Have you given those already?

Mr. FREY. No; I merely gave the figures from 1923 to 1927, inclusive, from the census of manufactures.

The CHAIRMAN. You do not know the percentage of decrease in income of the workers of the country during the depression.

Mr. FREY. No; I do not. I haven't got that here.

Senator BORAH. Mr. Frey, can you state what the average annual income, the annual salary or wage of the ordinary working man was, per year, during that period?

Mr. FREY. I would not attempt to do that, Senator, because I have not got the data here, and I might be one- or two- or perhaps three-hundred dollars off.

Senator BORAH. You spoke of Professor King.

Mr. FREY. Yes.

Senator BORAH. Professor King said a working man, an average working man with a family of four or five, had to live on from $1,800 to $2,000 a year.

Mr. FREY. Yes; well, I know this, that all of the reports from the census of manufactures and from the Bureau of Labor Statistics indicate that we have never had that average in reality.

The interests of the metal trades department in this bill is both of the features that strengthen the effectiveness of the National Labor Board and which place certain restrictions on the methods employers have adopted to determine the form of organization that their employees may enjoy.

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Since the National Industrial Recovery Act was enacted, and since the last National Labor Board has begun to function, there has been an apparent determination on the part of many employers in large industries to set aside and evade both the letter and the spirit of the act, and to set up labor organizations which indicate that the employer is violating that provision of section 7 (a) which provides that the employer shall not interfere as well as intimidate and coerce.

Yesterday much evidence was offered indicating that employers have been intimidating and coercing. I want to emphasize the importance of that interference part of the law, because all of the company unions of which I have any knowledge, which have been set up since the law was enacted, are all the result of direct interference on the employer's part. Much evidence was introduced yesterday by President Green.

I do not desire to burden the record, except with one document. One of the early codes in the steel and iron industry, after that first great code had been passed, was for the steel casting industry. On December 6, the code authority sent out to all steel foundries in the United States, and I will file this as a document, instructions on the setting up of local and national industrial relations adjustment boards. In the early part of their instructions they say:

> Each plant in the industry is required to nominate one employer representative and an alternate and to request the employees thereof to elect from their own number one employee representative and an alternate. The names of the representatives so nominated and elected will be filed with Steel Founders' Society of America in New York, and will constitute a panel from which there will be selected such committees as may be required.

These committees being the ones to take up the questions that arise between employees and employers over terms of employment.

Now, the interesting feature in this connection is that from this panel of men, elected in this manner, the executive vice president of the association under the code is to determine which ones shall serve on a committee to hear a specific complaint that is called before it. I want to read one other section.

> No fees will be paid to representatives of an employer or employee. Each company will absorb the expense of its representatives, whether of employer or employees, while engaged in their duties as members of conciliation committees. The representatives will be paid their regular salaries or wages as well as any traveling or out-of-pocket expenses. It is believed that in most cases the services of a public-spirited person to serve as chairman may be secured free of charge, except for out-of-pocket expenses, which will be paid from the general funds of the society. Where such arrangements are not possible, then a per-diem rate of not more than $10, exclusive of out-of-pocket expenses, will be allowed and this will likewise be paid by the society.

So that these men elected at a shop-committee meeting will constitute the panel from which are to be drawn those to sit on a labor adjustment board, locally and nationally, and who are to have their expenses paid by their employers.

Then, after much care not to evade the law in the election of these committees, they do say this as a suggestion:

> It would be appropriate for the management to offer such necessary assistance as may be desired, such as providing a suitable meeting place, stationery, supplies, etc., all with a view to assisting the employees in holding an election for the selection of their representatives on such absolutely independent basis as will result in the selection of employee representatives by none other than employees.

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The CHAIRMAN. Do you desire that document to go into the record?

Mr. FREY. I want it all to go in the record, Mr. Senator.

The CHAIRMAN. It may be placed in the record.

Mr. FREY. I merely want to call attention to certain developments, and here is the set-up within an industry for a local and a national industrial adjustment board, the representatives of which are to be selected at a company union or shop-representation election, who are then to have their expenses paid by the employer, or by the society, and in turn are to be subject to selection by the executive vice president of the employers of the association. What chance would labor have in receiving practical consideration of any complaint that they had to make? The operation of the National Industrial Recovery Act, and of the National Recovery Administration, of the National Labor Board, of the National Conciliation Board, and of the Conciliation Division of the Department of Labor, have not been able, up to the present time, to adjust a large number of the complaints that have been coming in from the beginning.

Scarcely had the law been enacted when the various international unions affiliated with the metal trades department sent in complaints that the law was being violated, that company unions were being forced upon employees, that men were being discharged because they opposed company unions or because they had joined a union of their industry or craft. The department found that it was no longer possible to handle these grievances in a general way, and one national officer was taken from an international union to devote his entire time to the one question of handling and following up these complaints. Since that time, since last July, this officer, or rather employee of the metal trades department, who is an international officer, has been swamped, the Conciliation Division of the Labor Department has been swamped, the Conciliation Board has been swamped. The National Labor Board has had an infinite number of cases of this kind coming before it. The great majority of complaints that have come in because of discrimination, discharge, are still unadjusted, because the employers refused to yield to the splendid efforts made by the Conciliation Department or Division of the Department of Labor, the National Labor Board, and the Conciliation Board.

I want to call your attention to just one case that is typical of our experience. Early last fall there was a strike took place in the port of New York, in one of the ship-repair yards. It was caused by the discharge of 1 man in 1 department because he was an officer of the local union. The case was decided by the National Labor Board about the first of December, if my memory serves me right. The decision of the Board was that the strike should be declared off, that all the strikers should be reemployed, and that the questions existing should then be taken up between the firm and the men's representatives.

The largest group of shipyards, except one, in the port of New York assured the Board that they would put back all of their strikers to work within 2 weeks, and they carried out their promise. The other group, known as the Todd Shipyards, also accepting this agreement, had never carried it into effect. The men who were on strike when the National Labor Board adjusted this dispute, the first of last December, are still on strike, with the exception of a little handful.

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But the Todd Shipyards on the 15th of December, or some 2 weeks after the National Labor Board had handed down its award, held a shop election for a company union, in which all of the strikebreakers participated, and now they tell you blandly and hypocritically, "We have an organization in our establishments. It is what the men wanted. Here is the result of the votes that were taken."

So that under such circumstances as that, a hollow mockery and a farce is made of the provisions that labor shall have the right to organize free from interference, intimidation, or coercion, to choose the organization they want and select their representatives in a manner satisfactory to them.

I have been connected with trade-union activities for a number of years. I have tried to understand the history of industrial disputes and what lies behind them, and I am of the opinion that this bill, introduced by Senator Wagner, is the most important one affecting industrial relations which has yet been considered by Congress during the present generation, with the possible exception of the Norris-LaGuardia anti-injunction bill, because this bill brings to a focus an issue which has been rapidly developing during the past 35 or 40 years—the issue of whether employers shall have the free unlimited right to organize for their own self-protection and shall then have the privilege to use these national organizations of theirs for the preventing of wage earners who are equally American citizens from enjoying that same right to organize, because the company-union program that has developed in this country mainly has a close relationship to the yellow-dog contract which workmen were compelled to sign in order that they could either secure work or retain the job that they had.

Thirty-five years ago, or approximately that time, such organizations as the National Association of Manufacturers, the National Metal Trades Association, and others of a similar type, began to preach the doctrine, through their secretaries and through their legal staffs, that American industry must prevent the existence of trade unionism. They have carried that out consistently since that time. All of you are familiar with the propaganda against the right of the American wage earner to organize that is found in many of our industries. You have heard their representatives appear every time when a measure is introduced in Congress which intends to improve the wage earner's condition. The men who are opposing this bill at the present time, the identical men, in many cases, are the same individuals who visited the several States years ago to prevent the enactment of workmen's compensation. They are the men who on all occasions are the spokemen of these employers.

Now Congress declared in the Norris-LaGuardia anti-injunction bill that yellow-dog contracts were null and void. Before that, several of the industrial States had done the same thing.

The question might be asked, "What is the difference now?" Well, the difference, gentlemen, is this, that the form of employers' organizations in this country have assumed an entirely different status from what they enjoyed before the enactment of the National Industrial Recovery Act. They did not have complete organization. There were many employers who remained outside of the organization of their industrial group, but the law which was intended to give a "new deal" to employers, to wage earners, to everyone else in

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the country, made it practically mandatory that the employers should organize. They were told it was impossible to secure a code, unless they could bring evidence that the group calling for the code represented a practical majority of the industrial associations.

And so, in addition to the free right that employers have always had to organize, this Recovery Act made it practically mandatory upon every employer to be organized in order to get the full benefit of the law. And the administration of the N.R.A. found it advisable to assist these employers in perfecting their organizations and in making them more compact, and there is no objection on our part to what has taken place.

The metal trades know of no way by which men can take up and adjust their industrial problems except through organization which enables them to accumulate facts, analyze them, adopt policies, endeavor to carry them into effect, and learn from experience whether the policies are wise or not. But the law which made it so imperative upon industry to organize, if it was to secure the benefit of the National Industrial Recovery Act, did not place upon any department of the Government any obligation whatsoever to assist labor to organize. Instead of its being made a duty under the law to help labor organize to the same extent as the law made it mandatory—not mandatory in one sense of the word, but mandatory if employers were to get the benefit of the law—labor was merely given the guaranty that it had the right to organize for the purpose of carrying on collective bargaining free from any interference, intimidation, or coercion on the employer's part.

Senator LA FOLLETTE. Mr. Frey, was there any difference in the mandatory character of the obligation placed upon the Industrial Recovery Administration, so far as facilitating and assisting in the organization is concerned, and the mandatory features of their responsibilities from an administrative point of view, so far as section 7 (a) was concerned?

Mr. FREY. The law raised no distinction at all.

Senator LA FOLLETTE. Precisely.

Mr. FREY. But the practical conditions created through the operation of the law made it necessary for employers to organize as they never had before, because the codes were not given to labor, they were given to industrial groups, and the administration of the N.R.A. could not give a code to an industrial group unless the representatives of that group would bring in evidence that they represented a very large majority of the employers in that particular industry.

Senator LA FOLLETTE. I personally fail to see any difference in the responsibilities and the mandatory character of the responsibilities of the Industrial Recovery Administration so far as section 7 (a) is concerned, and so far as the industrial organization is concerned.

Mr. FREY. Well, Senator, the practical result of what has happened is this——

Senator LA FOLLETTE. I know what the practical result is, but I do object to your saying that it is the difference in the mandatory responsibilities placed upon the Administration by the act of Congress. It is my view that the responsibilities of the Industrial Recovery Administration are just as mandatory, so far as section 7 (a) is concerned, as they are for any other section. It seems to me if you have any criticism to offer of the net result of the operation of this

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law, it could not be directed toward the statute, but toward the Administration.

Mr. FREY. I am not directing it toward the statute, Senator, and I am not offering this as one kind of criticism, because I am very heartily in support of what the N.R.A. is trying to do, and I think I will defend General Johnson as quickly as anyone, because of my intimate knowledge of the problems that are forced on his shoulders.

I did want to make it clear to the committee, however, that in the operation of the law labor up to the present time has been left largely to its own resources to organize.

Senator LA FOLLETTE. I will agree with that.

Mr. FREY. While the necessities of the situation made it almost mandatory for the employers to organize. Now, in the face of that condition, a large number of employers now are using the strength of their organization to build up company unions, which will make anything like voluntary organization on the part of the employees impossible, and there lies one of the inequalities which I think can only be corrected by Senator Wagner's bill, which would make it impossible for these company unions to be brought into existence as they are at the present time.

Now, I think it is unnecessary for me to say anything about what a company union is—it has been referred to so frequently. It is a plan of organization devised by the employer, imposed through various methods upon the employees. It represents the employer's point of view, the type of an organization he wants his employees to enjoy, and it only endures so long as the company is willing that it should. Every company union in existence, because it is brought into existence by the employer, can be terminated merely by posting a notice in the shop, "The company no longer desires to have the company union."

Senator WAGNER. You cannot very well have equality in bargaining power if it is all on one side and control both parties to the bargain, it seems to me.

Mr. FREY. There is no equality of bargaining power where there is a company union, because the company union is represented merely by employees in the plant, and the important fact to bear in mind in connection with the company union movements is this, that the job is such as important thing to the wage earner, it means so much to his family, that the employee is continually fearful that he may do something which will displease his foreman, or displease his employer and lead to his losing that only method that he has of supporting his family and himself, the job. And the foremen in these plants, when they receive their instructions that their departments are expected to deliver a full vote, they know their job is more or less at stake if they fail to do it.

The CHAIRMAN. It would assist us, Mr. Frey, if you would put your manuscript in the record.

Mr. FREY. Unfortunately, Mr. Senator, I have no manuscript; I have just notes, but I will not take up much more of your time. I think it is unnecessary for me to do it.

I merely want to say this, in conclusion—and I am not covering some of the facts that I wanted to bring out—that there is no dodging of certain conclusions that the Congress must reach, unless labor and industry, through their chosen representatives, are to work out their

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problems, arising from their relationship as employer and employee, then two things must follow, unless industry can adjust its own internal problems, so far as labor is concerned, and labor inside of industry can get a fair and adequate hearing of what it wants. Then two things must follow in this country: One, a return to the law of the law of the jungle, where the strongest will hold his own as best he can, and the other is a much more strict regulation of what industry and labor can do on the part of the Government. The latter is not to be welcomed. The former should never be given any thought if we really are civilized people.

So far as the wage earners of this country are concerned, they have been watching what has developed in Europe. They are opposed to the methods of adjusting industrial relations that have been established in Russia, that have been established in Italy, that have been established in Germany, and that have been proposed in some of the other European countries, but some form of adjustment must come, some authority must exist, or else we will return to the law of the jungle where employers' associations will endeavor to strangle the last vestige of trade unionism on the part of American workmen, or where American workmen finding they have no other method, will make an effort to take recourse to the strength of organization and all of the unfortunate conditions that follow.

So it seems to us that the enactment of this bill is the most important consideration which Congress can have, if it becomes a law. Then industry, that has hoped it could safely evade section 7 (a) and (b) of the basic law, will quit these efforts, in large numbers at least, to set up these company unions, and the National Labor Board will have the necessary authority, where there are violations of the law, to bring the recalcitrant employers in line with the modern American spirit, as it has been indicated in all that we can call the "new deal."

Senator WAGNER. And as the experience has been in all these other legislations to improve conditions which the thoughtless industrialist has opposed, in the end the legislation redounds to his benefit as well as to labor.

Mr. FREY. To his benefit, Senator. The unfortunate fact is that the trouble, the antagonism that exists toward trade-union movements on the part of many employers is due to either lack of knowledge or stupidity on their part, because the condition that would be established if they sat down and discussed the industrial problems with the representatives of their employees would be so much more satisfactory than the present condition, that they would never return to it, any more than the American employer would return to the old system that existed before workmen's compensation was accepted.

The CHAIRMAN. Thank you, Mr. Frey.

STEEL FOUNDERS' SOCIETY OF AMERICA,
New York, N. Y., December 6, 1933.

To all steel foundries in the United States:

Subject: The industrial self-government plan to adjudicate all complaints of violations of the labor provisions of the Code of Fair Competition for the Steel Casting Industry

GENTLEMEN: The board of directors of Steel Founders' Society of America is designated as the "administrative agency" (otherwise known as the "code authority") for the Code of Fair Competition for the Steel Casting Industry,

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which was signed by the President of the United States on November 2, anp became effective on Monday, November 13, 1933.

General Johnson recently made the following statement in regard to the administration of codes by code authorities, trade associations, and other agencies of industrial self-government:

"The function of code administration lies primarily with the code authority provided for in each code. Nevertheless, it is the responsibility of the National Recovery Administration that the code be administered. Whenever, as in the bituminous-coal code, an industry is organized for self-discipline that function will be accorded it. But in many instances industries are not so organized that they have machinery appropriate to the adjustment of complaints of violations of the trade practice, and other provisions of their codes.

"The organization of very few industries is at this time appropriate for the adjustment of complaints of violations of the labor provisions of codes. While, in every case, where the authority is organized, adjustment of fair-trade practices will be left to the code authorities, as a general rule the code provides no plan for the adjustment of their labor provisions. The code authority will be permitted to function on labor disputes when provision is made for adequate representation of labor on all committees, boards, or other agencies set up to entertain and adjust complaints by employees against their employers for violations of labor provisions."

Complying with this requirement and for the purpose of assuring an equitable adjustment of complaints of violations of the labor provisions of the Code of Fair Competition for the Steel Casting Industry, a plan of procedure has been evolved, the essential principle of which is equal representation of employers and employees on any committees charged with the responsibility of investigating such complaints under the guidance of a neutral person who shall preside as chairman and have equal voting power with other members of the committee.

Each plant in the industry is required to nominate one employer representative and an alternate and to request the employees thereof to elect from their own number one employee representative and an alternate. The names of the representatives so nominated and elected will be filed with Steel Founders' Society of America in New York, and will constitute a panel from which there will be selected such committees as may be required.

All complaints, from whatever source, shall be referred immediately to Steel Founders' Society of America, 932 Graybar Building, 420 Lexington Avenue, New York, N.Y.; attention of Col. Merrill G. Baker, executive vice president.

Upon receipt of such complaints, the executive vice president will communicate with the complainant and the company against whom the complaint has been made, suggesting a friendly conference in an endeavor to reach a mutually satisfactory adjustment. This is predicated upon the assumption that the complainant has not already consulted with the employer before filing his complaint. Each party to the complaint will be requested to report the results of the conference to the executive vice president. If both advise that an agreement has been reached, the matter will be considered as closed.

If either party reports that a satisfactory conclusion was not reached, the other will be notified accordingly. The executive vice president shall then refer to the panel of names described above and select a conciliation committee of an equal number of employer and employee representatives, appointing one of them to act as secretary. No employer or employee representatives of the company named in the complaint may serve on the committee. The number to constitute the committee will be determined by the seriousness of the complaint. The Secretary of the committee shall communicate immediately with a Federal, circuit, or county judge in the vicinity (the choice being left to the discretion of the committee), requesting him to nominate a responsible citizen of the United States, not identified with the industry or financially or otherwise interested in the company against whom the complaint has been made, this neutral person to act as the chairman of the committee, with equal voting powers with other members of the committee. The executive vice president shall forward all information, including the original complaint and all correspondence pertaining thereto, as well as a copy of the Code of Fair Competition for the Steel Casting Industry, to the secretary, and the committee will be charged with the responsibility of making an investigation and report of its findings, together with recommendations for a disposition of the complaint.

The secretary, after consultation with the chairman, shall appoint a suitable time and place for a hearing, giving notice thereof to all members of the committee as well as the complainant and the employer, both of whom shall be invited

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to appear personally to testify, or to file such statement as they may desire. At the conclusion of the hearing, the secretary shall file with the executive vice president a report of the findings of the committee, signed by all members of the committee, unless there be any who dissent, in which case the dissenting opinion should likewise be filed. The executive committee of the board of directors of Steel Founders' Society of America shall review the case, and after giving full consideration to the facts and the recommendations of the conciliation committee, shall issue a ruling, both parties to the complaint being then notified thereof. If either party to the complaint refuses to accept the ruling, then the case will be referred to the board of directors of Steel Founders' Society of America for decision, which decision shall be final, subject, however, to the right of any dissenting party to file an appeal with the Administrator of the National Recovery Administration in Washington, D.C.

No fees will be paid to representatives of an employer or employee. Each company will absorb the expense of its representatives, whether of employer or employees, while engaged in their duties as members of conciliation committees. The representatives will be paid their regular salaries or wages as well as any traveling or out-of-pocket expenses. It is believed that in most cases the services of a public-spirited person to serve as chairman, may be secured free of charge, except for out-of-pocket expenses, which will be paid from the general funds of the society. Where such arrangements are not possible, then a per diem rate of not more than $10 exclusive of out-of-pocket expenses, will be allowed and this will likewise be paid by the society.

A graphical chart or flow sheet of the plan is attached.

SUGGESTIONS FOR PROCEDURE FOR ELECTION OF EMPLOYEE REPRESENTATIVES

The selection of employee representatives and alternates must be made by the employees of each plant in such manner as they themselves may choose. As a suggested method of procedure, the following observations may be helpful.

Many plants in the industry have what are known as "works councils", consisting of employer and employee members. Where such exist, it would be desirable to discuss this program in detail at a regular or special meeting of the council, called for the purpose. After proper presentation of the plan, the employees' representatives on the council should then be requested to make arrangements for the selection of representatives and alternates, which selection must be the expressed wish of the majority of the employees of the plant in question. It might be suggested that the employees hold an election, unless they have a more suitable or satisfactory plan of their own, advising the management, if such proposed election is held, of the result thereof, namely, the number of employees voting and the number of votes cast for the various candidates.

If the employees decide to follow the plan of holding an election for the selection of representatives, then such election should be conducted by and under the guidance of employees only, without management (that is to say, any supervisory labor), participating in such election in any manner whatsoever.

It would be appropriate for the management to offer such necessary assistance as may be desired such as providing a suitable meeting place, stationery, supplies etc., all with a view to assisting the employees in holding an election for the selection of their representatives on such absolutely independent basis as will result in the selection of employee representatives by none other than employees. The employees themselves should arrange all details of the election, select their own judges, tellers, etc.

For plants having no works councils, it is suggested that substantially the foregoing plan may likewise apply by presenting this subject to a selected representative number of employees of the plant and in turn requesting them to carry on in the manner described above.

Very truly yours,

MERRILL G. BAKER,
Executive Vice President.

METHOD OF ADJUDICATING LABOR QUESTIONS ARISING OUT OF ADMINISTRATION OF STEEL CASTING CODE

Labor complaints referred to Steel Founders' Society (code authority) attention of executive vice president, who will attempt to reconcile differences without recourse to formal conciliation procedure, but if failing to do so will refer to a conciliation committee appointed from a national panel of foundry management

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representatives composed of one representative and one alternate appointed by the management of each plant in the industry who shall be reimbursed for traveling and out-of-pocket expenses by the companies by whom they are employed.

Conciliation committee composed of an equal number of management and employee representatives selected from national panels by executive vice president S.F.S.A., who shall name one such selected representative secretary of the conciliation committee, and a neutral member appointed by a Federal circuit or county judge to act as chairman of committee with voting power. He should be a prominent citizen in no way connected with a steel foundry, whose out-of-pocket expenses will be paid by the society and may receive a per diem fee. Conciliation committee shall consider facts and call for testimony, if necessary, reporting through the committee's secretary the findings and recommendations of the committee to the national panel of employee representatives, consisting of one representative and one alternate elected by the employees of each plant in the industry. Employee representatives serving on conciliation committee will be paid a sum equivalent to the wages normally earned at their regular occupations in their respective plants, plus traveling and out-of-pocket expenses, such wages and expenses to be borne by the companies by whom they are employed.

Executive committee S.F.S.A., who will give full consideration to committee's recommendations and make a ruling, binding upon both parties to the complaint, but a dissenting party may appeal to S.F.S.A. board of directors whose decision shall be final, subject to right of a dissenting party to file an appeal to N.R.A. administrator.

The CHAIRMAN. All right, Mrs. Herrick. You are the next. How much time would you like, Mrs. Herrick?

Mrs. HERRICK. Fifteen minutes.

STATEMENT BY MRS. ELINORE MOREHOUSE HERRICK, ACTING CHAIRMAN REGIONAL LABOR BOARD, NEW YORK CITY

The CHAIRMAN. May we have your full name, Mrs. Herrick, for the record?

Mrs. HERRICK. Mrs. Elinore M. Herrick.

The CHAIRMAN. Your activities?

Mrs. HERRICK. Vice chairman of the Regional Labor Board in New York.

The CHAIRMAN. We will be pleased to hear from you.

Mrs. HERRICK. I think I have heard so much of the discussion this morning in connection with the subject of company unions, that I am going to give you just one illustration that carries the company union principle to the nth degree, and then the rest of my paper, or practically the rest, I will be very glad to have inserted in the record.

(The matter referred to is as follows:)

[From the New York Times]

COMPANY UNIONS: A VAST INDUSTRIAL ISSUE

SENATOR WAGNER SETS FORTH THE GROWTH OF "EMPLOYER-DOMINATED" ORGANIZATIONS, TELLS OF THEIR EFFECT ON COLLECTIVE BARGAINING, AND DISCUSSES HIS BILL WHICH IS DESIGNED TO PREVENT ECONOMIC WARFARE

[The company union has become a focal point in the industrial relations problem that confronts the Nation It was under vigorous debate during the N.R.A. hearing last week and it is dealt with in a bill, designed to eliminate strife between labor and industry, introduced in Congress by Senator Wagner, who has served as Chairman of the National Labor Board since that body came into existence. The subject, together with other phases of the problem, is discussed in the following article]

[By Robert F. Wagner, Senator from New York]

Despite the emergency language in which it is cloaked, the recovery program embodies principles of reform as well as revival. The statistical indicia of revival are not to be denied, but the need for reform is still acute. And there is substan-

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tial agreement as to the path that reform must take if we are to achieve any approximation to social justice and avoid the recurrence of cataclysmic depressions. The fruits of industry must be distributed more bounteously among the masses of wage earners who create the bulk of consumer demand.

This central problem has been evisaged broadly by the National Recovery Administration, led by General Johnson and ever subject to the dynamic personality and brilliant intelligence of President Roosevelt. But despite their best efforts, the major portion of the problem remains unsolved. While reemployment has swelled the total volume of wage payments, the real earnings of the individual working full time are slightly less than they were last March.

Some of the minimum-wage provisions under the codes are lower than the standards actually prevailing in industry and in most of the upper wage brackets there have been reductions in hours without corresponding rises in hourly rates of pay. Despite the ameliorative features of a share-the-work movement, it is hardly the road to prosperity.

NEED OF EQUALITY

The reasons for the present difficulty are not hidden. The constant readjustments necessary to strike a fair balance between industry and labor cannot be accomplished simply by code revisions or by general exhortations. They can be accomplished only by cooperation between employers and employees, which rests upon equality of bargaining power and the freedom of either party from restraints imposed by the other.

Congress recognized this when it enacted section 7 (a) of the Recovery Act, restating the right of employees to deal collectively through representatives of their own choosing. But ambiguities of language and the absence of enforcement powers have enabled a minority of employers to deviate from the clear intent of the law and to threaten our entire program with destruction. Therefore, I have introduced a bill to clarify and fortify the provisions of section 7 (a), and I am sure that it will meet with the support of the vast majority of people interested in economic welfare.

COMPANY UNIONS

At the present time genuine collective bargaining is being thwarted immeasurably by the proliferation of company unions. Let me state at the outset that by the term "company union" I do not refer to all independent labor organizations whose membership lists embrace only the employees of a single employer. I allude rather to the employer-dominated union, generally initiated by the employer, which arbitrarily restricts employee cooperation to a single employer unit, and which habitually allows workers to deal with their employer only through representatives chosen from among his employees.

In the fall of 1933 a thoroughly reliable study was made which covered more than one fourth of the total number of wage-earners engaged in mining and manufacturing. An inquiry of this magnitude may be accepted as a fair sample of conditions in industry at large. It showed that only 9.3 percent of employees are dealing with employers through trade unions, while 45.7 percent are bargaining on an individual basis and 45 percent are enlisted in company unions. Less than 14 percent of the employers embraced by the study are recognizing trade unions.

HAMPERING CONDITIONS

It is worthy of note that company unions are most prevalent in the largest plants. This means that in the very cases where the bargaining power of the umployer is strongest, the worker is least free to improve his own position by enhampered affiliation with others of his kind.

It is also true that these unions have multiplied most rapidly since the enactment of the law which was intended to guarantee to the worker the fullest freedom of organization. The number of employees covered by company unions rose from 432,000 in 1932 to 1,164,000 in 1933, representing a gain of 169 percent. More than 69 percent of the company-union schemes now in existence have been inaugurated in the brief period since the passage of the Recovery Act.

The company union, as I have defined it, runs antithetical to the very core of the "new deal" philosophy. Business men are being allowed to pool their information and experience in vast trade associations in order to make a concerted drive against the evil features of modern industrialism. They have been permitted to reorganize the values of unity and the destructive tendencies of discrete activities, and to act accordingly. If employees are denied similar privileges they not only are unable to uphold their end of the labor bargain, in addition they cannot cope with any problems that transcend the boundaries of a single business.

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BENEFITS AND FAILINGS

The company union has improved personal relations, group welfare activities, discipline, and the other matters which may be handled on a local basis. But it has failed dismally to standardize or improve wage levels, for the wage question is a general one whose sweep embraces whole industries, or States, or even the Nation. Without wider areas of cooperation among employees that can be no protection against the nibbling tactics of the unfair employer or of the worker who is willing to degrade standards by serving for a pittance.

The inability of employees to unit in larger groups has not only limited their efforts to secure a just share of the national wealth. It has interfered with their attempts to provide insurance against sickness and old age, and to exert an effective influence upon salutary labor legislation. It has hampered the efforts of labor to preserve order within its own ranks, or to restrain the untimely and wayward acts of irresponsible groups, In this latter aspect, its unfavorable effect upon employers as well as workers stands clearly forth.

Even when dealing with problems that may without injury be delimited to the single company, the worker under company unionism suffers two fatal handicaps. In the first place, he has only slight knowledge of the labor market or of general business conditions. His trade is tending a machine. If forbidden to hire an expert in industrial relationships, he is entirely ineffectual in his attempts to take advantage of legitimate opportunities.

Secondly, only representatives who are not subservient to the employer with whom they deal can act freely in the interest of employees. Simple common sense tells us that a man does not possess this freedom when he bargain with those who control his source of livelihood.

I am well aware that many employer-dominated organizations now permit their employees to choose outside representatives, and the National Labor Board has affirmed this policy in a recent case. But this right is a mockery when the presence of a company union firmly entrenched in a plant enables an employer to exercise a compelling force over the collective activities of his workers. Freedom must begin with the removal of obstacles to its exercise.

MAJOR QUESTIONS INVOLVED

Major questions of self-expression and democracy are involved. At a time when politics is becoming impersonalized and when the average worker is remote from the processes of government, it is more imperative than ever before that industry should afford him real opportunities to participate in the determination of economic issues.

The company union is generally initiated by the employer; it exists by his sufferance; its decisions are subject to his unimpeachable veto. Most impartial students of industrial problems agree that the highest degree of cooperation between industry and labor is possible only when either side is free to act or to withdraw, and that the best records of mutual respect and mutual accomplishment have been made by employers dealing with independent labor organizations.

THE COMPANY'S CASE

The principal argument advanced by the proponents of company unionism is that it promotes industrial harmony and peace without subjecting the individual company to the intrusion of outside labor groups who have no interest in the company's practices. Of course, in our complicated economy, the interests of all employers and all employees are inextricably intertwined, and the assumption that outside workers have no valid interest in the labor standards prevailing within a plant is demonstrably false. Besides, a tranquil relationship between employer and employee, while eminently desirable, is not a sole desideratum. It all depends upon the basis of tranquility. The slave system of the old South was as tranquil as a summer's day, but that is no reason for perpetuating in modern industry any of the aspects of a master-servant relationship.

As a matter of fact, the company union cannot sustain even the claim that it tends to insure industrial peace. Men versed in the tenets of freedom become restive when not allowed to be free. The sharp outbreaks of economic warfare in various parts of the country at the present time have been caused more by the failure of employers to observe the spirit of section 7 (a) of the recovery act than by any other single factor. It has been my observation that industrial strife is most violent when company unionism enters into the situation, and that the company union line of organization is least likely to bring forth the restraint of irresponsible employees by others of their own group.

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The implications of what I have just said are clear. If the employer-dominated union is not checked, there are only two likely results. One is that the employer will have to maintain his dominance by force, and thus swing us directly into industrial fascism and the destruction of our most-cherished American ideals; the other is that employees will revolt, with widespread violence and unpredictable conclusions.

The final argument advanced for company unionism is that it hould be allowed to compete against trade unionism in an open field. If by company unionism one means simply the right of employees to confine their activitie to a single employer unit when they wish to do so, I do not object to that principle in the slightest and there is nothing contrary to it in the bill which I have introduced. But if by company unionism one includes the right of employers to obstruct the development of a more widespread employee cooperation, such a policy cannot be allowed to continue if we intend to pursue the philosophy of the new era.

THE NEW BILL

The new bill forbids any employer to influence any organization which deals with problems such as wages, grievances, and hours. They should be covered by a genuine labor union. At the same time, the bill does not prevent employers from forming or assisting associations which exist to promote the health and general welfare of workers or to provide group insurance, or for similar purposes. Employer-controlled organizations should be allowed to serve their proper functions of supplementing trade unionism, but they should not be allowed to supplant or destroy it.

Failure to meet the company-union challenge has not been the only defect of section 7 (a) of the recovery act. This section provides that employees shall be free to choose their own representatives. It has been interpreted repeatedly to mean that any employee at any time may elect to deal individually with his employer, even if the overwhelming majority of his coworkers desire a collective agreement covering all. Such an interpretation is detrimental to the practice and contrary to the theory of collective bargaining. It permits an unscrupulous employer to divide his employee against themselves by dealing with innumerable small groups or with individuals.

In my opinion, Congress certainly did not intend that the law should operate to place employees in a more unfavorable position than they were before the Recovery Act was passed.

The proposed legislation does not resolve the question of the closed-union shop. Such issues should be worked out by labor and industry in the course of experience. But the bill, if enacted, would make it clear that Congress has not intended to forclose the issue by illegalizing the closed-union shop or by placing any other obstacles in the way of making collective bargaining a working reality.

QUESTION OF RECOGNITION

The third major defect of section 7 (a) is that, while it guarantees to employees the right to organize, it does not state explicitly the right to receive recognition through their representatives. This explains why company unionism has increased so rapidly despite the fact that other labor organizations have added 2,000,000 to their membership during the past year. Employees have been assured of their right to join whatever unions they prefer, but they have been forced to bargain either individually or through company unions.

This refusal of employers to deal with properly chosen representatives has been the cause of more than 70 percent of the disputes coming before the National Labor Board. The new bill is designed to remedy this evil. It is modeled upon the successful experience of the Railway Labor Act, which provides that employers shall actually recognize duly chosen representatives and make a reasonable effort to deal with them and to reach satisfactory collective agreements.

ATTITUDE OF EMPLOYERS

When the factual situation that confronts us is analyzed carefully and comprehended fully, I am sure that employers as well as employees will favor the proposed measure. Fair-minded employers who are now allowed to band together in huge trade associations do not desire to deny analogous rights to their workers. Fair-minded employers do not relish the pretense that industry and labor are upon an equal footing, when in fact industry controls both sides by dominating the strategic points in the areas of controversy.

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Most important of all, far-sighted and broad-visioned employers who recognize the certainty of economic discord and the threat to our entire economic program that is implicit in the present status of labor relations will join whole-heartedly in this proposal for improvement.

There always will be an unfair minority who are amendable only to coercion. For this reason the National Labor Board, under the new bill, would be vested with statutory sanctions and given actual powers of investigation and restraint similar to those exercised by the Federal Trade Commission in cases of unfair competition. It would be composed of seven members, including two representatives of employers, two of employees, and three of the general public, and it would be empowered to set up regional or local boards.

FUNCTIONS OF THE BOARD

The present National Labor Board, set up by Executive order, has carried on its activities for half a year. In that short time, it has helped 650,000 employees, who were engaged in disputes, to return to work or to remain at work, upon terms satisfactory to all interested parties and promising durable peace. The chief function of the new board would not be to act as policeman or judge, but to mediate and conciliate industrial disputes, and to offer its services as arbitrator when the parties so desired. Aside from its power to prevent the specific unfair practices that would be forbidden by the law, it would not have the slightest flavor or compulsion. It would have no kinship to compulsory arbitration. It would continue to promote peace rather than strife and to appeal to the better judgment and good intentions of industry and labor.

When this board is established and bolstered by adequate sanctions and a clarification of the substantive law, it will help to solve the thorniest problem confronting us today, and be one of the chief bulwarks of our future economic prosperity and social justice.

The CHAIRMAN. Mrs. Herrick, will you tell us of your activities?

Mrs. HERRICK. I have been acting chairman of the regional labor board, and that board has handled, as a regional board, over 500 strikes, and as a mediation committee of the N.R.A. has handled 185 strikes, and came into this work with a viewpoint of both the worker and the employer. I worked for some years as a peace worker in factories, and later, for approximately 6 years, I was a productive manager for the Du Pont Corporation.

The CHAIRMAN. I assure you your paper will be read by all the members of the committee, and it will get more attention from them.

Mrs. HERRICK. I have come here today to speak in behalf of Senator Wagner's bill giving statutory powers to the National Labor Board because I am convinced, out of an intensive and extensive experience as head of the New York Regional Labor Board, that only through such machinery can the purposes of the Recovery Act to raise purchasing power and shorten hours be effectuated.

When the Recovery Act was written, the need had been demonstrated for the establishment of some method by which labor—which, after all, is both producer and consumer—could secure an equitable share of the national income, or, stating it in another way, an equitable share of its product. Only by such equitable distribution of the national wealth can this country avoid another complete collapse of the industrial system.

Although the writers of the National Industrial Recovery Act wrote section 7 (a) into the law of the land, I am confident they did not see as clearly then as now that organization for collective bargaining by labor would be the most effective and cheapest instrumentality for securing that equitable distribution of wealth. No one could foresee the trend that codification of industry would take, namely, the strengthening of industrial control of fair-trade practices

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with all that is implied therein. This concentration of power in the hands of industry has, so far as my observations go, far outstripped the strengthening of labor's power. The National Industrial Recovery program was to have been a cooperative enterprise between employers and employees. Yet, in a substantial part of the industrial system, that hoped-for cooperation has not been achieved.

We have fallen away from the high purposes and aims of the Recovery Act, through the nibbling away by selfish interests, which have written weak provisions into codes allowing ample opportunity for evasion by self-governing industry and have written inhumanly low wage rates into these codes. The Wagner bill is essentially aimed to permit the correction of such abuses by strengthening the position of labor in collective bargaining.

I am convinced that the entire Recovery program stands or falls on the labor provisions, and the reality of opportunity given to labor to bargain collectively. We must face the fact that the Government has fallen short of the success it anticipated in raising wages and reemploying the millions who have so long lacked work. A large measure of responsibility for our incomplete realization of this goal must be borne by those employers who are thwarting labor's right to organize for collective bargaining.

Many of the strikes handled by the regional labor board have been a protest against violations of codes by employers, or an effort to secure something more than the pitiful minimum wages set in the codes. When the process of code making was in the early stages the Government took the position, and rightly, that the codes should fix only that bottom level below which employers might not pay their labor. The Government relied upon section 7 (a) and the organization of workers for collective bargaining to fix wages in the more skilled occupations and in the higher brackets. Instead, what do we find? The minimum is made the maximum in virtually all hitherto unorganized trades and in many of the organized trades. In many instances learners' rates are paid to skilled workers, who are first discharged and then rehired at the "learner" or the minimum rate.

It is not enough that employers should merely refrain from violating the minimum wage and maximum hour provisions of the codes. Employers must also refrain from hampering labor in its efforts to organize, as only through such collective action by labor can the necessary corrective steps be taken toward the building up of an equitable adjustment between employers and employees.

As Senator Wagner said before the national convention of code authorities on March 5, "There must be, above all, cooperation between employers and employees, dealing with one another on an equal footing." Section 7 (a) was designed to put these two groups on an equal footing, yet we find in practice that there is no equal footing. The employer can, and many employers do, dominate the workers by discriminatory practices of various kinds, despite section 7 (a). In the New York region alone, where we have a cross-section of every type of industry, we have brought about the reinstatement of over 2,000 individuals who hae been singled out because of their union activities, and have been fired summarily, immediately after attending a union meeting, although the employers never admitted that there was any correlation.

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But I do not want to talk in general terms. It seemed to me that out of the experience of the New York Regional Board I could bring to you some really first-hand information as to the difficulties and weaknesses of the present set-up of the labor boards, and some examples to show how vitally necessary it is that the powers of the National Labor Board be greatly strengthened in the interest of industrial recovery and as a protection to those far-sighted employers who are making an honest effort to help recovery.

I propose, therefore, to take Senator Wagner's bill section by section and tell you briefly the type of problem we have met which that particular section is designed to remedy.

Section 5 (2) declares it to be an—

unfair labor practice to refuse to recognize or deal with representatives of his employers or to fail to make a reasonable effort to make and maintain agreements with representatives concerning wages, hours, and other conditions of employment.

Last August a certain clothing firm signed an agreement with the Amalgamated Clothing Workers, local 178. November 16 the shop closed and workers were told that operations would recommence as soon as possible. Meanwhile the firm reorganized, and claims that 4 of the 13 former employees became partners in the business, although they put up no capital, and, in fact, during the shut-down were receiving public aid. The only change in reality was that an "Incorporated" was added to the firm's name, and 9 employees are out in the cold with a broken union contract. The four who are now working as "partners" are exceeding code hours and union hours, and sharing the so-called "profits", although at a hearing it was established that the share money was actually far less than the union scale of wages. The nine workers with whom the firm broke its contract are receiving public aid. This employer is competing unfairly with stabilized firms in the clothing trade in New York.

The Labor Board held that this was a subterfuge to evade an obligation no less to the union but also to the Recovery Administration. However, the Board could only report the situation to the code authority, which promised on January 19 to investigate. Since then, a dead silence from this particular code authority.

This is not an isolated case. I could recite almost identical details from a number of other cases.

A firm in an entirely different line of business used a somewhat different method of achieving the same purpose of lowering wages. They locked out all thier employees because the union refused to allow its members to accept postdated checks in payment of wages, which, incidentally, was in violation of State law as well as union agreements.

Or there is the well-known restaurant which owed back wages for 9 weeks to 6 men and owed the remainder of their employees from 2 to 4 weeks' wages. In this case the employer, as soon as the workers asked for their pay, fired all those workers to whom money was due.

Changing the name and address of a firm is a device frequently used to evade workers who strike in protest against a cut in wages below the union scale. These are all actions over which the labor board has no control and even under the new set-up proposed, the Board will have no control. But these things would not occur if the bargaining power of the workers in any way equalled the bargaining powers of employers.

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In such cases as that involving the entire optical-manufacturing industry in New York in which the workers had struck 100 percent for the right of collective bargaining and recognition of union representation, it became apparent during the course of negotiations that the employers at no time entered the conferences with the intent of coming to any sort of agreement with their employees. They refused even to submit to arbitration, although the union offered to do so. In such a situation there must be some final authority given to an impartial Government agency to step in and compel an equitable settlement. If only in the public interest, such a situation cannot be allowed to drag along until either one or both parties to the dispute are exhausted.

I need not inform the committee of the many instances in which the employers hamper the workers in their self-organization through practices which section 5 (3) of the bill is designed to eliminate.

In the Fifth Avenue Coach Co. case, a petition for election was signed by 150 workers. Yet on the day of the election only 12 workers showed up to vote. It is a fair inference to state that the presence of cars containing company agents and officials parked near the polling places had something to do with the failure to vote by 138 of the workers who signed the petition.

Incidentally, the presence of these cars caused my young son to ask: "Isn't this the first time employers have gone in for 'mass picketing', Mother?"

In the Ever-Ready Label Corporation, "the country's largest printers of N.R.A. labels", according to the company's paid advertising, an election for representatives for collective bargaining was held under the supervision of the employer, and resulted in what the employer characterized as an "overwhelming pledge of loyalty." When, 2 weeks later, the unions having members in the shop called a strike in protest against this election and against wages lower than code minima, and a violation of the learners' rates, the employer appeared before the Regional Labor Board and stated, "I am here to represent my employees."

The employer had some justification for thinking that, if the employees chose a company union, they wanted him to represent them in collective bargaining with himself. The mere statement of this proposition shows how ridiculous such a method of collective bargaining must inevitably be. Of course, most proponents of "company dominated" unions do not admit that in effect this is the type of collective bargaining that is engendered by a "company dominated" union. This particular employer was more frank, or possibly had a clearer vision of the inevitable result of such a set-up as far as collective bargaining is concerned.

Or take the case of a radio company. Directly after a meeting to organize the union, the plant was closed, ostensibly for inventory purposes, but when it reopened, the union leaders were frozen out. Almost immediately, the employer called a meeting of the employees, stationed police in the hall, and then made a speech urging a company union on the workers. He still claims complete ignorance as to why he has had such a troublesome labor situation on his hands ever since.

All such attempts by employers to dominate workers' organizations lead inevitably, sooner or later, to dissension and strikes; and in the

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meanwhile, in every instance, the employers complain bitterly of the inefficiency of the workers and their indifference to the management's problems. There is such a strange naivete and little boy faith in miracles that prevents these employers from having any realistic conception of how they injure irreparably their own interests when they force their will upon workers who are well aware that the law gives them freedom of choice to select any representatives they want.

Section 5 (6) declares it an "unfair labor practice" to engage in discriminatory practices as to wage or hour differentials, advancement, demotion, hire, tenure of employment, or any other condition of employment which discourages union membership. This shall not preclude a "closed shop" agreement, if no unfair influence is used, if the organization represents a majority of workers and if agreements last for no more than a year.

We had, in the Fifth Avenue Coach Co. case, a complaint on the dismissal of 19 men, every one an official of the union. Some of them had been in the employ of the company for as long as 17 years; they were all discharged within a very few weeks after attending a union meeting. Some of them became suddenly inefficient and "endangered the lives of the public" within the short space of 10 blocks, and managed somehow to break 15 or 20 company rules within a 10 block drive, such as "failing to help an old lady board the bus!"

Is it surprising that reasonable people assumed that the direct cause of these dismissals was the men's activity in union organization?

Instances such as this can be multiplied by the hundred, despite the fact that section 7 (a) has attempted to prevent such practices.

Frequently employers require workers to sign pledges similar to the following:

> To management of Cushman's Sons, Inc., 518 East Seventy-second Street, New York.
>
> In view of the fact that there has been considerable discussion in regard to the present working conditions of bakery employees in this city, I wish to advise you that notwithstanding my membership in the proposed union for bakery employees, my first concern is loyalty to the Cushman's Bakery organization and my fellow employees, and under no circumstances am I willing to subscribe to a strike, lockout, or any other forceful means to accomplish the establishment of a closed shop.
>
> I wish to pledge my loyalty to you and the Cushman's Bakery executives, believing in the assurance given us that we can accomplish our aims by collective bargaining within our own bakery organization and without the aid of anyone not employed by the company.

In this instance, the employees alleged that they were required to sign this statement as they got their pay checks, and were told by the foremen that "if they knew what was good for them" they would sign.

Less subtle is the method of telling an employee, "You are fired because you joined the union. Just tell the other workers what you got. Now let the union find a job for you." This has happened so often that it is hardly worthy of mention by name of case.

Section 204 (a) gives the board "power to make public the findings and results in any case in which it acts as conciliator or mediator." Where there is no violation of law and either side takes an arbitrary or unjust stand it is only fair that the public should know the facts. In a number of cases we have found that when the facts were thus presented to the public, the power of public opinion has been sufficient to cause the arbitrary party to modify his stand.

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Of course, publicity is not sufficient to correct all the abuses which arise. It is of value, however, where either party arbitrarily refuses to mediate even though the stand the party takes may be prejudicial to the public interest. But this use of publicity alone is certainly not sufficient to satisfy the need for specific provisions of the Wagner bill outlawing definite practices. This particularly applies to small "marginal" firms, which are an ever-present threat to stabilized concerns and yet are not susceptible to this publicity treatment. A "stick" in the paper is no deterrent; it has to be headline news to make a firm really comply.

The attitude of such "marginal" firms is well described in a letter from an employee of the Louis Towbin Co., manufacturers of mattresses. I want to read a part of this employee's letter, because his words are more eloquent than mine could possibly be:

REGIONAL LABOR BOARD, N.R.A.,
45 Broadway, New York City.

LADIES, GENTLEMEN: The bedding industry of Greater New York are watching with much interest the action of the N.R.A. in this case. Fair employers and employees, with wonder at the delay and injustice inflicted on the worker. Chiseling employers watch with glee and feel stronger in their chiseling efforts. Workers are fearful of selecting a representative, as they see this long-drawn-out example of N.R.A. enforcement. As we all know, this firm has, over a period of 6 months, defied all efforts of the regional board to effect a settlement or force compliance of this national law. On January 31, the firm did enter into negotiations with employees and did sign an agreement. This, it shows, was done to stall off action of the National Labor Board, to whom this case had been referred for action. This agreement was violated on February 2, the firm showing that it had no intention of living up to it, and has continued the violations of the code and a defiance of the National Recovery Act.

These employees, discharged for accepting the invitation of the Government to select a representative, have suffered in silence, with the hope and confidence that the Government, which had enccuraged them to take this action, would not desert them.

It must be abundantly clear to all of you that machinery must be provided for legally compelling compliance with the National Recovery Act. The Wagner Labor Disputes Act gives us this sorely needed strength.

Sections 205 and 208 in essence give the board "power to issue complaints and compel attendance, relieves the board from being bound by rules of evidence as in courts of law, and gives the board power to subpena witnesses."

In many cases, even though employers are under a code, they refuse to come before the board. It is obviously impossible to attempt an adjustment of the dispute if one of the parties refuses to appear or to confer.

The provision that the "board shall not be bound by rules of evidence as in courts of law" has a special significance for one who has been serving on a labor board.

An alleged injustice, rankling to the workers, necessitates the coming together of both parties. Such a feeling of injustice has its roots in a problem of human relationships. Sunlight and fresh air are the best therapeutics for this kind of disease, just as for physical ailments. Rules of evidence and technical points of law have no place in hearings on an industrial dispute, because they are raised only to befog the issue, to cut off the sunlight and air of open, frank discussion.

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Many employers persist in raising legal objections as though in a court of law; they make their "appearance" not in person, but through counsel which cannot and does not have any first-hand knowledge of the underlying causes of the disputes. By tactics of delay and objections, counsel representing several important meat packers in New York, has successfully delayed the board in adjustment of a number of disputes, has kept workers unemployed, and in essence, this lawyer, actively engaged in defeating labor's right to representatives of their own choosing, continues to insist on his right to represent employers whom this board has never yet had the privilege of meeting face to face.

I could go on with this bill, section by section, and cite an ever-mounting roll of cases to point the necessity for the Wagner bill, but time does not permit. We come now to the heart of the Wagner bill: those sections giving compulsory power to the board to enforce its findings or orders. The right given the board to go to any district court in the district where the labor practice in question was engaged in should materially expedite the handling of cases and should ensure enforcement.

The present methods of enforcing compliance with section 7 (a) are undignified and unfair. Unfair, because the little fellow is so apt to be hurt by publicity and the very big fellow is not hurt enough. It is really the "middle-sized bear" that feels the lash of public scorn. Our present methods of enforcing compliance are undignified and unworthy of Government agents. We must put the Labor Board on a firm, solid foundation. Implement it for effective speedy action.

I can envisage now, and I wish I could show you the file of depressed and bewildered workers who pass through the New York offices of the Regional Labor Board day after day, saying, "But you told the boss to take us back, and he has not done it; can't you make him give us back our jobs? We didn't do anything wrong in joining the union, did we? Didn't Congress and the President give us the right to join any union we wanted?"

Free Americans, of course they were within their rights; but might is still right in industrial disputes, and the workers are still at a disadvantage. It takes a tremendous amount of collective action by workers to even approach equality in bargaining power with an employer, even a single employer, let alone a Nation-wide corporation. If the employers of the country know that labor board decrees can be enforced by the courts, we shall see a "right about face" on the part of the many who still defy the Government's desire to settle industrial disputes by peaceful and conciliatory means.

The workers do not realize the present limitations upon the labor board. As a result, they have become embittered against the whole Government program. This attitude is clearly expressed in a letter which came to me just this week:

DEAR MRS. HERRICK: Now or ever you and your party got to stand your bluff. You have made several statements about the N.R.A. and what can and can't be done under the law. You claim Roosevelt, Johnson, Wagner, yourself, etc. can do and undo miracles under section 7 (a) of the N.I.R.A. Now your bluffing is called by Mr. Wood, president of the Fifth Avenue Coach Co., who has said the whole thing is a stupid, unfounded, misleading, un-American stupidity. He has defied both you and everyone up to the President of the United States. Oh, what a fine challenge. Don't you know the eyes of New York and the whole Nation are on this case? I understand you have fine material from employees for a

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case against those people, but have you any law or anybody to enforce it, don't they know of the transit code? What influence through Grover Whalen or whom, or is it plain graft again? Why are not Fifth Avenue Coach Co. and all of the other transit companies made to live up to the transit code? Why can they defy it by working employees long hours as always—ticket agents on the Interborough Rapid Transit are still working 10 hours a day and dispatchers and supervisors on the Bus Co. 70 hours a week while others are starving. And Johnson and Roosevelt are, by the way, crying for shorter hours and higher pay.

Do those men, Wagner included with Mr. Green, president of the American Federation of Labor, think the people can be fooled forever? Labor has its part done and will do no more until those 25 men of the Bus Co. are reinstated, a speedy trial is needed to retain confidence. You have the evidence for a conviction under the law and if you don't act and act quickly then I would suggest to have Mr. Wood, president of the Fifth Avenue Coach Co., go down to Washington and replace Roosevelt in the White House and you, Wagner, and Johnson get Jimmy Walker's bronx cheer.

Not a pretty letter to receive, but, unfortunately, indicative of the distrust the public is beginning to feel in the sincerety of the Government.

One of the major difficulties now is that due to our lack of power cases drag on and on, and the employer all too successfully engages in a war of attrition. This is no help to the recovery program, when as a result factories stay closed for weeks and even months, and workers, when strike benefits are exhausted must knuckle under or ask for charity relief.

While the labor board must be given enforcement power, I think it only fair to point out that those of us who are dealing with these labor disputes day after day realize to the full our responsibility to educate and train both employers and employees in a realization of their several responsibilities. It has been a source of gratification to the New York Regional Labor Board to maintain a continuing communication with a number of firms and groups of workers that have come before us for an adjudication of their labor disputes. I frequently find myself back again in the role of a production manager, as in the case of the Whelan Studios, a coast to coast network of photographic studios.

Since reaching a strike settlement through the agency of the New York board this firm has consulted us on numerous occasions on both personnel and production problems. Similarly a newly formed union has taken us into their confidence frequently and sought advice in advance of taking any drastic action, thereby enabling us to stave off many unecessary and costly struggles. Yesterday the president of a chain of hotels submitted to me for cirticism a series of bulletins he proposed issuing to his executive officers in explanation of certain problems that had arisen under section 7 (a).

I point these things out only to show that if public confidence in the labor board can be strengthened and maintained we shall be in an increasingly better position to render a service to the country which never appears in the records of the National Labor Board as "strikes settled."

The present equivocal status of the labor board, however, seriously impairs, if, indeed, it has not already destroyed our power for effective action because of the loss of public confidence. The Labor Board has a contribution to make to industrial stability, if it is given the requisite power to enforce its decisions where it is impossible to mediate disputes.

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The necessity of building a firm structure for securing permanent industrial justice and peace must be apparent. I come straight from the "firing line" to try to show you some of the forces that render urgent and imperative the passage of the Wagner Labor Disputes Act. We are engaged today, not alone in a fight and struggle to win our way back to prosperity, however we may severally define "prosperity", but I see in the Wagner bill a long-range program to secure an enduring and above all practical basis for industrial peace.

Unless we can work out rules of the game that apply equitably to both employers and labor, we are faced with increasing violence and increasing industrial strife, caused by the failure of the Government to back up section 7 (a). If we do not put the labor board on such a basis as the Wagner bill establishes, I believe that we face a total collapse of the present economic system. Implement section 7 (a) of the Recovery Act by passing the labor disputes bill. Thank you.

The CHAIRMAN. Will Mr. Mullenbach come forward?

STATEMENT OF JAMES MULLENBACH, CHICAGO ARBITRATOR, CHICAGO, ILL.

The CHAIRMAN. Will you give us your full name for the record Mr. Mullenbach?

Mr. MULLENBACH. James Mullenbach, 855 Drexel Square, Chicago.

The CHAIRMAN. Your occupation and business.

Mr. MULLENBACH. I am arbitrator for the clothing trades, particularly for Hart, Schaeffner & Marx, the Amalgamated Clothing Workers, of Chicago.

The CHAIRMAN. How long have you been engaged as arbitrator?

Mr. MULLENBACH. It will be 22 years in May since we had our first hearing. I am also connected as a representative of the National Labor Board since August, until the first of the year; since that time I have been a member of the Petroleum Labor Policy Board in Washington.

The CHAIRMAN. We would like very much to have your views on this bill.

Mr. MULLENBACH. I should like at the outset to distinguish between the official relationship, as a member of this Board, and my personal opinion. I think we all understand that, as the representative of the regional labor board in Chicago at times, or as a member of the Federal Labor Board, I am restricted and limited strictly by the terms of that act, that when the people select their representatives, those representatives are either A. F. of L. men, whether they are independent union, whether they choose to organize under an employees' representative plan, so far as it is on their own initiative and of their own will, I am required as a representative of the Board to recognize the union, no matter what I might think about a company union as such.

Now, I would like to say a word or two, in order to be brief, on certain points of this bill, points that I believe would help in the clarification and the enforcement of section 7 (a) which I think would be more to the point. I could go into a very elaborate discussion here

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as to why I think this bill is an attack upon the final citadel of democracy and our social order and our country, which it is, but I do not want to go into that, into a long discourse, why it is that they resort to devious devices by company unions in order to retain their power.

The CHAIRMAN. You might send us a statement for the record of your views. They will be put into the record.

Mr. MULLENBACH. I would like to do that, if that would be satisfactory to you.

First, with regard to the composition of the Board, my suggestion there is that the representatives of the public—the three representatives of the public—be given sole voting power in the Board. I think it is well to have these 3 representatives, and the 2 representatives of capital and labor on the Board, but these representatives of capital and labor I would have in purely an advisory relationship. It is my observation during these years as an arbitrator and mediator that it is very difficult sometimes for an arbitrator to make a decision that is entirely satisfactory to both sides. I can conceive of situations arising where it would be quite impossible for the three members of the Board to secure the consent of both sides to a decision that they believe to be valid and proper.

To speak of my experience in the regional labor board in Chicago, we had a case which was before your National Labor Board, the case of A. Roth, which is a small concern. In that case the employer had to be summoned three times before the regional labor board before he was finally persuaded to appear by one of the representatives of his own kind, a representative of the Manufacturers' Association that sits upon our Board. Not until that persuasion was used did he appear before our Board, and when he appeared there, in response to a question by the chairman, President Hutchins of the Univeristy of Chicago, who asked him if he were prepared to observe the regulation of 7 (a)——

The CHAIRMAN. Just a minute. Could you come back this afternoon?

Mr. MULLENBACH. Yes; I could come back this afternoon.

The CHAIRMAN. I am sure your presentation will be most helpful and very interesting. I do not like to press you, but we will have to finish very soon. Now may I suggest that you and the other witnesses, those who desire to be heard, that they return to the committee room at 2:30 this afternoon.

(Whereupon a recess was taken, at the hour of 1:00 p.m., until 2:30 p.m., of the same afternoon, Thursday, March 16, 1934.)

AFTER RECESS

(The hearing was resumed at 2:30 p.m.)

The CHAIRMAN. I must apologize for being late. I should not have agreed to come back at all this afternoon because I knew I had an engagement that would keep me quite a long time, but I thought I would try to find an opportunity to hear some of this evidence, especially those who could not be here next Tuesday. I understand Mr. Chipman is anxious to get a hearing and that Mr. Mullenbach is willing to have Mr. Chipman take his place.

Mr. MULLENBACH. Dr. Lapp.

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STATEMENT OF DR. JOHN A. LAPP

The CHAIRMAN. Dr. Lapp, what is your full name?

Dr. LAPP. Dr. John A. Lapp.

The CHAIRMAN. Your residence, for the record?

Dr. LAPP. Chicago.

The CHAIRMAN. What have been some of your activities?

Dr. LAPP. Chairman of the bituminous coal labor board of division 2; member of the National Bituminous Coal Labor Board; for several weeks last fall at the beginning directing the Chicago Regional Labor Board, and associated rather closely with that organization since that time; at the present time engaged entirely in the work of the bituminous coal labor board, division 2, which includes the State of Indiana, the State of Iowa, and the very peaceful State of Illinois.

I do not intend to go into the question of collective bargaining because that has been presented to this Board fully by a number of witnesses. I will pass that up.

Yesterday this article by Senator Wagner was proposed and one of the witnesses said he would present it, the one that appeared last Sunday, on company unions. Lest he does not present it, I will leave it here with the committee because I think it is one of the most excellent statements of the principles of collective bargaining, and also one of the best expositions of the company union.

(The newspaper article referred to by the witness is attached as an exhibit.)

Dr. LAPP. In the first place, I am not speaking in behalf of the rightness of collective bargaining because in my judgment only extreme Bourbons oppose collective bargaining. It is quite inconceivable to be that anyone should hold that workers have not the right to act in unison. It is an elemental right of man to do that, and it seems to me like a travesty that we are here discussing before a Senate committee and that the Senate committee and the Senators take time necessarily in consideration of a question that is settled by plain, ordinary principles of right, that men have the same right to organize as workers that industrialists have to organize as industrialists. Now, the industry from which I come as a representative is fully organized in three States. There are only 2 or 3 company unions in all of Illinois, Indiana, and Iowa in the coal industry, and there are only a few, and very small mines at that, that are organized.

Moreover, these mines have been organized for many years and I have yet to find any leader of industry who would go back to the anarchy of the old days. I doubt if you would find any leaders in the three States who would think of giving up collective bargaining as it has been developed in those three States in the coal industry.

The coal code under which we work goes farther even than section 7 (a) and even goes farther than the proposed bill. I would like to read the section of the coal code to show how far this matter extends:

SEC. 5. *Labor relations.*—(a) Any controversy concerning hours, wages, and conditions of employment, or compliance with the provisions of article V of this code—

that is the labor provisions—

between employers and employees who are organized or associated for collective action shall, if possible, be adjusted by conference and negotiation between duly designated representatives of employers and such employees, meeting either in a

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mine conference or district conference or divisional conference, as the machinery for such conference may be established by agreement of the parties thereto; and it shall be the duty of employers and employees to exert every reasonable effort to establish such machinery of adjustment and to utilize it to negotiate to a conclusion such controversies wherever possible.

In other words, in our industry, the code calls for both employers and employees to get organized in order that they may settle disputes with the machinery thus set forth, and the Bituminous Coal Labor Board is given jurisdiction to see that that is done, and in some instances, the Board has definitely ordered the representatives of small mines to get organized in order that they might settle their own disputes, we realizing that if they settle their own disputes this Board as a governmental body will have comparatively little to do.

I am very much agreed on this bill. It is an excellent bill. There are a few details in it that one might question but they are not the important provisions of the bill.

It removes the obstructions to industrial peace. It removes the main causes of industrial war. It does this by stopping the causes at their very source; it does not stop strikes, nothing can do that completely, but it does lessen or will be bound to lessen their occurrence.

I emphasize again that it is a preventive measure.

Experience as we have had it in the regional labor boards and elsewhere shows that representatives of workers for collective bargaining must be absolutely free and no company union represented can be free to be an agent in collective bargaining, it just is not possible for a man who represents a company union, dependent upon a company, to be a representative in collective bargaining.

Representatives of company unions are not free, because, as you heard this morning, and as you heard yesterday, they are under the domination and the influence of the employers, and to have a collective bargaining arrangement or a contract between a company union and the company is absurd. No man can contract with himself. No one department of a business can contract with another department of business, and the company union is nothing short of a department of the business contracting with another part of the business.

I should like to emphasize what others have emphasized here throughout these hearings, that there is no collective bargaining arrangement in force anywhere, nor to my knowledge has one ever been made, where wages, hours, and the really vital conditions of work have been the object of negotiations between company union representatives and the employers.

As a rule also the men in a plant, the men who work in the plant, are not able to and willing to stand up in the face of their employer as the representative of their fellow employees. I think that is extremely important to emphasize although it is a matter well known to all who have had connection with labor unions. An employee who faces his employer is timid, even though he has a group back of him. I have been in groups where employers have met employees and the first thing that struck me was the timidity of the men when they faced their employer. The result is that it is necessary for employees to have outside representatives if they are really going to be free in the bargaining which they are to have with their employer. That is why it is so essential that the men have free choice to pick men either within their own group or outside of their own group, men who work in this

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plant, or men who come from outside, as representatives of labor unions if there is to be that kind of freedom which is so essential in the development of real bargaining.

Now, the next matter which has come from my experience is this matter of what is collective bargaining. Meeting the employees is one thing and bargaining is quite another thing. We have had ever so many instances—not in the coal business, because that is organized—but in the other lines of industry where men have said, "Yes, I will meet my men; I have always been willing to meet my men; I will meet a committee of my men at any time—" but they have added, "I will not agree with them, I will not bargain with them, I will not do as they ask me to." In other words, in advance agreeing that they will disagree on anything that is proposed by the employees.

I had that within the last few weeks while I was sitting on a committee with one of the leading employers of our section of the country, a man employing some 4,000 men. He said very frankly, "We agreed to meet our men but we did not agree to do anything about it, but we will always meet them." His conclusion was that there was nothing that was certain to come out of it.

Now, it is essential that we have some means by which men who are required to have collective bargaining go beyond the mere meeting and discussion, and the bill does specifically provide that they must observe every reasonable effort to bring about collective bargaining. That is to my mind the most essential fact, and the machinery set up in this bill will have its main duty in seeing to it that that bargain is actually made or that every reasonable effort is exerted to make that bargain.

Of course, the weakness that we have all discovered has been in the enforcement of section 7 (a). I do not want to go into that because it has been discussed here so much, but this is evident to all that section 7 (a) in its present form has not been enforcible to the degree that has been necessary to bring about results that have been desired.

This bill remedies that weakness. This bill puts teeth into section 7 (a) and makes certain that the workers shall have a free right to organize into the kind of unions they desire and that they shall not be coerced into company unions.

It is particularly important to note what has been noted so frequently, that the employer is taken out of the business completely of having anything to do with the organizing of workers, and my judgment is that he cannot have anything to do with the organizing of workers without actually coercing them for his very presence is a coercive thing with employees.

There is one matter that has not been touched upon, at least while I have been present at this hearing, that this bill does provide a very adequate machinery for court review. No man can claim that anything is being put over on him arbitrarily by this bill if he can go into court, the provisions being very specific, and have that decision, if it affects him vitally, reviewed by the court. There is also a very fine protective feature in that provision, namely, that if he goes into court and advances new testimony, the matter is automatically referred back to the board in order that the board can take into consideration all new testimony.

It has happened so frequently in public utility hearings that the boards have been made jokes of because they would present only part

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of the case to the board and then later go into court and present their full case and the board would be a laughing stock because it was overruled. This provides that new testimony must go back to the board and be heard by the board.

Then, finally, there is the provision regarding attendance of people whom we want to hear. The regional boards and the national boards, too, have had the difficulty of forcing men to come in, and it has been very humiliating to public officials to send out a notice to men under the authority of the Government of the United States and have some little whipper-snapper of an employer—usually the smaller they are the more they do it—refuse to come in even to be heard in the case. Consequently, in that connection it is very important that we have a right to get the employer that we want to come in and not the attorney for the employer. We have had in the regional boards difficulty, as I am sure all regional boards have had, that oftentimes the employer would not come in but he would send his attorney. Now, the attorney is welcome but we want the employer to come along because we feel that if the employer would come in and sit in the conference that probably a benefit would result from it, whereas the attorney would be an influence for keeping alive the dispute.

So, this bill remedies the defects that we have found.

I think, Mr. Chairman, that this bill does remedy all of the defects that experience has shown to exist in the existing recovery act, particularly in section 7 (a), and I believe it should be enacted into law, particularly so at this time when business has been brought to a high degree of organization, when to curb the activities of business which is organized to this high degree we must have on the other side an equally strong labor force organized with the Government in between keeping the balance between the two great forces. It is certainly unwise and dangerous to have business organized as it is organized under the codes, and, at the same time, not having an adequate organization or an equally balancing force on the other side. I hope very earnestly that this bill will be enacted into law as being a measure which men who have been studying the question for many years have thought to be necessary to safeguard the rights of labor.

The CHAIRMAN. Dr. James Mullenbach? Mr. Mullenbach was testifying at the time of the recess at noon and will now continue.

STATEMENT OF JAMES MULLENBACH—Resumed

Mr. MULLENBACH. I was speaking, Mr. Chairman, on that section of the bill regarding the composition of the board and urging that the three members representing the public be the only members of the board charged with voting power, that is, that the other two, the representatives of capital and the representatives of labor should have purely advisory functions on the board for the reasons, as I stated, that there will be cases, undoubtedly, in the course of the activities of this board where the public members of the public will want to reach a decision or a recommendation with which neither of the other parties will wish to concur. That has been my experience as an arbitrator for many years, that such changes are almost bound to arise.

There is another reason why the members representing capital and representing labor cannot always vote with freedom. I took up the case of A. Roga & Co., and a small employer on the north side of

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Chicago, manufacturing white goods, who came before our board on a charge of discrimination and refusal to deal with the Ladies' Garment Workers. They had organized his shop and in retaliation he had discharged four of his cutters and brought about a strike and a shutdown of his workers for the time being and finally brought before the regional labor board.

In an attempt by the regional labor board to adjust that difficulty they summoned Mr. Roga before the board, requesting him to appear, and he did not appear until three requests of that kind had been served upon him. Twice the board held sessions at which the workers appeared and others who were interested, but Mr. Roga did not appear and it was not until the intersession of one of his colleagues and a member of the board that he actually came before our board to reply to the charge of discrimination and refusal to deal with the representatives chosen by his people.

The chairman of the board put the question to Mr. Boga as to whether he was willing to deal with the elected representatives of his people, whether they were people within the shop or whether they were representatives of the Ladies' Garment Workers, and Mr. Roga stated positively that he had not and would not deal with any representatives except a representative who was an employee in his works.

The chairman of the board cautioned him as to his statement and said, "You know, that is in violation of section 7 (a) and you know that this board is not interested at all in the unionization of your plant but we are interested in the enforcement of this act." That was President Hutchins, of the University of Chicago.

Mr. Roga said, "I am not going to deal with anyone except a representative of my own people."

When the board then took a resolution to refer this case to the National Labor Board with the recommendation to have it presented in the courts, two of the employers on that board voted against that resolution. They were members of the association of which this gentleman was a member. They were holding together and they were giving evidence of their class consciousness. I have no doubt but what that board, if they were in the position where there were 10,000 men on strike in the stockyards in Chicago and the regional labor board felt that was an illegal strike and required a determination of it by vote of the workers, representatives on that board would not give their consent to it, and for that reason I feel that these two parties on the board should not vote a question of that sort, and that the voting power of the board ought to be restricted to the representatives of the public.

I wanted to say a word in support of section 207, speaking out of our experience. That section refers to the question of the matter of the selection of these representatives and how they shall be certified to the employer. This section is valuable because it clarifies the powers of the board. We have found that employers, and very rightly, say to the representatives when they come forward, "How do we know that you represent the workers in our plant?"

We require a definite certification, of course, but there was in 7 (a) a way in which the representatives of the workers, the elected representatives of the workers, certified themselves to the employer, which was by calling the workers out on the street, by causing a strike, but we wish to avoid strikes, so how shall the board certify, how shall

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the employer be assured that these representatives really represent his workers, and this definitely states it:

> In any such investigation the Board shall be authorized to take a secret ballot of employees or to utilize any other appropriate method to ascertain their representatives.

Now, we have been doing that, but we have done it because we felt it was implied in the law. We now have a clear authorization of it in this present section.

I want to speak also of section 208 regarding the power of subpena and the production of witnesses. One of the greatest handicaps that we have in Chicago in bringing about satisfactory mediation and negotiations with employers and the workers was the refusal of the employers to come into the conference.

As Dr. Lapp said, it is true that many of these employers were small, and perhaps they did not realize the full significance of this request set out; to be sure, in a way, it was informal and there was nothing especially legalistic about the style of it. They would not come in and the afternoon might be wasted by the Board just listening to one side of the case.

I recall that in the case of the Greyhound Bus Line we held that case for—we have three different sessions on that case before we could get any representative of the bus line to come in, and I happen to know that they came at that time only because one of the members of the Board representing the employers' end of it saw to it that the representative of the bus line was present.

To be able to have the books and records produced and the pay rolls produced will be a very great assistance in helping to bring about a successful mediation and negotiation.

We had a case just recently in the oil trade out West, in a hearing that I had, and there was a division of opinion on the part of the oil company with regard to the professed representatives, and the question was whether there should be an election or some other form of election, and I asked the attorney for the company if they would not supply us with a list of their employees. He said he would take it under consideration, and I suppose he consulted with his associates, and they decided they would not supply the list to us, so we had no method of checking the names of the workers in this plant.

All of that would be done away with by reason of this provision. We could ask for that and it would be a perfectly reasonable request and I think it is a reasonable one.

There is another reason why this provision for bringing the parties before the Board I think is altogether worth while, and that relates to these charges of discrimination. Now, I do not happen to have the fortune and experience of being trained in the law, but I think lawyers will know perhaps better than anybody else how difficult it is to prove discrimination because it involves proof of motive and the proof of motive, as you know, can never be exact as a thing of direct evidence unless some incautious employer in this industry tells you in so many words he has fired the men because they joined the union. We have had some cases of that kind but more employers are far more cautious than that, and in order to prove an ulterior reason for an action requires a deduction from a certain concatenation of circumstances, and those cannot all be assembled.

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I worked in a machine shop as a youth for 5 years and we knew in the shop who the "soups" were and the "suckers", as we called them, who carried the tales to the foreman and the management, and every man on the floor knew that when you were talking to those two or three fellows you had to look out, so we looked out. We could not prove that if we were hauled before a regional labor board to make good our assertion of our opinion—we could not have done it—yet we were perfectly certain of it.

That is what I mean by the difficulty of proving discrimination, but the bringing in of pay rolls to show the duration of time that this group of men were employed as against those who were discharged is evidence of that kind that will help substantiate these charges or set them aside.

I want to reiterate what Dr. Lapp has just said about the significance of section 5 relating to the phrase dealing with collective bargaining, to exert every reasonable effort to make an agreement with such representatives concerning wages, hours, and other conditions of employment.

We had a dispute that our board was undertaking to adjust in Chicago with one of our big pastry stores.

I had called on the head of that store and explained to him that this particular section of his store had become organized. I said, "I believe they have become unionized." I said, "Are you willing to meet with the head of the union and deal with them?"

He said, "I know what the requirement of section 7 (a) is; I have to meet them; but I want to tell you now that I do not intend to deal with them in the sense of granting them the results they are expecting."

I said, "You will be willing to meet with them and talk with them?" and he said "Yes."

So, in the hope that something would come out of it I arranged with the representative of the Amalgamated to call upon him, and it was an entirely unsuccessful conference because when I spoke to the Amalgamated representative later to see whether he had succeeded in adjusting the matter, he said, "Well, we met, but I could not collect and I could not bargain." So, a strike was called and that store is being picketed.

Now, those are the only suggestions I have to make with regard to special phases of the bill. I am for the whole bill as it is. I would like to have the privilege that you indicated this morning, Mr. Senator, of supplying a supplementary statement with regard to what I think is the big underlying problem that this bill is intended to meet.

The CHAIRMAN. Thank you, Mr. Mullenbach.

Mr. Chipman, how much time would you like?

Mr. CHIPMAN. About 10 minutes.

The CHAIRMAN. Will you give your full name?

STATEMENT OF A. J. CHIPMAN

Mr. CHIPMAN. My name is A. J. Chipman, of Denver, Colo.

The CHAIRMAN. What is your association with this problem?

Mr. CHIPMAN. General Chairman, Brotherhood of Locomotive Firemen and Enginemen for approximately 17 years, on the Denver & Rio Grande Western Railroad, Labor Compliance Director, acting since March 1, 1924, for the State of Colorado.

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The CHAIRMAN. You may proceed.

Mr. CHIPMAN. It is not our purpose, gentlemen, to attempt to elaborate on the statements made with respect to company unions and their effect on other classes of employees on railroads beyond the statements made by President Green of the American Federation of Labor yesterday morning.

In substance, Mr. Green has stated our experience and observation with respect to that character of organization on railroads.

We want to add this, however, which we believe is significant, that, of course, beginning with 1922 we have experienced the actual creation and the carrying out of those company unions under railroads has been not only annoying and a matter that invites disputes with other employees, but the carriers have gone beyond that to provoke their other employees to a degree that really invites strikes and everything incident thereto.

To illustrate just one point, and it is typical of the whole situation as we figure it; in 1932 when the train service employees of all railroads in Colorado were endeavoring to secure the so-called Full Crew Bill through legislation, and when it had reached a point where the employees were feeling that all inclinations appointed to the enactment of that measure into law, the forces of the company unions on all railroads within the State were marshaled into a hearing. They testified that of course if that concession was granted to one class of employees it would result, of course, in the other classes of employees being removed from the service gradually because of the increased cost that would force the carriers to curtail other expenses.

That, in a measure, is typical of what happens when organizations of that character are permitted to prevail.

Now, insofar as the N.R.A. side of the situation is concerned, we, of course, believe that this bill is essential; we think it vital to a proper application of the Industrial Recovery Act. Without it we feel that there is no real measure by which we can hope to apply the provisions of that law. We have in the brief 2 weeks' time that we have been endeavoring to adjust complaints under that set-up, adjusted six out of a great number that have accumulated in the office.

The smaller employer seems anxious to meet the issue and settle the question and get behind him. The larger employer of course, comes in with his attorney and they are standing on their rights, so-called, and it is almost impossible to do anything with them.

Now, we have a situation that we can point to that may be helpful to this committee. It has occurred on the Southern Pacific Railroad with respect to the activities of the Pacific-Greyhound Line, the bus company, opposing the efforts of those men to join an organization of their choice, and if your committee is willing we have the chairman of that carrier here who will testify very briefly as to just their experience in that respect, and he has with him a number of affidavits, but they are of the nature that in all fairness to the men who made them, they should not be divulged at a public hearing for fear that those men will lose their jobs; so, if it is permissible we would like to present them to your committee, not in the public hearing, so these names would not be divulged, if that be permissible.

It is information that your committee should have and it shows concrete illustrations of how far some people are going with these things.

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The CHAIRMAN. How many are there?

Mr. CHIPMAN. Possibly a dozen.

The CHAIRMAN. Do you want to insert them in the record and eliminate both the employees' and the employers' names?

Mr. CHIPMAN. If that would be permissible.

The CHAIRMAN. I see no objection to that. When you present them they may be put into the record.

Mr. CHIPMAN. In conclusion, we are very much in favor of the bill. We think it vital to the proper application of the Industrial Recovery Act and we trust that it will become a law.

The CHAIRMAN. Thank you very much.

Mr. CHIPMAN. Mr. Moffet will present those affidavits right now.

The CHAIRMAN. Mr. Moffet?

STATEMENT OF CLARENCE W. MOFFETT

The CHAIRMAN. Your full name, please?

Mr. MOFFET. Clarence W. Moffet of San Francisco, 861 Pacific Building.

The CHAIRMAN. Your occupation or business?

Mr. MOFFET. Senior vice chairman, Brotherhood of Locomotive Firemen and Enginemen.

The CHAIRMAN. In what capacity are you appearing before this committee, individually or representing your group?

Mr. MOFFET. As a representative of the Brotherhood of Locomotive Firemen and Enginemen.

The CHAIRMAN. You have some affidavits that you would like to present to the committee?

Mr. MOFFET. I have.

The CHAIRMAN. Referred to by the last witness?

Mr. MOFFET. Yes, sir.

The CHAIRMAN. Have the names been eliminated, or do you want to leave it to us to have the names eliminated in the printing of them and return them to you?

Mr. MOFFET. Yes.

The CHAIRMAN. Will you present the affidavits, please?

(The papers were submitted by the witness.)

The CHAIRMAN. Do you want the affidavits returned to you in person?

Mr. MOFFET. Yes, sir.

The CHAIRMAN. The stenographer will take these affidavits and transcribe them for the Public Printer, eliminating the names of the parties to the affidavits and the place and the location and they will be printed accordingly.

(The affidavits referred to by the witness, Mr. Moffett, are as follows:)

STATE OF CALIFORNIA,
City and County of San Francisco, ss.

To whom it may concern:

I, ——— ——— bus driver of the Pacific Greyhound Lines in San Francisco, was notified September 28, 1933, by Mr. J. W. Krug, superintendent of division 4 of the Pacific Greyhound Lines, that Mr. Buck Travis, president of the Pacific Greyhound Lines, wished to see me at once in his office. I reported in Mr. Travis' office at approximately 4:30 p.m. that date, securing an immediate audience with him, and the following represents, in substance, my conversation with him.

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Mr. Travis stated that he had been informed that after the meeting of the bus drivers called September 27 for the purpose of discussing the Employees' Association, or in other words, the company union, I took a number of the men who had been present to the office of Mr. C. W. Moffett, acting general chairman of the Brotherhood of Locomotive Firemen and Enginemen. I admitted that I had done so, but no man was forced to go and in doing so exercised his own free will.

Mr. Travis also stated that he had been informed I had made the statement to drivers that they were a bunch of "d--n fools" if they did not accept the opportunity presented them by virtue of the National Industrial Recovery Act to become affiliated with a bona fide labor organization. In answering Mr. Travis' statement, I stated I had not forced or tried to coerce in any way any individual to whom I have talked, merely presenting my feelings and explaining to them the advantages of being affiliated with any bona fide labor organization * * * I stated that my preference is the Brotherhood of Locomotive Firemen and Enginemen and asked the men if they desired to investigate what this organization has to offer.

At this point Mr. Travis made the statement that it was plain to him that had he first enlisted my services I would have been instrumental in assisting the formation of the Company Employees' Association and that the present condition would not have existed. I replied to Mr. Travis that I had not been enlisted by any organization, in particular not the Brotherhood of Locomotive Firemen and Enginemen, as one would infer from his statement, for the purpose of influencing fellow drivers to join a labor organization. I wish to emphatically state that I have not influenced any individual with whom I have come in contact, nor have I been asked to do so by any labor organization. My reason for taking the initiative in this matter is not from a selfish standpoint but for the betterment of working and wage conditions of all the members in the driving ranks, not only on the Pacific Greyhound Lines but on all bus lines concerned. I might state that another reason for my asking the men to investigate both sides of the story is to show them the advantages of being affiliated with a bona fide labor organization which is in a position to give them the proper representation and endeavor to improve working and wage conditions, which we could not hope to secure from a company union. To go more into detail, it would mean that any bona fide labor organization of their own choosing would draw up a contract of working conditions and wage scales, with the assurance of a fair hearing in any difficulty which may arise relative to their duties.

I have also made the statement that under section 7 (a) of the National Industrial Recovery Act the Government has informed employers that they must negotiate with any representatives chosen by the men.

Mr. Travis asked me why I had affiliated with an organization so inimical to our class of transportation, also if I thought I was using good judgment, in fairness to myself and my fellow employes, in stating to other fellow employes my choice of the Brotherhood of Locomotive Firemen and Enginemen to represent me in negotiating the above-mentioned contract. To this I replied I was entitled to choose my own representation. Mr. Travis said he still thought I am making a mistake in joining an organization which has fought us so bitterly ever since the origination of bus transportation and asked if I am foolish enough to believe that any railroad brotherhood would serve us as well as they have served the railroad men.

He asked if I had read the article given the press by the Brotherhood of Railroad Trainmen, opening the way for enrollment in their organization. At this point he asked if I believed this to be a Pacific coast movement only, and I replied to my knowledge it is a national movement. He informed me that upon wiring and communicating by telephone with the East they advised they are not confronted with conditions of a like nature, to which I replied that I am thoroughly convinced it is in the form of a national movement.

He also stated that he could have taken the same stand as other employers by releasing men who affiliated or expressed their desire to affiliate with a labor organization, adding that he had word from the East that 250 men are at his disposal. I asked Mr. Travis if he anticipated a strike or any other trouble to arise from this situation. He said no. I advised him that the men have no intention nor is it the purpose of the Brotherhood of Locomotive Firemen and Enginemen, which organization is apparently the choice of the Pacific Greyhound bus drivers to act as their representative, to resort to strikes to secure any request they might make upon the management.

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Mr. Travis said he thought it would be unwise on the part of the men to affiliate with an organization that would not have their best interests at heart; however, he admitted that if we were to form an independent association of our own we would be in no position, financially, to support the proper legal representation necessary to guarantee a perpetual working agreement. He made the statement that he felt the same issue regarding the drivers becoming affiliated with the Brotherhood of Locomotive Firemen and Enginemen had gone beyond recall but suggested that we become affiliated with some other labor organization. He also stated that he would never deal with any railroad brotherhood after having fought them for so many years for the reason they were so inimical to the bus transportation interests, further stating that if the issue were forced and he had to recognize the Brotherhood of Locomotive Firemen and Enginemen as the drivers' representatives he would step out and let someone else do it. He also said that he would rather deal with any other organization on a strike basis than to deal with the Brotherhood of Locomotive Firemen and Enginemen.

For the purpose of securing a definite statement from Mr. Travis regarding his desire to have all of the drivers join the Company Employees' Association, I informed him that if he wished I would, as a disinterested party, present the company's standpoint to the drivers on my division but would not endorse either its acceptance or rejection. Mr. Travis stated he believed that if I were to offer my approval of giving the Employees' Association, or the company union, a trial the men would be inclined to accept same and in return he would not offer me anything which would insult my integrity for taking this matter before the boys but at some future date I would be rewarded in some way that would not insult my personal integrity.

This closed our discussion.

To whom it may concern:

I, ——— ———, wife of ——— ———, bus driver employed by the Pacific Greyhound Lines, was called this date into the office of Mr. W. E. Travis, president, Pacific Greyhound Lines, when he endeavored to persuade me to use my influence on my husband, Mr. ——— ———, to withdraw his efforts toward the Brotherhood of Locomotive Firemen and Enginemen and to support the company's union.

Mr. Travis asked what I had against the company union and I explained that it was due to undesirable working conditions and rates of pay.

He stated that he wants to put this company union across and, in order to do so, it is necessary to have the support of all drivers, that everybody concerned would have to work in harmony and those not in harmony would have to be eliminated.

He further stated that he would like to see me change my attitude and not to be so terribly bitter.

He also stated that he would recognize any other union but the Brotherhood of Locomotive Firemen and Enginemen, because the Brotherhood is out to break the bus industry, which would result in the Pacific Greyhound Lines going into receivership, and then everyone would be out of a job.

SAN FRANCISCO, CALIF.,
September 30, 1933.

To whom it may concern:

I, ——— ———, bus driver of the Pacific Greyhound Lines, Inc., have been called before three different officials of the Pacific Greyhound Lines in an attempt on their part, to influence me in my choice of an organization to represent me.

The company association has twice been presented to the drivers on division no. 4 and both times has been rejected by a large majority vote. We stated the first time the association was rejected; we did not care to further associate ourselves with an association formed by the company.

Prior to the last meeting, I was called into Mr. L. D. Jones's office, general manager of the Pacific Greyhound Lines, at which time he tried to influence me against my preference of an organization. I stated my preference to be the Brotherhood of Locomotive Firemen and Enginemen. He informed me that Brotherhood does not have the company's or employees' best interests at heart. I replied I was entitled to make my own choice. I closed the conversation by explaining to Mr. Jones that I clearly understood the interpretation of his explanation why I should not join the Brotherhood of Locomotive Firemen and Enginemen.

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To whom it may concern:

I, ——— ———, employed as bus driver on the Pacific Greyhound Lines, Inc., was called into the office of Mr. W. E. Travis, president, Pacific Greyhound Lines, on October 3, 1933, when I was requested by one E. A. Raymond, representative of the company union, to sign the following telegram:

"SAN FRANCISCO, CALIF.,
October 3, 1933.

WARREN MACY,
Pacific Greyhound Lines,
Los Angeles, Calif.

Division 4 and 6 are 80 percent for Employees' Association. Have the boys on division 3 get in line."

This request was made of me in the presence of Judge Lucas, chief counsel for the Pacific Greyhound Lines; Mr. Johnson, agent of the Pacific Greyhound Lines Terminal in Oakland, Calif., and secretary of the company union; and Mr. A. F. Martin, representative of the company union.

This request was made upon me due to the fact that it was alleged I have been actively engaged in soliciting the drivers to affiliate with the Brotherhood of Locomotive Firemen and Enginemen, and it was stated by Messrs. Raymond and Martin and concurred in by Mr. Johnson that the telegram above quoted would influence the bus drivers on division 3 to join the company union.

To whom it may concern:

On account of my activities and affiliation with the Brotherhood of Locomotive Firemen and Enginemen, I have on numerous occasions, as stated before, been called into the offices of the officials of the Pacific Greyhound Lines.

On October 3, 1933, I was again called to the office of Mr. W. E. Travis, president Pacific Greyhound Lines, when he informed me that we must all get behind the company union and put it across before the Brotherhood of Locomotive Firemen and Enginemen can get in and organize the bus drivers.

I signed an application to join the company union to preclude the possibility of further interference or coercion by the company or representatives of the company union because I have affiliated with the Brotherhood of Locomotive Firemen and Enginemen.

I, ——— ———, employed as a bus driver by the Pacific Greyhound Lines, was accosted by Mr. A. Freyschlag, who is superintendent of the Pacific Greyhound Lines, and I was asked if I had joined the Brotherhood. I replied: "Sure, I have." He then said: "I'm sorry to hear that, as they can do nothing for you." He then went on to say: "They are in bad financial condition and all they want is your money." He also said: "I am talking to you as a friend, you understand, and not as your superintendent, and have your best interests at heart and am sorry to see you do this and hope you will reconsider."

OCTOBER 19, 1933.

Mr. C. W. MOFFITT,
861 Pacific Building,
San Francisco, Calif.

DEAR SIR AND BROTHER: Herewith inclosed affidavit of ——— ———. The minutes of the meeting held October 14, 1933, which I forwarded to you under date of October 18 is a true record of the proceedings of the meeting of October 14, 1933, to which this affidavit makes reference.

Fraternally yours,

P. N. SCHLIZ.

AFFIDAVIT

STATE OF CALIFORNIA
County of Los Angeles, ss:

——— ——— being first duly sworn says:

That I am a driver in the employ of the Pacific Greyhound Bus Lines Inc., and that on October 14, 1933, I attended a meeting at the Pacific Greyhound Bus depot, Sixth and Los Angeles streets, Los Angeles, Calif., with 22 other

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drivers attending. That Mr. Travis, president of the Pacific Greyhound Bus Lines, Inc., presided over the meeting as chairman during the duration of the meeting.

Mr. Travis discussed in the meeting the question of drivers affiliating with the Drivers' Association as against their affiliation with the Brotherhood of Locomotive Firemen and Enginemen.

To whom it may concern:

On the night of October 2, 1933, I was told by the Pacific Greyhound Lines dispatcher in Oakland, Calif., to report to Mr. W. E. Travis, President of the Pacific Greyhound Lines, the following day:

At 10:15 A. M., October 3, I entered Mr. Travis' office at 9 Main Street, San Francisco, Calif.

Mr. Travis said: "——— ———, you have been unduly active for the Brotherhood of Locomotive Firemen and Enginemen. Now, understand, I am not denying your right to join an organization of your own choosing, but you have been active at Davis Junction on company time, which is not right."

I replied that any conversations with other drivers regarding choosing between the company union and the Brotherhood had not been allowed to interfere with company work.

Mr. Travis said: "Nevertheless, you have been doing it on company time and it must stop."

Mr. Travis said: "You are doing the wrong thing in joining the Brotherhood. Those are the same men who were complaining about busses taking the bread and butter out of their mouths. Do you expect them to change overnight? All they want is the money of you men."

I replied that I had talked with railroad men many times at the towns of Redding, Weed, and Dunsmuir about the transportation business, and their organization, and that it is my opinion they have changed their minds about busses and that they want to get on the "band wagon", as it were, by getting into the bus business themselves, and that they believe it their right to organize the bus drivers as the Pacific Greyhound Lines is a subsidiary of the Southern Pacific Co.

Mr. Travis said:

"Pacific Greyhound Lines are not a subsidiary of the Southern Pacific Co. and, if they are organizing on that assumption, then they have no right to organize you men. I will show you that the Southern Pacific Co. owns but a third of Pacific Greyhound Lines."

Mr. Travis then pressed a desk button and a man entered the office, who Mr. Travis told to get certain papers. This man left the office and soon reappeared with some papers which he handed to Mr. Travis. Mr. Travis then read from the papers the names of various stockholders and the number of shares held by them.

I told Mr. Travis that I had understood that the Southern Pacific Co. controlled two thirds of Pacific Greyhound Lines, that I had no faith in the Southern Pacific Co.'s dealings with labor and that they (the Southern Pacific Co.) had not only altered that opinion but had strengthened it in their management of the Pacific Greyhound Lines for the last couple of years, in the persons of former Southern Pacific Co. officials who were transferred to the Pacific Greyhound Lines after the merger of the three companies.

Mr. Travis said:

"I have not been in active touch with the affairs of the company for some time, and possibly things have not been all that they could be, but I propose to change those conditions that are not right, and I think it can be done very fairly through the Employees' Association. But I will not have anything to do with the brotherhood. They have imposed conditions and restrictions on the railroads that are part of the reasons why so many of the railroads are virtually bankrupt today. Some years ago I had some labor troubles with the chauffeurs in this city. I had a man by the name of Dixon arrested for paying men to put emery dust in motors of my cars. This Dixon was and still is an official of the Chauffeurs' Union here. In spite of that experience with this man Dixon and the Chauffeurs' Union, I would a hundred times rather deal with them than with the brotherhood."

I told Mr. Travis that he had given me something to think about and left his office.

On September 15, 1933, a meeting was held in the Pacific Greyhound Lines, Inc., Terminal in San Francisco, for the purpose of submitting to the drivers a working agreement and bylaws of a proposed employees association.

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After these bylaws and the working agreement had been read there was considerable discussion by the 23 drivers present.

Following the discussion a motion was made to take a vote to decide whether we, the drivers, wished an employees' association. The 23 men present voted unanimously to reject the employees' association in its entirety.

We the undersigned drivers were present at this meeting.

On September 27, 1933, a meeting was held in the Pacific Greyhound Lines, Inc., terminal, in San Francisco, for the purpose of submitting to the drivers a revised bylaws and working agreement of the proposed employees' association.

After these bylaws and working agreement had been read, there was considerable discussion by the 27 drivers present.

Following the discussion a motion was made to take a vote to decide whether or not we, the drivers, wished an employees' association.

Twenty-six of the drivers present voted to reject the employees association, also the bylaws and working agreement.

One driver present voted to accept.

We, the undersigned drivers, were present at the meeting of September 27, 1933, San Francisco, Calif.

STATE OF CALIFORNIA,
City and county of San Francisco, ss:

I, ——— ———, bus driver in the employ of the Pacific Greyhound Lines, Inc., was summoned to the office of Mr. W. E. Travis, president of the Pacific Greyhound Lines, and the following represents substantially what he said to me:

Mr. Travis told me that if he knew of any man in his employ who is organizing or influencing other drivers to join the Brotherhood of Locomotive Firemen and Enginemen he would discharge him, regardless of what the cost or result might be, and he would not give a d—n what the National Recovery Administration or anyone else thought about it.

He asked me if I joined the Brotherhood of Locomotive Firemen and Enginemen, and I told him that I was 100 percent brotherhood. He then said that any man who would not work his way would not work for him.

He said that he would sanction any union but the Brotherhood of Locomotive Firemen and Enginemen and that there is one man in this world, above all, with whom he would absolutely refuse to do business, and that is Mr. C. W. Moffitt.

Mr. Travis said that if he knew at the moment that I had at any time solicited or caused any driver to become a member of the Brotherhood of Locomotive Firemen and Enginemen he would fire me; in fact, if necessary, he would fire every man; that he would not tolerate any man working against him and that he is paying the men wages to work for him and not against him.

To whom it may concern:

I, ——— ———, was contacted by Mr. Krug, superintendent of division no. 4 of the Pacific Greyhound Lines, Inc., at Salinas, Calif., October 17, 1933, and requested by him to sign the revised constitution, bylaws, and working agreement prepared by the Drivers' Association, or company union.

Mr. ——— ———, another driver on division no. 4 of the Pacific Greyhound Lines, was also asked, in my presence, to sign the same document.

Mr. Krug further requested Mr. ——— and me to sign a form withdrawing power of attorney given the Brotherhood of Locomotive Firemen and Enginemen to represent us in negotiating an agreement covering rates of pay and working conditions.

STATE OF CALIFORNIA,
City and county of San Francisco, ss:

I, ——— ———, bus driver of the Pacific Greyhound Lines, Inc., was confronted by Drivers' Association representative, Mr. Mieninger, to join the company union. I refused and was told that I might as well turn in my tools and quit, and he said I was cutting my own throat.

The CHAIRMAN. I understand these affidavits to be just what? Just what are they?

Mr. MOFFETT. To prove coercion.

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The CHAIRMAN. Affidavits presented to show that employees in a particular industry were coerced in the organization of a company union?

Mr. MOFFETT. Yes, sir.

Mr. CHIPMAN. In their efforts to seek representatives of their own choosing.

The CHAIRMAN. And the facts are fully set forth in those affidavits?

Mr. CHIPMAN. Yes; they are, I believe.

The CHAIRMAN. All right. Is there anything else you desire to say to the committee?

Mr. MOFFETT. Yes, I would like to give an outline of the procedure followed. In August of 1933 the drivers employed by the Pacific Greyhound Lines called on me and asked if they could affiliate with our organization. At the time I was very busy and I told them that I did not know.

However, later, approximately 100 of them came into the office and insisted that I find out if they could affiliate with our brotherhood and I immediately wired our international president who gave us authority to take them in.

As soon as it became known to the management of the Pacific Greyhound Lines that their employees were joining the Brotherhood of Locomotive Firemen and Enginemen they immediately started a company union, called the Drivers' Association.

During this time I had secured in excess of 250 power-of-attorney certificates giving our organization the right to represent the drivers in negotiating a contract covering rates of pay, rules, and working conditions.

As soon as the management found this out they began calling the drivers into the office, from the president on down through the general manager and the superintendent, calling them individually and handing them a contract, or a working agreement, as they called it, and also a copy of the bylaws and constitution of the Drivers' Association, and accompanying that was a revocation blank for them to sign revoking the power of attorney given our organization.

The CHAIRMAN. Will you state the date of this?

Mr. MOFFETT. That was in August and September of 1933. All of these affidavits are dated.

The CHAIRMAN. Do you want the record to disclose where this took place? I assume from what you said if the name of the company were known the employees might be replaced.

Mr. MOFFETT. That is all right, as long as the names of the individual employees are not known.

The CHAIRMAN. Have you any objections to telling us where this took place and what was the name of the company?

Mr. MOFFETT. The Pacific Greyhound Lines, Inc.

The CHAIRMAN. And the location?

Mr. MOFFETT. They operate between Portland, Oreg., and San Francisco, Calif.; San Francisco and Salt Lake City, Utah; and San Francisco and El Paso, Tex.

The CHAIRMAN. And these employees were to be employees who operate their lines between these points?

Mr. MOFFETT. Yes, sir.

The CHAIRMAN. Thank you.

Senator WALCOTT. We better find out who owns the Greyhound Lines. Is it a railway-controlled line?

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Mr. MOFFETT. I understand it to be a subsidiary of the Southern Pacific lines. They have 33⅓ percent interest, the company proper, and the stockholders of the Southern Pacific Co. own 33⅓ percent more. Mr. W. E. Travis is the president of that line, that portion of the Pacific lines.

I would like to state here that these men, in my opinion, were desirous of organizing.

The CHAIRMAN. Do they state that in the affidavit?

Mr. MOFFITT. No; they do not. They are called to perform service commonly known as protecting. They are called to go to the station, the depots, and collect baggage, load the busses, take up the tickets, for approximately 8 hours a day and they do not receive any compensation whatsoever for that. They are required during this time to handle busses from the garages or the shops to the depot and stations and they are subject to discipline and dismissal for this time that they are working without compensation.

In other words, they receive approximately 3 cents a mile for the actual mileage they drive a car or a bus. If they drive a bus 60 miles, they get 3 cents a mile for it regardless of the length of time it takes them to make the trip.

They are discharged without being given a fair and impartial hearing. They call them into the office one day and tell them they are out of service and they will let them know later. I have known of men staying around as high as 16 days before they could find out whether they were going to be reinstated or dismissed and finally they would tell them they could not use them any more.

The management has refused to produce any records whatsoever, and Mr. George Creel, chairman of the San Francisco Regional Labor Board, notified us before I left San Francisco that he was going to proceed with an election to determine who the men wanted to represent them. We take the position that we have the majority of powers of attorney to represent the majority of the drivers employed, and the company takes the position that they have revocation of all those powers of attorney and we do not have a right to represent anybody.

Now, speaking in favor of Senator Wagner's bill, I understand that that part is taken care of, it provides for conducting a Government election, it provides that the employer will produce any records necessary or required by the Board, and in several other portions of the bill I think it puts teeth in section 7 (a) of the National Recovery Act. Therefore, I am heartily in hopes that the bill will pass.

Senator WALCOTT. Tell us just a word or two about those lines out your way where they have company unions, the relations of the members with your organization? There are some railways out there, are there not, where you have a company union but your own members work just the same on the road?

Mr. MOFFETT. Yes; they have a "Shop Crafts", so-called. It is a company union on the Southern Pacific proper, and hearings have been conducted by what they call adjustment boards, consisting of a foreman, master mechanic, or possibly two or three master mechanics from different divisions, and a representative of the Shop Crafts Association. If a man was discharged, they would call him in and take the evidence and decide it.

The Shop Crafts Association of the Southern Pacific Co. more or less depends on what our several labor organizations do. In fact,

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during the last wage movement in 1932 the officials of the Shop Crafts Association, agreed to take the 10 percent pay roll reduction 3 months before the agreement was negotiated in Chicago in 1932, and about 2 weeks after they had agreed they came out with a statement in the press that they agreed to do as the other transportation organizations agreed to do in Chicago. They really haven't any representation at all, the employees who hold official positions with the company represent them or tell them they represent them; they haven't any representation.

The CHAIRMAN. Thank you very much. The next and last witness is Dr. Paul H. Douglas.

STATEMENT OF DR. PAUL H. DOUGLAS, AUTHORITY ON LABOR PROBLEMS, PROFESSOR OF ECONOMICS, UNIVERSITY OF CHICAGO

The CHAIRMAN. Doctor, will you give your full name for the record?

Dr. DOUGLAS. My name is Paul H. Douglas. I am professor of economics at the University of Chicago; a member of the Consumers' Advisory Board, National Recovery Administration, but I am speaking purely in a personal capacity. I am not here representing any group.

This bill (S. 2926) can only be understood in the light of the changed industrial situation which has been brought about by the National Industrial Recovery Act and its administration. That act in effect virtually made it mandatory for the various employers in an industry to associate themselves together. In the first place, since the proposed codes were almost invariably submitted by trade associations, there was an initial stimulus upon employers to join such associations in order to have a voice in the formation of the code submitted to the recovery administration. Secondly, once the code is promulgated, it becomes vitally important for every employer to join a trade association in order to help select the representatives of the owners upon the code authorities, and to be represented in all of the other work which the trade association or code authority carries on.

In practice, therefore, the N.R.A. has virtually compelled employers to band themselves together in self-defense and has enormously increased the power of their organizations.

Now it is, I take it, obvious that this may well lead to great abuses unless a corresponding degree of balance is introduced into our industrial system and our social policy. For public decisions, in the nature of the case, tend to follow and to register the relative strength of economic forces and of organizations. If we build up the power of organized employers, which was originally great, without correspondingly strengthening the forces of labor and the consumer, we further unbalance our system.

For with their added power the employers' associations can keep wage rates lower and hours longer than they would otherwise be. They can, in addition, obtain privileges on such matters as open-price associations, direct price fixing, the use of liberal cost formulas to fix minimum price limitations upon output, restrictions of machine hours and upon new investment which would not be given them were the balance of power more even. Finally, if one set of economic interests is powerfully organized and the others are not, the first

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group is likely to reach out for political and social control and to introduce a system which would be very similar to Fascism.

In order to have a democratic balance in society, it is therefore necessary that labor and the consumers should be at least equally as well organized. But section 7 (a) of the National Industrial Recovery Act, while framed with good intentions, has not given such equal rights and powers to the workers. Thus, while it provided that—

> employees shall have the right to organize and bargain collectively through representatives of their own choosing and shall be free from the interference, restraint, or coercion of employers of labor or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection—

these were rights for which the workers in practice had to contend in many cases against great odds, and to win or lose in the hard struggle of industry.

For many employers, as Senator Wagner will probably testify, drew up for their workers plans for company unions, or shop committees, which were designed to replace the inter-company or regular trade unions as agencies for collective bargaining. Not only were the plans for these company unions drawn up by the employers, but in many cases they were apparently installed without a vote on the part of the employees. In other cases where they were submitted to a vote by the workers, the balloting generally took place on the premises or under the oversight of the company without the workers having the opportunity of hearing about the advantages of regular unionism or of voting for it as an alternative. These company unions, when set up, generally provided that the workers could only be represented by fellow-employees and not by independent outside agents, while the funds of these organizations were not only kept low, but in many cases provided by the employers themselves.

Now, there was every reason why the workers should regard such organizations as company controlled and as not providing them with the protection which would be given them by independent organizations combining the employees of many employers which would have the power of negotiating agreements on a broader scale and of being represented by fearless and independent representatives.

First, the elections were frequently held in such places and in such a manner that the workers felt they were subject to some economic duress in voting for the plan and in choosing the officers of the plant committee.

Second, even at its best the company union could only negotiate an agreement for that company and not for any other portion of the industry as a whole. It is virtually impossible, however, for the wages or working conditions in any one plant to be raised very appreciably above the general level of competing plants. In order to establish and maintain a rate of wages and a set of working conditions, it is customarily necessary to establish it for an industry as a whole or for the major portion of it in order to protect individual concerns from what would otherwise be competitive undercutting by the low-wage firms. For this purpose, the industry and not the plant should be the general unit of collective bargaining, and only the independent union can establish this.

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Third, when workmen are restricted in their choice of representatives to fellow-workmen, they must be represented by men whose industrial future largely depends upon their employers. The tacit fear of future discharge or failure to obtain promotion will in most cases restrain these fellow-workmen from putting the case of their clients with the fearlessness and independence of an outsider who would not be dependent for employment upon the employer against whom the complaint was being made. Only equals can talk on terms of equality, and men whose jobs and future are dependent upon the good-will of the employers are not the equals but the economic inferiors of the latter. It may furthermore be remarked that the employers and their trade associations are not restricted for their representatives to those already actively engaged in the industry. They may, on the contrary, hire lawyers, economists, and statisticians from the outside with specialized skills to represent them. It is small wonder, therefore, that the workers should wish a reciprocal right.

Fourth, while the individual employers were federating into local and industrial bodies which would increase their economic, political, and social power, the use of company unions would prevent the workers of different companies from federating for similar purposes.

Fifth, the financial resources of the company unions or shop committees were kept low so that if they did fail to agree with the company, they would not be able adequately to finance a strike in the same way that an interplant union with its pooled reserves would be able to do.

There is good reason, therefore, why workers should prefer regular interplant unions instead of plant company unions. When, however, the workers attempted to assert this preference, they were frequently denied this opportunity by their employers who, in these cases, refused to recognize the right of the regular union to carry out the collective bargaining, and who insisted that the company union should be the bargaining agency instead.

When the workers went on strike to establish the union as the agency for collective bargaining, the matter was then put up to the National Labor Board for adjustment. This Board generally asked the strikers to return to their work under the promise that they would not be discriminated against and that an impartial plebiscite, would be held upon the question as to whether or not the workers wanted to be represented by company or regular unions. But time is of the essence of a strike, and once a strike was called off, it was possible for employers to discriminate against active union men on one pretext or another and to interpose vexatious delays to the holding of the election.

The legal powers of the National Labor Board to prevent such discrimination, to hold such neutral elections and to compel unwilling employers to abide by the result, were shadowy and uncertain. The result was, as I believe Senator Wagner will agree, that the National Labor Board with the best will in the world was forced into the assumption of responsibility without power. It was put in the position of inducing the workers to give up their chief weapon, the strike, and yet not being able to furnish them with equivalent protection and a guarantee of impartial treatment in return. The history of the Weirton, the Budd, the Harriman, and the Ford cases, together with a number of others, abundantly bear out the truth of this statement.

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This put the workers, the National Labor Board, and the Government in an impossible situation, and it is a tribute to the insight, honor, and statesmanship of Senator Wagner that he has clearly seen the issues involved and has introduced S. 2926 to meet the situation. By section 5 it is provided that the workers shall really have a free choice in determining how they shall bargain and whom their representatives shall be. Company unions are not outlawed. Instead, if the workers of their own free will draw up such plans and express their preference in a free and fair election for them over the regular unions, the company unions are to be recognized.

What is prohibited is, however, that the employers shall not directly or indirectly make or influence the choice of their workers. The employers are not to propose or initiate such plans of organization or to help finance them. It is to be the workers who will make the choice. This is only fair, since the law has long since recognized that a man should not serve adverse interests or represent both buyer and seller in the same transaction or both debtor and creditor. The employer, or the buyer of labor, can choose his own bargaining agency, but he is not to help the worker, or the seller of labor, to choose his.

The National Labor Board is not only given the definite power to enforce such a just provision, but it is also given the power to prevent workers from being discriminated against because of union membership. If this act is passed, it can then induce workers to abandon a strike and return to work, secure in the knowledge that it can probably give the workers the protection which it promises.

Now, I know it will be said that this act will undoubtedly stimulate the organization of labor into regular trade unions. That such will be the result is fairly obvious. But this will be true only to the degree that the workers wish such organization. And if they wish it, they should have it just as much as the employers. In fact, I should like to submit that the organization of labor should be welcomed instead of feared. We might get along with purely individual bargaining in a period of small-scale competitive capitalism. When large-scale enterprises appeared, individual bargaining, even under competition, became inadequate.

Now that we are replacing competitive capitalism by strong associations of employers who are given the power of united action and who are coming to have even greater control over prices and production under the codes, it is, in my opinion, essential to build up organizations of labor as a counterpoise. For only so shall we obtain balance and prevent the domination of capital which seems to be the economic essence of Fascism. We must grant reciprocal rights to both parties and not exclusive rights to one, and these rights should give effective and not merely nominal freedom to organize.

And to those who fear that the organization of labor as well as capital merely paves the way to struggles which will disrupt industry, may I point out that the National Labor Board will be above both sides, and while it will not have the powers of compulsory arbitration, it can marshal the forces of public opinion and thus, in all probability, compel solutions which in the vast majority of cases will be for the general good of society. I believe, in fact, that there will be

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much more harmony if labor's position is recognized than if it has to fight for the very basic principle of freedom to organize.

I thank you.

The CHAIRMAN. We will adjourn until Tuesday morning at 10 o'clock.

(Whereupon at the hour of 4:30 p.m. an adjournment was taken until Tuesday, Mar. 20, 1934, at 10 a.m.)

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TO CREATE A NATIONAL LABOR BOARD

TUESDAY, MARCH 20, 1934

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The committee met at 10 a.m., pursuant to adjournment, in room 335, Senate Office Building. Senator David I. Walsh presiding.

Present: Senators Walsh (chairman), Thomas, Borah, and Davis. Also present: Senator Robert F. Wagner.

The CHAIRMAN. Dr. Brissenden.

STATEMENT OF DR. PAUL F. BRISSENDEN, PROFESSOR OF ECONOMICS, COLUMBIA UNIVERSITY

The CHAIRMAN. Will you give your full name, Doctor?

Dr. BRISSENDEN. Paul F. Brissenden.

The CHAIRMAN. And your residence?

Dr. BRISSENDEN. My home address is Dobbs Ferry, N.Y.

The CHAIRMAN. You are listed here as professor of economics, Columbia University.

Dr. BRISSENDEN. Yes.

The CHAIRMAN. I assume from what Senator Wagner said, and others, that you have given much attention to labor problems?

Dr. BRISSENDEN. Yes.

The CHAIRMAN. How long have you been interested in labor problems?

Dr. BRISSENDEN. For about 15 years or more.

The CHAIRMAN. What have been your activities in connection with them other than a study of the problems?

Dr. BRISSENDEN. I at one time was a member of the staff of the California Commission on Immigration and Housing, as special agent. In 1914 I was a special agent of the United States Commission on Industrial Relations, and then at a later period I served as economic advisor for the Personnel Classification Board. Between 1915 and 1920 I was on the staff of United States Department of Labor.

The CHAIRMAN. We will be pleased to have your views respecting the pending bill.

Dr. BRISSENDEN. I have a statement which I have prepared. May I read this statement?

The CHAIRMAN. Certainly.

Dr. BRISSENDEN. The purpose of the National Recovery Act, in the words of President Roosevelt, was "to put people back to work" at wages which would provide more than a bare living. Its objective was, he said, to provide the wages of a "decent living", as a socially desirable end in itself and as a means of effecting the increase in mass

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purchasing power without which business will lack the markets for its goods and services which are necessary if we are to have any real recovery.

I am heartily in sympathy with these purposes. But, in my judgment, the operation of the act, through its first 8 months of life, has worked to defeat, rather than to further these ends. It has, indeed, provided the stimulus for almost extraordinary growth in labor organizations, a truly momentous achievement, particularly so if they are given the opportunity which, unfortunately, the Act has not in fact afforded them to date.

Apart from this important gain, and the long step it has taken in the direction of the abolition of child labor, the record of the N.R.A. has been one of futility—unless one counts it a gain that big business units can now more easily than before exploit consumers, workers and the little business men. I do not believe that the N.R.A. has materially increased employment or aggregate pay rolls. In spite of it, or because of it, per capita earnings have declined. With a few exceptions, the codes (which are in effect public statutes) are being administered by code authorities wholly or almost wholly composed of business men. In the face of the Presidential warning on June 16 that if prices were allowed to run ahead of wages the whole enterprise, in the President's words, would be "set at naught" the N.R.A. has encouraged, or at least tolerated price increases that have, generally, outrun wages. There has been widespread price-fixing and limitation on production in the interest (or the presumed interest) of business groups, especially the big-business groups. There seems to have been widespread resort to monopolistic practices. Even the large growth in labor organization has been more marked in the case of company-fostered and company-dominated organizations than it has in case of independent self-organized associations.

That the central purpose of the N.I.R.A. to stimulate recovery by increasing purchasing power has not been realized seems to be clearly demonstrated by the statistics on the trend of pay rolls and employment, published by the United States Bureau of Labor Statistics. These figures showed considerable gains between March and September, but the codification of industry did not get going apprciably before September, so that these spring and summer gains are scarcely to be attributed to any great extent, if at all, to the N.R.A. I have taken the Bureau's figures for all manufacturing industries. I have also taken a weighted average of its figures for all industries (including manufacturing, trade, transportation, mining, utilities, banking, etc.) and, thirdly, my own weighted averages of its figures for the 18 industries whose codes were signed before October 1. The changes from September to December 1933 were as follows:

	Employment	Pay rolls	Per-capita earnings
	Percent	*Percent*	*Percent*
All industries	−1	−2	−1
Manufacturing	−5	−7	−2
18 early N.R.A. coded industries signed before Oct. 1	−4	−7	−3

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The reports of the National Industrial Conference Board indicate that the cost of living increased about 0.8 percent between September and December, so that real pay rolls and real per capita earnings must have shrunk slightly more than these figures indicate.

Official statistics on hourly earnings of industrial workers naturally show increases since the length of the workweek has been shortened (as a result of the depression itself, as the result of the work-spreading movement, and as the result of the N.R.A.) often without proportionate, and sometimes without any, reductions in weekly wages. But even where the workweek is curtailed without any reduction in weekly pay rates there follows no gain in per capita earnings and no gain in aggregate pay rolls except to the extent that there is net increase in personnel. Statistics of hourly earnings, therefore, are of little or no value for the assessment of the effectiveness of the N.R.A. in accomplishing its central objective.

I think that title II, not title I, was the essential recovery section of the N.I.R.A. Title I, which covers the industrial control provisions of the act, in the very nature of these provisions, could not be expected to be effective as a recovery instrument. The management of this part of the act should have been assigned to a national reconstruction administration. The administration to which the job was assigned has made no headway toward recovery. More or less inadvertently, it has accomplished some things in the way of reconstruction.

Although extraordinary social gains could and can yet be achieved under the act, the achievements actually accomplished to date are mostly bad: Big business has been seated more firmly in the saddle, little businesses have been put in a more precarious position than ever, consumers have been undermined rather than supported, workers are not being reemployed to any appreciable extent in private business enterprise, they are not, on the average, getting any more money in their pay envelopes with which to buy "a decent living", company-dominated unions have increased more rapidly than independent ones. Some of the reconstruction results have been good: There has been a considerable increase in trade-union membership, child labor has been in large measure abolished, some competitive excesses in business have been eliminated, in a few industries employment, pay rolls and even per capita earnings increased during the fall, and apparently as a result of code operation.

The CHAIRMAN. Do you think the operations of the codes have thus far tended to the disadvantage of the small producer?

Dr. BRISSENDEN. Yes, that is my opinion.

The CHAIRMAN. In competition with the large producers?

Dr. BRISSENDEN. Yes, that is my opinion.

Senator DAVIS. What percentage of the increase in employment can be accredited to Government spending? I notice that you made a comment on it.

Dr. BRISSENDEN. I cannot tell you in terms of exact percentages, Senator Davis. I think most, if not all, of the net gain in employment has been due to the public employment. I do not mean by that to say that I do not believe there has been some gain in some industries, large gain in employment, but that has been more than offset in my opinion by the losses in employment resultant upon code operation; for instance, the items that appeared along during

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the fall of the 9,000 men whom Mr. Ford laid off in one of his plants, alleging, whether correctly or not, that that was the result of code operation.

Senator DAVIS. But don't you find at the end of the year, even so shut down for the time being, that production in the entire year is enough to take care of all of the needs of the country?

Dr. BRISSENDEN. It is enough, Senator Davis, I think, to take care of that part of the needs of the country for which the country's population has money to buy, but not of the potential needs of the country; no. I most emphatically do not think it is anywhere near adequate for that, and I think the statistics of living standards and budgets would confirm that to the hilt.

Senator DAVIS. I think you are correct.

The CHAIRMAN. Proceed, Professor.

Dr. BRISSENDEN. The present situation seems to me to be a perilous one. The N.R.A. is at dead center. Yet within the framework of the statute with the administration of the industrial control provisions of which the N.R.A. was entrusted, I am convinced that, supplemented by such modification of the labor provisions as this bill suggests, much sound reconstruction of our economy in the public interest, and perhaps even some visible progress toward sound and permanent recovery are possible, although I must say I look to other agencies chiefly for the accomplishment of what we call recovery.

Except for section 7 (a) I do not think the great need is for revision so much as for sharply revised administrative policies. If the code authorities are to operate in the public interest instead of being made up exclusively or almost exclusively of the trade associations, they should be tripartite bodies composed of equal numbers of representatives of employer, employee, and consumer group interests. In general, the N.R.A. and the code authorities should reverse their policy, in my opinion, of boosting or even tolerating high prices and their policy of limitation upon production and substitute a policy of price reduction, expecially in industries where consumer demand is relatively elastic, to encourage volume production. Adoption of such a price and production policy would have certain important advantages:

1. It would really encourage buying, with all of its favorable repercussions of that encouragement.

2. It would tend to bring about increases in real wages by reduction in living costs, and thus make increases in money wages less necessary and so automatically reduce the likelihood of strikes, most of which are over wage increases or union recognition.

3. It would not necessarily work any greater hardships upon the farmer than does N.R.A.'s present price policy. Indeed, there would seem to be just as much prospect of the farmer benefiting under this policy as a result of retail prices falling more than farm prices, as, under the prevailing policy, there is of his benefiting because farm prices rise more than retail prices.

The history of the past 8 months makes it clear, I think, that the collective bargaining provisions in section 7 (a) are in urgent need of clarification. Even before the act was passed, employers were hastily drafting plans for company unions with whom they might bargain much as the lion bargains with the lamb. As already noted, these company unions have increased since the N.R.A. even

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more rapidly than the trade unions. Strikes were deprecated. General Johnson told the American Federation of Labor convention last fall that now labor no longer needed to strike, since the Government would safeguard their rights. Then followed the long and largely futile controversies over collective bargaining and the election and recognition of employees' representatives—in the captive mines case, the Wierton case, the Budd case, the Philadelphia Rapid Transit case, and many others. Employers insisted that section 7 (a) granted to employees only the right to be represented, for collective bargaining purposes, by individuals or organizations of their own choosing, not the right to be bargained with by them.

In other words, many employers if they could not by the company union device select (from within the circle of those whom they could fire) the employee representatives with whom they would "bargain", they would do no bargaining with independently chosen representatives. If it was to be a company union the employees' rights were to have their representatives and to "bargain". If it was to be an independent union—and it should not be such if the employers could prevent it—the employees would have the representatives but they could not bargain, because the employer would not bargain with them. The reason, in the company union set-up, why the employers were willing to "bargain", even though they held the law did not require it, was that through the power to hire and fire they controlled the bargainers.

Real bargaining is impossible in my judgment with employer-dominated or employer-festered unions. Most company unions are employer dominated. Without genuine bargaining over terms of employment there is, in my opinion, little chance of bringing about the readjustments in wages and hours of work necessary to the attainment of a decent living for the mass of the workers and so a decent market for the mass of their employers. Moreover, where an employer may be able to make more money by a policy of high prices, small volume of sales, and wages kept low because unit overhead costs are made too high by limited volume, an intelligent, independent labor organization might well recognize that its best chance of a wage increase will emerge out of a policy of low prices, large volume of sales, low unit overhead costs, permitting higher wages, possibly without much reduction in profits. But such a readjustment of factors, though evidently beneficial to the consumer and in the public interest, as well as beneficial to the employees, is unlikely to be made unless there is strong economic pressure exerted by an independently organized and functioning union of employees.

It is considerations such as these which convince me that apart from changes in administrative policy and personnel the step now most urgently necessary is that which this bill proposes. In my judgment the time has come when the public interest will be most adequately protected in a big-business world where otherwise the consumer and the worker will be helpless by a public policy on industrial relations which definitely discourages both individual bargaining and the so-called "bargaining" between employer-dominated groups and the employers who dominate them and which frankly encourages collective bargaining by and between employers and the self-designated representatives of their independently organized employees.

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Another weakness of section 7 (a) is the ambiguity in its language that has given rise in many quarters to the interpretation of it that the act illegalizes the closed shop. I am glad to note that Senator Wagner's bill (in section 5 (6)) definitely permits closed-shop agreements provided the union includes at least a majority of the employees. This seems to me in line with the very best democratic traditions. Minorities should have a voice, in my opinion, in the making of codes and agreements, but once the rules are decided upon the majority must not only rule, but bind the minorities. Thus, too, under the N.R.A., once a code is whipped into shape, after minorities as well as majorities have had a voice in its construction, it becomes law for all in the industry. The theory that section 7 (a) requires an employer to make, and do business under, agreements not only with the union representing the majority of his employees but also with each of perhaps several minorities and finally with every employee who wishes to bargain individually is one whose application would create an impossible situation.

Minorities may well have a hand in the negotiations constituting the agreement-forming process, but the group which gets its policies and terms written into the protocol must be the recognized group, membership in which, of course, should be open and free from inequitable restrictions, as in case of the trade associations. A minority group may become one of the high contracting parties if and when it can muster a majority. All this supports the closed-shop agreement and makes questionable from the point of view of practical necessity, at least, upon the interpretation of this part of section 7 (a) which many employers and some minority or left-wing labor groups have urged.

I do not believe that we have yet reached the stage in our economic evolution when we can wisely impair or interfere with the right to strike and I am glad to note that this bill explicitly safeguards this right. It is not easy to estimate the effect of this bill upon the extent and severity of strikes. I should think it would make them less frequent. Certainly strikes for union recognition would be less frequent, perhaps also strikes turning on the question of wages.

Insofar as the bill sets up a plan of arbitration which is voluntary rather than compulsory, it has my full approval. Compulsory arbitration, in the sense of compulsory submission and compulsory award, would result not only in prohibition of strikes, not to be desired, but also in Government fixation of wages, in my opinion still less to be desired. While I am in agreement with the bill in providing for voluntary arbitration, I prefer a scheme of compulsory submission (with compulsory investigation but without suspension of the right to strike) and voluntary award to the proposed plan of voluntary submission with compulsory award. I should rely upon publicity as the means of making the award effective.

Quite apart from the fact that compulsory arbitration has been held to be unconsituttional except in the case of utilities, the history of industrial relations in this country seems clearly to indicate that there is no escape from Government intervention, and that that intervention should adopt the method of mediation, after encouragement of conciliation, followed, if necessary, by some form of voluntary arbitration, accompanied in my opinion by compulsory submission of evidence or of compulsory investigation. An earlier witness, Pro-

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fessor Slichter, according to the newspapers, suggested to this committee that some provision be made to forestall the probable tendency of employers, in the event of this bill's enactment, to enter into collective bargaining agreements with company unions, or company-dominated national unions, or company-dominated locals of national unions, even those affiliated with the National Federation of Labor, in order to avoid dealing with the self-chosen representatives of their own employees. I wish to second this suggestion. Moreover, I think it important to extend its applications to cover such agreements with all company-dominated or company-sponsored unions, whether or not they happen to be intra-company organizations. Genuine collective bargaining between an employer and the self-chosen representatives of his employees, such as this bill is intended to promote, may be frustrated by the employer's negotiation of a "smart bargain" with a local of a national trade union as well as by a similar sort of bargain with a company union.

I know of at least one case of such overreaching that has reached the courts since the enactment of the N.I.R.A. It appears that the majority of the employees of the Fair Lawn Fur Dressing Co. in New Jersey were members of the Needle Trades Workers Industrial Union. The employer threatened to discharge his employees and to refuse to reemploy others unless they give up membership in this organization. Thereupon, 36 of the forty-odd employees struck. Immediately upon this occurrence, and while these employees were out on strike, the employer negotiated a closed-shop agreement with a local of the International Fur Workers Union, which apparently had no employees in this particular plant. The striking union applied for and obtained an injunction restraining the employer from making membership in the International Fur Workers Union a condition of employment. The case referred to is *Fryns* v. *Fair Lawn Fur Dressing Co.*

It is worth noting that the workers secured this relief, not because the employer was guilty of smart or disingenious bargaining, but apparently only because the judge considered that section 7 (a) of the N.I.R.A. outlawed the closed union shop.

But, effective prohibition of the resort to spurious contracting-out agreements, as are illustrated by the *Fair Lawn case*, should not have to rest upon any theory about the closed shop. I would suggest that the making of such agreements be designated an unfair practice within the meaning of this bill. This could be accomplished by adding at the end of section 5 (2) and completing that paragraph as follows:

> *Provided*, That any agreement made by an employer with a company-dominated or company-sponsored union (whether or not its membership is limited to employees of the said employer) for the purpose of contracting-out of the obligation in good faith to deal with self-chosen representatives of his employees shall itself be deemed an unfair labor practice, and no such agreement shall be a basis for unjunctive (sic) relief to the employer against his employees or their self-chosen representatives.

If I do not misinterpret this bill, it would require (at least if the modification I have suggested is inserted, and perhaps even without it), in the situation existing in the *Fair Lawn case*, that the employer scrap his agreement with the American Federation of Labor affiliate, the International Fur Workers Union, and negotiate and enter into an agreement (which might or might not contain a closed-shop clause)

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with the Needle Trade Workers Industrial Union. He would be required to abandon the first agreement, not because it is a closed-shop contract, and certainly not because it is an American Federation of Labor affiliate, but because it is an agreement deviously entered into with an organization including at best only a minority and at worst none of his employes, with the purpose of evading the necessity of dealing with the self-designated representatives of a majority of his employees. He would be require in good faith to negotiate and in the words of the present bill, "to exert every reasonable effort to make and maintain (an) agreement(s) with" the Needle Trades Workers Industrial Union, because if the facts of the case have not been misstated that union has the shop organized. If another year the International Fur Workers' Union can win the allegiance of a majority in the Fair Lawn Shop, the employer will have to deal with it.

This illustration of the application of the present bill to a concrete case ought to make it evident, it seems to me, that the bill sets up no labor dictatorship. In a recent press dispatch the directors of the National Automobile Chamber of Commerce, following the lead of the steel industry, starting a procession of those great business interests which in the past have virtually dominated American industrial life, are reported to have asserted that this bill "would result in giving a labor-union official virtual domination over American industrial life." That is absurd, of course. If what is meant is that this bill will give organized labor such a dominant position, still I should dissent.

I believe that this bill, if passed, will do much to redress the disastrous unbalance that exists between the buyers and the sellers of labor. I hope and believe that it will materially facilitate the campaign for the complete organization of American industry. I hope and expect that it will make life hard for company-dominated and company-sponsored unions. All these things will be sound gains in the way of permanent reconstruction, and I place these things first. What the effect of the bill upon recovery may be I hesitate to predict. In the conditioning atmosphere of the sound reconstruction of industrial relations it should help to bring about, particularly if amended in some such way as the present bill proposes, I should expect that it would tend definitely to discourage the kind of recovery that may lead us into another speculative debauch. Through better balanced bargaining activities and the resultant lessening of extreme inequalities in the distribution of wealth, I should expect it substantially to further the kind of recovery that will be permanent because it deserves to be permanent.

Thank you very much.

The CHAIRMAN. We thank you, Professor, for your presentation.

Senator WAGNER. Professor, in view of the fact that you referred to this news dispatch which you read, that I also read in the papers, with reference to the effect of this legislation, this propaganda which has been pretty wide-spread, that the purpose of this act is to impose some particular union upon the manufacturers of the United States, as a matter of fact, I want to know whether you agree with me that this bill does not do anything of this kind except that it does make a workers a free man so he may decide whether he wants a union or not, and, if he wants one, what particular union he wants to represent him, or whether he wants to remain unorganized. Is that not all that the legislation does?

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Dr. BRESSENDEN. I think that is true. I think that the New Jersey case I referred to illustrates it. Instead of this bill imposing any particular union upon the employer, it will merely result in giving effect to their wishes.

Now, it happened in the Fair Lawn case that their wishes, if I understand the facts in the case, were that they should be represented by the Needle Trades Workers Industrial Union, and I believe that every member in the direct labor part of the factory was a member of that organization, and not one a member of the other union.

Now, the employer negotiated this agreement for the purposes of getting rid of the bulk of his employees or force them to join this other union which was an American Federation of Labor Union, and which was thrown out as a result of this court's decision.

The CHAIRMAN. Thank you.

Dr. BRISSENDEN. May I add just this one word, if you will indulge me, in regard to this present situation in the automobile industry?

The CHAIRMAN. We would be pleased to have this information.

Dr. BRISSENDEN. I firmly believe that if some such scheme as is proposed by Senator Wagner's bill were now in effect that, first, this present situation would not have reached the critical pass which it has now reached, because the bill would have provided, if its terms were essentially as set down here, for a control and elimination of such unfair labor practices and enlistment of company-dominated unions to serve as farcial substitutes for genuine unions could not have made the headway it has made in the automobile industry; secondly, I think the likelihood of avoidance of the strike—I hope in any event it may be avoided but I am not one who believes that peace at any price in any industry is preferable to war—I think that in this present situation we have two very important groups, on the side of the automobile manufacturers and on the side of the American Federation of Labor, and I think that those groups can adjust this situation.

It will require concessions. I think that the concessions which will be required are not concessions which will in any fundamental way interfere with the effective on-go of business enterprise in the industry involved, and I think the history of industrial relations in the printing trades, in the needle trades, and on the railroads of this country is ample demonstration of the fact that an industry does not die of union management cooperation involving negotiations and joint administration of the labor phases of the industry even with a union affiliated with the American Federation of Labor.

Now, if in this present situation the automobile employers will concede what to my mind is the very real necessity, the recognition of the necessity for intercompany scope on the part of the union and the necessity that the representatives be freely and independently chosen by the employees; if, on the contrary, the American Federation of Labor will concede the necessity for a very drastic and long overdue reconstruction in the structural set-up of its organizations, if it will give assurances that the now partial industrial character of the organizations in the automobile trade, these Federal unions which are not craft unions, as I understand it—if the Federation will give assurances to the employers of the automobile industry that they will maintain and strengthen the industrial character of the organizations in the shops and not allow the traditional craft union as such to get a foot-

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hold in the industry, I think there may be present the basis of a real statesmanlike settlement of the issue; and, further, if the employers will offer in addition to some assurance of the recognition of the union, some assurance of stability of tenure, and the union on the other side will offer to cooperate to its fullest ability in maintaining an efficient production there, I think there might be along those lines some possibility of effecting a workable adjustment of the points at issue.

Thank you very much.

The CHAIRMAN. Thank you, Professor.

Professor Otto Beyer.

STATEMENT OF OTTO BEYER

The CHAIRMAN. Your name, please?

Mr. BEYER. Otto Beyer.

The CHAIRMAN. You are listed here as an industrial engineer, now with the Federal Coordinator of Transportation.

Mr. BEYER. Correct.

The CHAIRMAN. Where is your residence?

Mr. BEYER. It is in Virginia; McLean, Va.

The CHAIRMAN. What was your occupation before you became an industrial engineer with the Federal Coordinator?

Mr. BEYER. I am not an industrial engineer with the Federal Coordinator of Transportation. I am director of the section of labor relations with the Federal Coordinator of Transportation, but my profession has been that of an engineer who has in the last 15 years devoted his time to the promotion of constructive relations between labor and management in industry.

The CHAIRMAN. We would be pleased to have your views.

Mr. BEYER. I would like to add, if I may, in that general direction, that I take it my reason for having been asked to present my views on the bill this morning grows out of my experience in the field of industrial relations.

The thing I have been peculiarly interested in, and to which I devoted my time, has been the development of so-called "union" management relations on the railroads and some private industries, the point being to integrate labor with management to the end that the purposes of industry would be better served. Some of the industries in which this activity has gone on largely under my direction are the Baltimore & Ohio Railroad, the Canadian National Railroad, and some private concerns in Chicago and in Massachusetts.

Now, I should like also to say at the beginning that in speaking as I do I am speaking purely in my private capacity and not as a representative of the Federal Coordinator of Transportation.

I should like to observe at the very beginning that I would prefer to confine my remarks more or less specifically to the bill. I would like to make one or two general remarks about the bill, however, and that is this, that in the situation with which we are confronted at the moment, especially under the codes, that a law of this kind be enacted for the purpose of facilitating compliance with the codes.

It strikes me as an almost impossible task if the National Recovery Administration were to undertake the responsibility of and by itself to bring about complete compliance with the codes. It must, in other words, have the assistance of labor properly organized in industry to

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facilitate that process, and I should like, if I may, to call the committee's attention to the fact that in those industries where labor is now functioning in an independent capacity, notably the men's garment industry, the women's garment industry, the printing industry, and in the railroad industry, that we do not have the difficulties, the complaints are not forthcoming in those industries we find in other industries.

In other words, this particular bill, which I like to refer to as a bill for the purpose of adjusting industrial disputes and facilitating conciliation in industry, would bring about in my estimation a very essential contribution in the way of compliance on the part of employers and employees in industry with the various provisions of the codes. I think that is absolutely necessary and essential.

Now, I would also like to call the committee's attention, if I may, to the fact that we here in the United States have been singularly behindhand in enacting legislation of this kind. I checked that situation up this morning with the international labor office, and they handed me a document which reviewed the practice in every country, and the outstanding thing about the United States is that in only one industry, the railroad industry, have we enacted legislation for the purpose of bringing about the peaceful adjustment of disputes on the one hand, and the only other agency that we have is an agency established in the Department of Labor, the United States Conciliation Service, which has no authority in law, but which is the only means of occasionally standing by to bring about and maintain peace and harmony in industry.

The CHAIRMAN. Would the international labor organization be in a position to give us information as to what other countries have done along the line of legislation of this kind?

Mr. BEYER. Yes, indeed. Here is a document which I think is exceedingly valuable, and, if I may, I would like to put it at the disposal of the committee.

The CHAIRMAN. We would like to have it. Is that document confined entirely to questions involved in this legislation?

Mr. BEYER. Conciliation and arbitration of industrial disputes. It reviews the practice in every country.

The CHAIRMAN. We should like very much to have it.

Mr. BEYER. I would be glad to leave it, if I may. It is entitled "International Labor Office, studies and reports, series A (industrial relations) no. 34, Conciliation and Arbitration in Industrial Disputes; Geneva, 1933."

The CHAIRMAN. I suppose this organization probably could give us a codification of it. Are they equipped to do that?

Mr. BEYER. A codification of it? I think they would be glad to. I will take it up with them.

The CHAIRMAN. Where are they located?

Mr. BEYER. Here in Washington.

The CHAIRMAN. I think it would be very helpful to the committee if they could give us a very brief, concise statement of what legislation has been enacted in the different countries of Europe along the line of this proposal. Don't you think so, Senator?

Senator WAGNER. Yes. I know all about the organization. We are not members of it, but we really ought to be.

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Senator DAVIS. It is part of the League of Nations.

The CHAIRMAN. We are such busy men here that it is difficult for us to get the time to go through documents like this. I think we might well have the summary go into the record. I suggest that we obtain that summary and have it printed in the record.

Senator WAGNER. They are willing to let us come in without joining the League of Nations.

The CHAIRMAN. You may proceed.

Mr. BEYER. As I indicated earlier in my remarks, I would like very much to confine my remarks more or less specifically to certain features of the bill, believing in that way I can be most helpful.

Now, the first section of the bill of broad interest is section 5, dealing with the so-called "unfair labor practices". I am sure it will interest the committee to know that we have in this country, as a result of the Emergency Railroad Transportation Act, had some experience in bringing about compliance with so-called "unfair labor practices" in the railroad industry.

The situation is briefly this: When the Emergency Railroad Transportation Act was passed, by reference was incorporated in it certain provisions of the Bankruptcy Act, which in essence on those railroads in bankruptcy or in the hands of a judge or trustees, prohibited certain practices analogous in principle to these practices spelled out in section 5.

When the Emergency Act was passed it became the duty of the Federal Coordinator of Transportation to bring about compliance with these prohibitions incorporated in the Emergency Act, and in my capacity as Director of Labor Relations I had the general job of seeing to it that that particular responsibility was properly furthered.

Senator WAGNER. Mr. Beyer, may I emphasize right here—you know one of the attacks upon this bill is that, besides being vicious, it is entirely novel.

Mr. BEYER. It is not novel.

Senator WAGNER. Of course.

Mr. BEYER. Exactly. I would like to make that point, because what I would like to present, if I may, in advocacy of that very feature, is the fact that we have had that experience and as a result of that experience certain conclusions are already warranted, conclusions which have already been called to the attention of the Senate and the Congress.

The CHAIRMAN. The experience you have had was the result of voluntary action by employers and employees?

Mr. BEYER. Well, no; this is the result of action inaugurated by the Coordinator of Transportation.

The CHAIRMAN. Since that establishment was set up?

Mr. BEYER. Since that establishment was set up.

The CHAIRMAN. How much experience have you had?

Mr. BEYER. Well, since June. I cannot give you any quantitative measure of the experience.

The CHAIRMAN. That is voluntary to the extent that it has been done by the Coordinator himself?

Mr. BEYER. Well, the Coordinator called the attention of various carriers to certain practices which are now prohibited, which practices, as I say, are analogous to those spelled out in this bill.

Senator WAGNER. Prohibited where?

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Mr. BEYER. By the Emergency Railroad Transportation Act of 1933.

Senator WAGNER. By law?

Mr. BEYER. By law, exactly.

Now, if I may read from a circular issued to all carriers by the Coordinator under date of September 7, I will just read this first page:

The many complaints which I have received lead me to believe that one important feature of the Emergency Railroad Transportation Act, 1933, has been overlooked or misunderstood. Section 7 (e) makes applicable to all railroads certain paragraphs in the Bankruptcy Act which there apply to railroads operated by a judge or trustee. The result is that it is now unlawful for any railroad to:

(1) Deny or in any way question the right of its employees to join the labor organization of their choice.

(2) Interfere in any way with the organizations of its employees.

(3) Use its funds in maintaining so-called company unions.

(4) Influence or coerce its employees in an effort to induce them to join or to remain members of such company unions.

(5) Require any person seeking employment to sign a contract or agreement promising to join or not to join a labor organization. And if such a contract has been enforced, the railroad is required to notify its employees by an appropriate order that said contract has been discarded and is no longer binding on them in any way.

Now, those are the provisions in the Emergency Act.

The CHAIRMAN. What provision is there for enforcing it?

Mr. BEYER. The Emergency Act simply provides, similar to the processes which are laid down in the——

The CHAIRMAN. N.R.A.?

Mr. BEYER. No, not in the N.R.A.; in this act here, that the matter in the event of noncompliance may be referred to the Department of Justice for enforcement. If I may, I will try and confine——

The CHAIRMAN. That act went beyond the mere declaration of the rights of employees?

Mr. BEYER. Oh, indeed; yes.

The CHAIRMAN. And the difficulty with the Recovery Act is that it merely made a declaration?

Mr. BEYER. That is the difference, exactly.

The CHAIRMAN. And did not provide the way in which it should be enforceable. I would like you to give us the citation in that act of the method of enforcement.

Mr. BEYER. It is pages 3, 4; page 6, paragraph 12; and page 10 (13).

The Coordinator said specifically:

I deem it my duty to see to it, so far as possible, that all provisions of the Emergency Railroad Transportation Act of 1933 are enforced, including the provisions above described.

Senator DAVIS. Since the issuing of that order have any of the railroads discontinued any of their unfair practices?

Mr. BEYER. Yes; that is what I am leading to. I am just simply reciting that this was calling the attention on the part of the Coordinator to the carriers with respect to these unfair labor practices.

The coordinator then requested the carriers to fill out a questionnaire, which they are obliged to do under the act, and he requested them to do so under oath. The questionnaire was designed to develop the practices on the part of the carriers in respect to these prohibitions.

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The result of that was that the Coordinator in due time, and as a result of this survey, which it happened to be my privilege to conduct, issued a subsequent order—not an order, because these are not orders, but these were sent out in his capacity soliciting the cooperation of the carriers to comply with the law—in his final request of the carriers, which, incidentally, was aside from the so-called regional coordinating function, he requested them to comply with seven suggestions.

I first would like to say this, before I list those seven suggestions, this survey developed this fact, and I am sure this will interest the committee as to what the practices are that have been indulged in, the things which have been invented for the purpose of circumventing the right on the part of the employees to organize, for the purpose of denying them their opportunity to constitute themselves into organizations of their own choice, and, if I may, I will read these into the record for the information of the committee or else I can have them incorporated by reference. Which would you prefer my doing?

The CHAIRMAN. Will it take long?

Mr. BEYER. It will not take long.

The CHAIRMAN: I think they ought to be read into the record.

Mr. BEYER. These are the 12 practices which we discovered as a result of the activities of the carriers in respect to labor matters that they have been indulging in:

(1) Carrier officers have participated in or supervised, directly or indirectly, the formation of, and carrier managements have retained a measure of control over, constitutions, bylaws, and other governing rules of organizations of their employees.

(2) Carrier officers have supervised, or taken part in prescribing, the rules governing nominations and elections or other methods of choice of the representatives, committees, and officers of such organizations.

(3) Carrier officers have participated and continue to participate in such election processes, at times taking charge of the count of ballots.

(4) Carriers contribute or have contributed financial support, both directly and indirectly, to company unions.

(5) Carriers pay or have paid, directly or indirectly, the salaries, wages, or expenses of officers, agents, representatives, and members of committees of company unions when exclusively engaged in the business of such company unions.

(6) Supervisors, officers, and agents of carriers participate or assist or have participated or assisted in the collection of dues, fees, and assessments of company unions.

(7) Carriers extend or have extended special privileges, such as group insurance, donations to relief funds, and the like, the benefits of which are confined exclusively to members of company unions.

(8) Officers, supervisors, and agents of carriers, by written and oral statements, address or have addressed employees with a view toward encouraging or advising them to join, or not to join, particular labor organizations, and attempt or have attempted to dissuade employees from joining other labor organizations and otherwise from exercising free choice in the selection of labor organizations or representatives.

(9) Carriers and their officers and supervisors assess or have assessed demerits, made reductions in pay, increased working hours, demoted, discharged, and otherwise victimized employees for failure to pay company union dues, or to remain members of company unions, for failure to join company unions, or for legally soliciting membership in or joining labor organizations other than company unions.

(10) Carrier officers solicit and maintain or have solicited and maintained lists of names of employees who are members of one labor organization or another, or who have or have not paid dues, these lists being used for the purpose of administering discipline, or otherwise influencing or coercing employees with respect to membership or nonmembership in labor organizations.

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(11) Carrier officers deny or have denied wage differentials or other legitimate benefits, privileges, or opportunities incident to employment to certain employees, on account of membership or nonmembership in a labor organization.

(12) Carriers which have in the past required employees to sign a contract or agreement promising to join or not to join a labor organization have not notified the employees concerned by an appropriate order that such contracts have been discarded and are no longer binding on them in any way.

Carriers have in the past required employees to sign a contract or agreement promising to join or not to join a labor organization; in other words, a yellow-dog contract.

The CHAIRMAN. Does that complete the list?

Mr. BEYER. That completes the bill of particulars with respect to the practices which we have uncovered.

The CHAIRMAN. Now, may I inquire, are these evils or violations of the fair-labor practices general or isolated cases?

Mr. BEYER. They are not general. I am glad to say, on most railroads, and particularly with respect to certain classes of employees these labor practices do not hold. They are only with respect to certain classes of employees.

The CHAIRMAN. That was my impression.

Mr. BEYER. Yes; that is correct.

The CHAIRMAN. The Brotherhood organizations have been able to prevent those practices?

Mr. BEYER. Oh, yes; they have good so-called bona fide agreements with them and so have all of the other organizations in some cases and on some railroads, but on certain railroads the railroads have established company unions and have denied some classes of their employees the same privileges, if you want to put it that way, or have rather sought to prohibit some classes of their employees from enjoying the same privileges that other classes of their employees enjoy.

In all events, in the light of what that particular survey revealed, the Coordinator subsequently suggested to the carriers that they discontinue these various practices.

The CHAIRMAN. When was that?

Mr. BEYER. That was in December—comparatively recently.

The CHAIRMAN. December last? What response has been forthcoming?

Mr. BEYER. I think I can best answer that question by reading what the Coordinator himself has had to say on that score.

The CHAIRMAN. What are you reading from now?

Mr. BEYER. Senate Document No. 119, entitled "Regulation of Railroads."

The CHAIRMAN. That is his report?

Mr. BEYER. That is the Coordinator's first report.

The CHAIRMAN. To the Congress?

Mr. BEYER. To the Congress, yes. On page 61 he says:

The indications are that substantial progress has been made, and that further progress will be made, toward the correction of this situation. It will be closely watched and checked, however, by the section.

That is the section of labor relations.

If need for enforcement proceedings develops, and it appears that they will be hampered by ambiguities in the act, or by inadequate enforcement provisions, the Coordinator will ask Congress to correct these defects.

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I want to say, however, that it has not been necessary thus far in the case of most carriers. This is not entirely true, and I do not want to give the impression that compliance has been by any means 100 percent, but I am glad to be able to say that as a result of the efforts which I have reviewed substantial progress has been made.

Senator WAGNER. That progress would not have been possible, would it, Mr. Beyer, if in the Emergency Act the practices had not been prohibited?

Mr. BEYER. Most decidedly not. Nobody would have been inclined to do anything about it. It simply took some agency on the part of the Government with respect to the railroads to watch the situation and police it and call the attention of all concerned to the practices which were being indulged in and then to inaugurate such action with the end of view of discouraging and otherwise bringing about compliance with the provision of the act.

I would like to stress on that very thing, if I may, the need for approaching the problem in a more or less general way which our experience seems to indicate as a desirable way of doing it. A good deal seems to depend upon how you go at these things, and I think the approach should be statesmanlike and cooperative. In other words, there is a lot of education necessary. There is a lot of prejudice that shoots through these things, and with the best will and intention I suppose a lot of things being said about the bill and against it and about and against these unfair labor practices, grow out of prejudices which are perhaps sincerely felt. Now, being a little bit more specific with respect to the bill—if this is not in order, I will not feel aggrieved if you check me.

The CHAIRMAN. You are perfectly in order.

Mr. BEYER. The point being that if I can be of any service it will be by confining myself as much as possible to specific words.

On page 5, line 10, the word "wages" is used. I think it would be better to use the words "rates of pay" rather than "wages", so that that particular line would read: "representatives concerning rates of pay, working, and other conditions of employment." The point about it is that wages are rather an indefinite thing.

The CHAIRMAN. Would you keep in "hours"?

Mr. BEYER. Oh, yes, I beg your pardon; "hours and other conditions of employment."

The CHAIRMAN. You would say, after "hours", "working and other conditions of employment"?

Mr. BEYER. "Working rules and other conditions of employment".

The CHAIRMAN. So that line 10 would read:

Representatives concerning rates of pay, hours, working rules and other conditions of employment?

Mr. BEYER. Yes. Incidentally, that is very much the language which is now in the Railway Labor Act and which has stood the test of time.

The CHAIRMAN. Any other suggestions?

Mr. BEYER. Section 5, the very first word at the top of the page, line 1:

It shall be an unfair labor practice for an employer, or anyone acting in his interest, directly or indirectly—

Now, it has been our experience that it is not merely the manufacturer, which is a sort of a generic, broad item, but his officers and

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supervisors and the foremen who are the individuals who are oftentimes responsible. Take an employer who may have a change of heart, it takes a long time for that change of heart to filter down to the rank and file, to the supervisors, the foremen, or the superintendents. In other words, I believe the bill should bring out clearly and distinctly that it is not merely the employer or anyone acting in his interest, but also his specific agents, his officers, his supervisors, and his foremen who are liable under this act. In other words, they have got to be put on the spot if you want to bring about genuine compliance.

The CHAIRMAN. In other words, you would be more specific than the language "anyone acting in his interest"?

Senator BORAH. How would the bill read then?

Mr. BEYER. I would say that, "an employer, his officers, supervisors, agents, or anyone acting in his interest."

The CHAIRMAN. Very well.

Mr. BEYER. I understand that in line 12 there has been some question about the wisdom of the continuance of the word "initiate". Frankly, I consider that word is very essential. In other words, if by some process the employer can do a lot of initiating of labor unions and things of that kind, we would be back again where we started; in other words, we would be placing a premium upon the employer taking the initiative with respect to bringing about the organization on the part of his employees.

Now, the proviso in line 25, which reads:

Provided, That where a contract or agreement of any kind is or shall be enforced between an employer and a group of employees, the provisions of such contract or agreement regarding conditions of employment shall not, because of anything contained in this paragraph, compel an employer to observe similar conditions of employment in his relations with all his employees—

I understood you to say, Senator Wagner, that you had in mind taking that out?

Senator WAGNER. Yes; unless you persuade me that it ought to stay in.

Mr. BEYER. No; that is not the point. The object there is to permit crafts under certain conditions to make agreements covering the craft. I believe that the same purpose would be accomplished by inserting a sentence in section 207 (a), cross this out and amend section 207 (a) somewhat as follows:

The CHAIRMAN. What page is that on, please?

Mr. BEYER. Section 207 (a) is page 18, line 22:

To provide that a majority of the employees of any employer unit, craft unit, or plant unit, or other appropriate grouping, shall have the right to determine who shall be the representatives of the unit concerned for the purpose of making and maintaining agreements.

The CHAIRMAN. Where would you place that, at the end of line 22?

Mr. BEYER. No, at the very beginning. I would say:

Section 207(a)—

And start right off—

The majority of the employees of any employer unit, craft unit, plant unit, or other appropriate group, shall have the right to determine who shall be the representatives of the unit concerned for the purpose of making and maintaining agreements.

The CHAIRMAN. Then you would carry on?

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Mr. BEYER. Then I would carry on.

The CHAIRMAN. With the rest of the section?

Mr. BEYER. More or less. You will have to change the language a little bit, but I think that will accomplish the same purpose.

Senator DAVIS. Do I understand, then, that on page 5, line 25, you would strike out that proviso?

Mr. BEYER. I would strike out the proviso——

Senator WAGNER. Beginning at the bottom of page 5. It is not needed with the language he just gave.

Senator DAVIS. I mean, you would strike that out?

Mr. BEYER. I would strike that out. Now, I have some reservations about the next proviso, for this reason. On page 6, beginning with line 7, it is not inconceivable to me that by that proviso you may forever thereafter establish so-called company unions in certain situations, and it is going to be exceedingly difficult—I would just like to give you this warning—no matter how many unfair labor practices you spell out in this act, you are not going to be very successful in catching the employer in bringing about company unions. There are various devices and ways of doing it.

Senator WAGNER. They have not been so very astute about it so far. It has been rather obvious.

Mr. BEYER. They will get more astute.

Senator WAGNER. The legal staff will invent other means for them.

Mr. BEYER. Yes, exactly; so that I would be somewhat afraid that if you maintain this proviso you would in some respects be providing an incentive, and certainly a temptation, to some employers to bring about company unions, as it were, in their particular situation, and you will have a hard time proving they have been responsible for starting the company unions.

The CHAIRMAN. You recommend to the committee that that proviso be eliminated?

Mr. BEYER. I would not want to say it should be eliminated, but rather consider it from the angle that I made. This thing goes a step further because it brings about a condition whereby all employees may be required to join.

Senator BORAH. You mean by that that that is a voluntary agreement and you would not want to include in the unit agreement.

Mr. BEYER. That is absolutely true. Now, I would like, if I may, to say a few words about the National Labor Board as it is proposed to be set up by the act.

It strikes me that the National Labor Board, as the act proposes to set it up, is to discharge three, if not four, separate functions. The first function is the so-called police function, to see to it, in other words, that these unfair labor practices are prohibited; secondly, it is to stand by as a board of mediation in the event mediation is invoked; thirdly, if both parties agree, it may serve as an arbitral tribunal; fourthly, it may serve in an administrative capacity in a way, for example, of conducting elections and doing things of that particular kind.

Well, it is my judgment, speaking very frankly, that it would be wiser not to mix up these functions. It would seem to me that the thing which should be aimed at with respect to the National Labor Board is to permit it or enable it to function somewhat as the custodian of the Government's conscience with respect to the rights of

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employees in industry, and to delegate the mediation function and the arbitration function to other agencies.

The mediation function, I believe, should be delegated purely and simply to the United States Conciliation Service, and the United States Conciliation Service should, in my estimation, be recognized in law and should be dignified in keeping with, for example, the United States Board of Mediation as it applies to the railroad industry.

Now, if there has been one thing which has made the success of the United States Railway Act and the United States Board ot Mediation, it is this, that the United States Board of Mediation at no stage of the game has ever been put in the position, or could be put in the position of taking sides in any dispute. It was purely and simply a mediation board, and both parties, as well as Congress, when the act was enacted, went very much out of its way to see to it that the Board of Mediation was not put in the position at any stage of the game of having to decide an issue. Otherwise, its mediation functions would become more or less undermined.

Now, with respect to arbitration, the United States Board of Mediation does not serve in an arbitral capacity. Instead, in the event the two parties cannot agree the United States Board of Mediation may propose arbitration and if arbitration is proposed than an arbitration board is set up in conformity with certain practices laid down in the act, and the only thing that the United States Board of Mediation has to do with respect to arbitration is in the event the two parties to the arbitration cannot agree to select the neutral arbitrator, or, as the case may be, one or two.

Now, it seems to me that that same practice should be observed in this particular situation. Certainly one thing is true, and it has got to be watched very, very carefully, that if the Board is exposed to all kinds of requests it may soon become overloaded and bogged down. I think Mr. Lewis made that observation with respect to this mediation.

Certainly, as far as the mediation function is concerned, the United States Conciliation Service, properly amplified and dignified in the law and otherwise, and properly manned, which, incidentally, is very, very essential, would, I think discharge that function very admirably.

Now, if the suggestions which I make are considered seriously, their practical effect would be something like this, that the National Labor Board would stand by as the custodian, as I said, of the Government's conscience with respect to the employees; it would do, in other words, what the Federal Coordinator has been doing in the railway industry.

In the railroad industry the United States Board of Mediation has been free to step in and mediate at any stage. The Federal Coordinator has not at any stage of the game interjected himself other than where he might have been called in jointly or otherwise in the capacity of mediator. That thing has been left purely and simply to the United States Board of Mediation.

Now, with respect to the matter of arbitration of disputes, if both parties can agree—and I believe the act should be amended so as to bring this about—if both parties can agree to arbitration I think it would be wiser to set up independent arbitration tribunals every time there is an arbitration forthcoming of a certain magnitude.

The United States Conciliation Service in that event can stand by, can facilitate arbitration, and can participate in the selection of

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neutrals when they are asked to do so and when it becomes necessary to do so.

Now, then, let us assume for the moment that the arbitration in any difficulty is rejected and that some difficulties threaten; then I would say that perhaps the National Labor Board should again be prepared to stand by to step into the picture in this way: Before a stoppage can result, before a lock-out can happen, it is my judgment that there should be a period of, say, 30 or 60 days in which the status quo is maintained, during which time if, in the opinion of the National Labor Board, a serious difficulty is threatened, resulting in strike, working a hardship, or otherwise interfering with interstate commerce, a fact-finding commission should be appointed by the Board, or else the Board sit as a fact-finding commission, and determine the merits of the issue and assign the responsibility and make those facts known.

That, in other words, is more or less again in keeping with the general experience of the Railway Labor Act.

The CHAIRMAN. This is after arbitration has failed?

Mr. BEYER. Not failed, but has been rejected. After arbitration is accepted the terms of the arbitration agreement would simply be that both parties would accept them for a certain period.

The CHAIRMAN. But if it is rejected and a strike threatened, you would suggest the Labor Board stepping in and doing what you have indicated?

Mr. BEYER. Yes; stepping in and issuing a proclamation to the effect that the status quo be maintained for a limited period pending which time it would determine what the merits of the issue were and who would be responsible in the event of a failure.

I believe that the United States Conciliation Service should, as I said before, be dignified in its position, that instead of having conciliators pure and simple we should have a conciliation board perhaps of three.

I also consider that the National Labor Board, instead of being a tripartite arrangement, should be constituted—I think for this purpose a body of three or five would be sufficient, but the gentlemen appointed to the Labor Board should be absolutely nonpartisan and not the representatives of labor, not the representatives of employee interests, but should be high-grade individuals appointed by the President with the approval of the Senate and should be men well versed in the whole art of appraising labor disputes, and, in other words, be the Supreme Court in a way of the labor judiciary; standing by on the one hand, to see to it that labor is safeguarded with respect to its right to organization, and so forth, and in the event of a breakdown to act as a fact-finding commission or else delegate that authority to a special committee which may be appointed from time to time as the need may arise.

Senator WAGNER. Would you keep the supervision of elections?

Mr. BEYER. Yes, decidedly. All of these administrative functions should be concentrated in the hands of the Labor Board. The Labor Board should have access up to a certain point to records for the purpose of enabling the intelligent conduct of an election. I would do that by all means.

That constitutes the burden of my observations and remarks.

Senator Wagner has asked this question and I, among others, will volunteer an answer: In the first place, there is absolutely nothing in

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this bill as drawn at the present time that prevents or prohibits any employee from choosing any kind of labor organization or company union or otherwise. Second, there is nothing in this act that gives any American Federation of Labor organization or any other kind of an organization a peculiar advantage. All that it does is to give the employees absolute freedom of choice to be safeguarded under Government supervision, and, as I say again, it is in keeping with the practices that have been recognized as sound and healthy in every other country apparently except this one.

The CHAIRMAN. Thank you.

The CHAIRMAN. Dr. Leiserson.

STATEMENT OF DR. WM. M. LEISERSON, NATIONAL AUTHORITY ON LABOR PROBLEMS, FORMERLY CHAIRMAN OF OHIO UNEMPLOYMENT INSURANCE COMMISSION; AT PRESENT, CHAIRMAN PETROLEUM LABOR POLICY BOARD

The CHAIRMAN. Your full name, please.

Dr. LEISERSON. William M. Leiserson.

The CHAIRMAN. Your residence?

Dr. LEISERSON. Yellow Springs, Ohio.

The CHAIRMAN. You are listed here as chairman of the Ohio Unemployment Insurance Commission, and the present chairman of of the Petroleum Labor Policy Board. Is that correct?

Dr. LEISERSON. That is correct.

The CHAIRMAN. I assume you have been interested in labor problems for some time?

Dr. LEISERSON. Yes. I am professor of economics at Antioch College. I have been engaged in arbitration work, in labor disputes, ever since the war. I began arbitrating disputes in the manufacture of army clothing, and I have stayed in it, more or less, since.

I have not very much to add to what Mr. Beyer has said, so I won't take very much of your time. I think Mr. Beyer has outlined the real problem that requires the enactment of this bill.

I want to explain the need for the bill from the point of view of an administrator who has to enforce section 7 (a). Before I became chairman of the Petroleum Labor Board, I acted as Secretary of the National Labor Board, and the problem of section 7 (a) were the main problems that came up.

Senator WAGNER. And they still are the main problems, professor?

Dr. LEISERSON. Yes.

Senator DAVIS. And, I might add, always will be.

Dr. LEISERSON. Yes. Well, of course, the problems of administration will always be there, but the need for the specific unfair labor practices provisions that are enumerated in section 5 were well explained by Mr. Beyer. If you have a law, such as the Emergency Transportation Act, which specifically makes certain things that may not be done in interfering with the employee's right to organize, makes them specifically illegal, then the law can be enforced. If, however, you leave the term general, the right to organize, and do not specifically prohibit the things that the administrator or the Coordinator of the Railroads are able to prohibit, then it is not possible for Congress' intent to be carried out, that labor should have the right to organize.

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Now let me illustrate how that happened. As soon as section 7 (a) was adopted, industries that previously had objected to employee representation plans, that are otherwise called company unions, suddenly began to organize them. Now, there had been sincere advocates among the industries for many years of employee representation plans, but most of the industries that are now fighting the right of labor to organize opposed the formation of employee representation plans, for unions, on the ground, as they told their personnel managers, "What you are doing is organizing our employees, and the first thing you know they will go over to the union." And so they were as much opposed to company unions as they were to other unions.

As soon as section 7 (a) was adopted, the National Organization of Employers held conferences and worked out plans of employee representation and distributed them throughout the industry, and beginning with July those plans were imposed on the industry.

Now let me read you two or three things that they find essential in every one of those plans. Here is a typical plan, and it appears in practically all the employee representation plans. Here is one with regard to representatives of the employees:

> Any employee who, on the voting date, is at least of the age of 21 years; who is an American citizen, or who has secured his first papers for naturalization, and who has been in the active and exclusive continuous employ of the company for a period of at least 1 year, shall be eligible to serve as a representative of the employees in elections.

Now, no employee group, when they make up a plan of representation, will ever put that in. Now whether it ought to be in or ought not to be in is not a question. Congress did not so limit the right of representation. Congress said an employee who is 20 or 19 or 18 has a right to choose his representatives for collective bargaining, and did not say that he has to be 21. It did not say that he has to work for the company. The companies want that, and that is what is meant by the vague term "company union."

Collective bargaining means that the employees want to sell their labor cooperatively and not individually. It is cooperative marketing. Now, obviously if a thousand wage earners chip in together to market their labor cooperatively, they want a highly trained salesman to sell their labor, or they might want a highly trained statistician or economic expert, or a personnel manager, the way the companies do. But the companies insist that you cannot have a personnel manager, they say, "We are the only ones that have the right to have a personnel manager. You cannot have your own statistician. The only one that we will bargain with is a representative who works for us, that we can fire."

Senator DAVIS. It is the old story of the check weigher at the mine over and over again.

Dr. LEISERSON. Yes. That is the first thing. The next thing is the qualification of voters. The company plan says:

> All employees of the plant or company subdivision who, on the voting date, are at least 21 years of age and are in the active, regular, exclusive service of the company shall be eligible to vote.

Senator DAVIS. Aren't there many skilled mechanics who are 17, 18, and 19 years of age?

Dr. LEISERSON. Yes. It varies. It does not make any difference whether they are skilled. The semiskilled machine hands are mostly

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younger fellows, running from 18 to 21 and they make up the majority in the mechanized industry.

There is always in the plant an amendment provision, and the amendment provides this: "This plan may be amended or terminated by the council" which is a joint organization of employers and employees, "by a majority vote of all the duty elected employee representatives, together with the majority vote of all of the management representatives." In other words, if the management representatives object to the amendment, the employees' right is entirely taken away. The management-appointed representatives have the way with respect to changing anything that is in this plan. If, for instance, the employees should discover that they cannot bargain decently and fairly without an outside representative and they want to change the plan, amend it, to elect one, they can be stopped by the appointed representatives of the management not agreeing to it.

Now when you hear the talk about company unions, this is what is in mind: The companies prepare these plans, they put them in since July, and they claim, "This is the choice of our employees." Now technically I should say that if the employees prepare this kind of a plan, and this is what they want, I think under the law they have a right to have it. But it is quite a different thing for the companies to come in and prepare the plan. They send their personnel manager around to talk to the employees at the meeting. We have had cases where the employees wanted to stay home and not vote and the company would send trucks after them, making them come and vote for this plan under that kind of pressure.

Senator WAGNER. And, Doctor, isn't it also true that if the foreman comes along and says, "I want you to go over there and vote", the man knows if he does not his position would be in jeopardy. They have actually been discharged for that.

Dr. LEISERSON. If there were any sincere belief on the part of the employers who foster this plan that what they call the outside union was merely intimidating the employees, and that the employees prefer this kind of a plan, why, the employers would say to the National Labor Board, or to any other governmental agency, "For Heaven's sake, come in here and hold a secret election and let our employees vote without intimidation, so we can hold these elections without intimidation." The trouble is that the people who have imposed these plans on the employees know that if a secret election were held the plans would be repudiated.

Take the position of the automobile industry at the present time. They raised the question as to whether the whole issue is not a monopoly for the American Federation of Labor. A year ago there was a strike in the automobile plants in Detroit. It was run by an organization, a bona fide organization of employees known as the Mechanics' Educational Society. That organization was against the American Federation of Labor, and it was against the company union. It was an exercise of the right of the employees to choose their own organization. The employers who are now talking in New York about the American Federation of Labor bound themselves not to make an agreement with this independent organization that anti-American Federation of Labor, because what they did not want is the right of the employees to have the same rights that the employers have to sit in New York and decide what wages shall be paid in

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Detroit factories. They do not want the employees to be able to do what the Railroad Brotherhoods are doing here, to come down to Washington and have their conference and select their capable men to bargain for them.

That is the real issue. The issue is over section 7 (a). I would like to point out that the whole Recovery Program cannot operate with the employers given the monopoly right to fix wages, to combine to fix wages, without consulting the employees, without giving the employees the same right to parallel the employers' organization. Therefore you have to have in your bill, or in your law, as the emergency railroad law has, a list of things that the employers may not do, and the things that Mr. Beyer pointed out, that the administrator have the right to issue, the Coordinator of Railroads have the right to issue, and the Labor Board has to have the right to issue that same kind of a statement prohibiting those practices. It is questionable, at least, whether the Labor Board has that right now.

Now there are one or two things in addition to Mr. Beyer's statement that need to be pointed out. There was a witness here a few days ago who called the attention of your committee to subsection (2) of section 5.

Senator DAVIS. What page is that?

Dr. LEISERSON. Page 5. He thought that the first part of that section is all right, but the second part, which says, "or to fail to exert every reasonable effort to make and maintain agreements with such representatives", and so on, he thought that that is impractical and would not work. That is copied from the Railway Labor Act, where it has been in since 1926, and the Railway Labor Act was constructed by the management of the railroads and the Railroad Brotherhoods together, and they brought it down to Congress. They knew that if you gave the right to labor to organize and you did not have a corresponding obligation of the employer to deal with that entity, that it would mean nothing at all. Again and again the employer says, "All right, we will meet their representative", and they meet him and say, "We cannot agree to anything."

Senator WAGNER. That actually came up in the National Labor Board. We are not talking about fictitious things.

Dr. LEISERSON. No; that happened almost every day. They say, "We are always ready to meet our employees, or their representatives, or any groups of them", and they think as the law reads now that is all they are required to do. But in the Railway Labor Act it says, "It shall be the duty of all carriers, their agents", and so on, "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes", and so on.

The CHAIRMAN. Will you give us that citation?

Dr. LEISERSON. That is section 2 of the Railway Labor Act, that was adopted by the Sixty-ninth Congress, No. 257, H.R. 9463.

Now, I think it is exceedingly important that it should stay in the bill it should not be thrown out on the theory, "Well, you cannot enforce that anyway." If we can say, if the administrators of the law can say to an employer, "Now you really haven't tried to agree with them, so that we will avoid a strike. They have elected their representatives. Now sit down and make an earnest effort, the way the laws says." You will avoid many disputes in that way.

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Senator WAGNER. Before you leave that subject, I might call attention to some testimony in this way automobile situation which was adduced on the same question. I asked the representative who had been selected by the company union whether he had anything to do, together with the other representatives, in the fixation of the wages that were being paid, and he said no. I asked him if he and his committee had ever attempted to negotiate a collective bargaining agreement on behalf of the workers, and he said no.

Dr. LEISERSON. Usually they do not. They merely elect representatives in this way. Of course the employee representative whose job depends on the employer, especially at a time like this, with so many people out of work, he isn't going to talk to the employer like a high-powered salesman, nor is he going to talk to him like the wage experts and personnel experts, outsiders, who do not belong to the industry at all. They go to colleges and hire psychologists as personnel managers to deal with the ordinary workman, then they turn around and say, "You workmen are not allowed to hire a fellow like we hire, to bargain with us. We do not think we want it. We think it will give somebody a monopoly of labor if you do that sort of thing."

Now the next thing, subsection (3) says the employers shall be prohibited "To initiate, participate in, supervise, or influence the formation, constitution, bylaws", and so on. Now that is absolutely necessary because of what I have just shown you here in this plan. There was a conference at Princeton University this last summer where the personnel managers of the largest industries got together for what, in my judgment, was to work out plans for circumventing this law. I was there at the meeting and I questioned the morals of that kind of a meeting. Can these people get together to work out a form of representation and then spread it throughout the country, impose it on the employees, and then publish statistics about the growth of employee representation plans? But they answered me, and they were sincere in their answer, that "The law gives us the right to educate our employees. It does not prohibit it. We are merely trying to assist them."

Now unless you put this in, to prohibit any such activity, you cannot expect common wage earners, who are not college men, to compete with these trained executives, hired by the companies at high salaries, in having their rights protected, and it is that lack of protection of right that causes disputes, strikes, and unrest; it is that kind of unfair dealing and not some outsider.

I have not found anywhere where an employer said to the employee, "You go ahead and organize your own union. Call in the A. F. of L. fellows, call in the company union fellows, call in anybody, it is none of my business; you go ahead and organize your own union", I haven't found in any such places any great unrest. The employees have sometimes joined A. F. of L. unions, sometimes voted down A. F. of L. unions, and set up their independent unions, but it was their own and the purpose of this law is to see that they have that.

Senator DAVIS. Doctor, have you got any suggestions as to the language to be used in this particular section?

Dr. LEISERSON. I think on the whole the language here is all right. I think you might leave the word "policies" out, for instance. An employer might want to discuss with an employees' organization,

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policies, and the question might arise. But I don't think that is particularly important. As it stands employers should not be permitted, or any of their agents, to initiate or participate in or supervise in the formation of the constitution, bylaws, and governing rules. Just how would the employer like it if the A. F. of L. or the Railroad Brotherhoods insisted that the trade associations that they belonged to shall have a certain constitutional provision that the unions insist on? They would say, "It is rotten, it is unfair, it is none of your business." Certainly it is none of the employers' business as to what kind of constitution the employees have for their own organization.

I agree also that that proviso about discrimination, beginning on the twenty-fifth line, ought to go out.

Now one thing about the constitution of the board. Mr. Beyer pointed out, what is a very important thing, that this board would have to enforce a law; therefore, the suggestion that the board have partisan representation on it, from the point of view of half labor and half capital, with an impartial chairman, is essentially wrong from an administrative point of view. If the law is to be enforced, the person has to represent the Government only. He is sworn to see that the law is enforced. Now when you have a bipartisan board enforcing a law, they cannot get away from the idea that they have been fighting it out in Congress, to see what should get into this law. Now you know how they fought on section 7 (a). The same people that were fighting on that will get into the bipartisan board to administer the law, with the result that they will continue their scraps that presumably were settled by Congress, and the result is that you will get a confused enforcement of the law, and there will often be a compromise on how far they will go in enforcing the law.

Senator DAVIS. Wasn't that the trouble with the old Railroad Labor Board?

Dr. LEISERSON. That is why the old Railroad Labor Board collapsed.

Senator DAVIS. That is right.

Dr. LEISERSON. Therefore I think it is a mistake. Now it may be all right to put on advisory boards of employer and employee representatives, of employer and employee organizations, for the purpose of informing the Government officials on detail problems in various industries, to sit as advisory members from time to time, but to put the enforcement of the law into a bipartisan board, is, in my judgment, a very serious mistake from an administrative point of view.

On the other hand, this same board is going to have functions of conciliation, arbitration, the administrative machinery of election. That is part of the enforcement. It belongs together. They may have elections, sometimes they may have to certify these employees. If there is a strike in a plant where a thousand people are working and 900 go out, you do not have to have an election to determine what the 900 want. They are telling you. It is silly to go through the election business then.

Now, I do not quite agree with Mr. Beyer's suggestion that all of the conciliation work should be thrown back to the Department of Labor, and that the board should have no conciliation function. I think the United States Conciliation Service in the Department of Labor needs to be strengthened, and most of the smaller disputes

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that come to the National Labor Board should be handled by them in the first instance.

There are hundreds of small disputes where a conciliator goes out, and he can settle them without any trouble. But when a big dispute comes along, it is not on the enforcement of the law, it is a dispute over and above the law, you need to have, in that case, the next step after the conciliator fails, because the job is too big. At that point the prestige of a national board, in my judgment, might well be enlarged this way: You have three members, then have the Secretary of Labor and Secretary of Commerce as ex-officio members, because this isn't the Labor Department work, this isn't the Department of Commerce work, it is where the two get together, and this national Board, with its prestige, can have examiners to hear cases, or their own members can act as examiners, or themselves act as conciliating bodies, in the bigger disputes.

Now only one thing more in conclusion, and that is with respect to the absolute need for this law, especially the provisions of section 5, having to do with the unfair practices, the absolute need for that in the recovery program, if it is going to succeed. The recovery program gives the right——

Senator DAVIS. Will you make the first part of your statement again, Doctor?

Dr. LEISERSON. All right. In conclusion I want to point out the absolute need for the enactment of this act, especially of section 5, that is the one prohibiting unfair labor practices—and while I am on that, there ought to be one more thing: Prohibiting the use of spies in labor disputes.

You will find the codes have a provision, many of them, the steel code, particularly, has a provision that no member of the code shall employ anybody to get secrets from a competitor. The Secretary of Labor very properly pointed out at the public hearing on that code that employers will use spies to get business secrets from each other; they will not hesitate to use spies in labor organizations. And there is nothing that causes unrest so much as when I, a workman at my bench, do not know whether the other fellow at the next bench is a spy employed by the employer. That is an unfair practice, whether it is labor or business, and you might well include that with the list of unfair practices.

Now the code gives the right to competing employers to get together and make rules of fair competition, which include price-fixing in many cases.

Now there are two great dangers. One is that they will have a monopoly, they will make a monopolistic rule. So the law specifically prohibits monopolistic rules with respect to pricing. But when employers get together they also make monopolistic rules with respect to wages, they decide what the wages shall be among themselves, they bind themselves not to pay anything else, and then turn around and say, "We will not recognize an organization of the employees." They say, "They must compete with us individually." And all the cutthroat competition is good when it comes to labor.

Now look what the Government does. This is Bulletin No. 7 of the National Recovery Administration Manual for the Adjustment of Complaints, and on page 4 the Government tells the world, "It

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is the policy of N.R.A. to build up and strengthen trade associations"; that is, trade unions of employers. If anybody wrote that it is the policy of the Government to build up trade unions, that fellow would lose his job right away. As if there was something wicked about building up a trade union? "It is the policy of the Government to build up and to strengthen trade associations", which means trade unions of employers, "throughout all commerce and industry." In other words, to set up a monopoly like the automobile members say the A. F. of L. is a monopoly, through all commerce and industry, you are going to have trade unions of employers so that they may perform all code administrative functions, they may get together and act as a unit.

Now it is well to recall what that canny Scotchman, Adam Smith, said, that "We must never let either employers or laborers combine", he said, "for it is well known that when business men get together, even for merriment and diversion, the conversation soon turns to prices and ends in a conspiracy against the public." I think there is a great deal of truth in that statement. On the other hand, we cannot get along nowadays with that kind of a suspicious attitude, either toward business or toward labor. We cannot have the kind of competition that Adam Smith wanted, the cutthroat, raw, he-man competition that he wanted. We have got to have regulated control of competition, and the Government properly so provides. Then it goes on to say, "A trade association division has been established in N.R.A. to carry out this policy and to advise and assist industry in the performance of these functions." The Government spending the taxpayers' money to help organize trade unions of employers.

Now the law specifically contemplates that the Government will do the same for labor, and we seem to forget that there is a section 7 (b) in the National Recovery Act.

Senator DAVIS. What is the number of the Government bulletin that you read?

Dr. LEISERSON. That is no. 7, Manual for the Adjustment of Complaints, of the N.R.A.

Now, section 7 (b) of the National Industrial Recovery Act instructs the President to exert his efforts—and by the President, of course it means the Administrators under him—to help employers and employees to arrange collective bargains and make agreements. Now, that was the purpose of it. Now, the employers come along and brazenly tell you, "We will not deal with any organization of our employees. We will not recognize their right to an association and to deal with that association as an entity", when the law contemplates it. Now, if you tell them that they are violating the law on that point, they say, "No; there is nothing in here that requires us to negotiate an agreement." Therefore, you have got to have this provision in the act, that they must exert every effort.

There is nothing to prevent us from doing these other things, therefore you have to put these lists of unfair, prohibited practices into a law, and if you do not, I think the danger to the whole program of National Recovery is that you will not have industrial self-government. The theory of industrial self-government, as I have tried to explain to employers, is, "You have a right to govern yourselves, but doesn't the law give the employees the same right to govern themselves and make rules of fair competition among themselves?" "Oh, no; the law does not do that", they say.

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Now, it seems to me, unless you put that in, you are making it possible for the employers of the country to organize nationally into automobile chambers of commerce, into steel institutes, into various organizations, to dictate collectively wages to individuals who must, of necessity, bargain against each other in a cut-throat way; and then they may organize themselves into a national industrial conference board, or chamber of commerce, or anything, and these must be recognized, but they will not stand for the same right to labor.

If you want anything more calculated to bring unrest, disorder, discontent, and failure of the whole program than that, I do not know how you can figure anything out better than that. You have the chance here to stop that and make the National Recovery Act operate by explaining that this section 5 of the unfair practices, that section 7 (a) was meant to give the employees exactly the same rights that the employers have.

Senator DAVIS. Doctor, what would you think of having a division of conciliation and arbitration for the transportation industry in the Department of Labor, and the Railway Labor Board come under that with the supervision of this particular board that is now in this Wagner bill?

Dr. LEISERSON. Well, I haven't given any thought to the matter. It might be desirable to unify those things, I don't know

Senator DAVIS. That would mean one board, then.

Dr. LEISERSON. It might be too much for one board. It is almost too much for the National Labor Board, as it is, when you have so many industries to deal with.

The CHAIRMAN. Have you considered whether or not this bill ought to be restricted to businesses where there is a limited number of employees?

Dr. LEISERSON. How do you mean "a limited number"?

The CHAIRMAN. One of the criticisms made to the bill was that it applies to a man who has one employee.

Senator WAGNER. No; it is 10.

Dr. LEISERSON. You cannot have collective bargaining very well where there is only one employee.

The CHAIRMAN. Senator Wagner suggests it is 10 employees.

Dr. LEISERSON. Well, of course I did not know about that. You might want to make an exception, but I would not except the small plant. We have a notion that the big problems of labor and the meanness of the relation between employer and employee comes only in the large plant, when the small employer knows every man by his first name. Yes; but what names does he call them? In handling labor disputes, you have more difficulty, more serious difficulties in smaller plants where the personalities enter into it, and where you have not the standard labor practices, than in the larger plants. You might want to except a small farmer with a few employees, but you certainly would not want to except him in a situation like the one you have out in the Imperial Valley now, with a great number of people working in agricultural employment.

The CHAIRMAN. As the bill is drafted, there is no limitation at all.

Dr. LEISERSON. There might be an exception made in certain cases.

The CHAIRMAN. Senator Wagner's impression was it was limited to 10. Your answer to my question is you would apply the principles of this bill to the small employer as well as the larger or big employer?

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Dr. LEISERSON. Yes; but I would say where 1, 3, or 5 employees were employed, perhaps 10, you might take it out, but in the main I would not except the small employer, what is ordinarily known as a small employer.

The CHAIRMAN. Thank you for your presentation. Is Mr. Witte here?

Mr. WITTE. Yes.

The CHAIRMAN. Mr. Witte, could you come tomorrow morning?

Mr. WITTE. Unfortunately, I have got to get back to Madison.

The CHAIRMAN. How long will you take?

Mr. WITTE. I will make it very short.

The CHAIRMAN. Very well.

STATEMENT OF EDWIN E. WITTE, LABOR EXPERT, PROFESSOR OF ECONOMICS, UNIVERSITY OF WISCONSIN

The CHAIRMAN. Will you state your full name, please?

Mr. WITTE. Edwin E. Witte, professor of economics at the Univeristy of Wisconsin.

The CHAIRMAN. You live at Madison, Wis.?

Mr. WITTE. I live at Madison, Wis.

The CHAIRMAN. How long have you been a professor of economics at the University of Wisconsin?

Mr. WITTE. Well, I have been connected with the university since 1920, but I was chief of the Wisconsin Legislative Library; secretary of the industrial commission, before that.

The CHAIRMAN. Did you succeed Mr. McCarthy?

Mr. WITTE. I did; yes, sir.

Because of the lateness of the hour, I will not go into the arguments at all as to why I am appearing in support of this bill. I only want to say that there evidently is a very great misunderstanding of the provisions of the bill. I was approached by a Wisconsin employer on Saturday when I left, in regard to this bill. The impression seems to be that this bill somehow outlaws plants unions. Of course it does nothing of the kind. The impression seems to be it establishes a compulsory closed shop. It does nothing of the kind. It legalizes voluntary closed shop agreements. Every local of every State in the Union, including even the State of Massachusetts, where the law has been pretty restrictive on activities of labor unions, the voluntary agreement for the closed shop is legal, even in Massachusetts.

The CHAIRMAN. But it is comprehensive and broad, it is liberal in its legislation for the improvement of labor conditions generally.

Mr. WITTE. I certainly would acknowledge that, Senator. Of course it does not give the American Federation of Labor domination of industry. The very people that make that claim are also calling attention to the fact that only 10 percent of all employees are in the American Federation of Labor, and the situation, as I see it, is much more likely to be a situation in which the American Federation of Labor unions will be unable to function in many of the major industries of the country, unless legislation of this kind is enacted. It means not the domination of the American Federation of Labor, but giving the American Federation of Labor unions a chance.

As I see it, the essential provisions of the bill are just three: Recognition of collective bargaining, and the corresponding duty of the employers to try to arrive at agreements; second, the employers are

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not to interfere with labor in self-organization; and, finally, it sets up machinery for the interpretation and enforcement of these provisions.

The employers, as Dr. Leiserson well stated, are insisting on free self-regulation in industry, and yet, illogically, they would not permit self-organization on the part of the employees. I endorce every statement that has been made here by Dr. Leiserson, and wish to be recorded strongly in support of this bill.

What I mainly wish to do is to call attention to certain amendments that have not been brought to your attention before, that I I think should be inserted in this bill. The major amendment that I would suggest, I would insert on page 23, section 304, and the purpose of the amendment or suggestion is to prevent the employers who have set up company-dominated unions from barring elections or from claiming that elections are barred. In paragraph (b) you say:

> Any term of a contract or agreement of any kind which conflicts with the provisions of this Act is hereby abrogated, and every employer who is a party to such contract or agreement shall immediately so notify his employees by appropriate action.

I submit that in practically all cases there are no contracts or agreements. That hasn't been what company unionism has meant. Company unionism has not culminated in agreements at all. It certainly is doubtful whether this is effective in barring, what appeared to me to be the plain violation of the intent of section 7 (a), from being now made a permanent bar against labor organizations. I suggest, consequently, an insertion of a new paragraph, something like this:

> (c) Any election on the adoption of any employee representation plan or for the election of representatives of the employees for purposes of collective bargaining held subsequent to June 16, 1933—

I am inserting that date. That is the date of the Industrial Recovery Act, when section 7 became effective—

> and prior to the effective date of this Act in relation to which the employer was guilty of any of the unfair labor practices specified in subsections (3) and (4) of this Act, shall not be binding, but the National Labor Board shall have authority to ascertain the wishes of the employees as to collective bargaining and the selection of representatives as provided in section 207.

That is to determine the wishes of employees in the relation of collective bargaining and in the selection of representatives.

With the very phenomenal development of the so-called "company" unions since section 7 (a) was enacted, there is grave danger that section 7 (a) will become the greatest travesty on labor that has ever existed, if these arrangements are now, in a sense, validated and no provision is made expressly abrogating them.

Next I want to raise another point which to me is very essential, and that relates to the question of whether section 5, as it stands, covers the situation that is most prevalent in this whole field of company unionism, that loose organization, if you can call it an organization, that has no members, no dues, that is merely a method of electing representatives. I call your attention to the fact that in subsection (5) of section 3, the definition of labor organizations, you speak of the term "labor organization" as meaning—

> any organization, labor union, association, corporation or society of any kind, in which the employees participate to any degree whatsoever, which exists for the

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purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, or hours of employment.

I am not certain that that includes what is known as the "employee representation" committee, which is the most prevalent form of company union. There are two forms of company unions, the employee association and the employee representation committee, a mere election of representatives, no organization whatsoever, and, of course, no dues. I am not at all sure that the employee representation committee is covered. That doubt arises further because in other places in this act you distinguish between labor organizations and representatives, you distinguish in subsection (4) of section 3, "The term 'representatives' includes any individual or labor organization", evidently referring to these employee representation committees.

Now, in section 4 on page 4, you say, "Employees shall have the right to organize and join labor organization, and to engage in concerted activities, either in labor organizations or otherwise." You imply that there is something besides a labor organization that engages in these collective activities.

Similarly, in subsection (2) of section 5, you speak only of representatives of the employees, and I submit that there is danger that your language does not include this most prevalent form of company unionism that we now know, the employee representation committee.

Senator WAGNER. Will you suggest the word which ought to be added there?

Mr. WITTE. I am suggesting two alternatives, Senator. In the definition of "labor organization", at the end, you could insert the words:

This term shall include every plan for the selection of employee representatives for purposes of collective bargaining, although there is no definite organization of employees.

Or, preferably, this is my own preference, my own preference would be to distinguish between labor organizations and employee representation committees. I think it is strained language that calls an employee representation committee an organization of any kind, and the sections I have called your attention to do not so call it. They refer to it as something else besides an organization. I would define an employee representation committee something in this fashion:

The term "employee representation committee" means any committee or group of representatives of employees not a labor organization, who are elected to confer with the employer or representatives of the employer concerning grievances, labor disputes, wages, or hours of employment.

If that alternative were adopted you would have to insert in subsections (3) and (4) on page 5, following "labor organization", the words, "or employee representation committee", which I think is really what this is. It is not a labor organization at all, and it is a confusion of terms to define it as such.

The CHAIRMAN. Is that a frequent agency designed for employees?

Mr. WITTE. That is the principal agency of company unionism. The employee association type of company union is very, very rare, and practically all of the new company unions that have been started since the National Industrial Recovery Act was passed, are not unions in any proper sense of the term at all, they are loose plans for the election of representatives only.

The CHAIRMAN. And this language embraces them?

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Mr. WITTE. I think so. That is why I am submitting it, Senator.

The CHAIRMAN. Yes.

Mr. WITTE. My final point, I endorse some of the amendments suggested here before, but I am calling attention to some that have not been, perhaps, brought to your attention. I am concerned with this question of majority representation that is raised now in the automobile difficulty, and it has been raised in other concerns. As I understand it, this is what the automobile man says, "We will deal with the representatives of those of our employees who want to join the labor union, but we must have a list of those employees."

The CHAIRMAN. Any labor union?

Mr. WITTE. Any labor union. "We will deal with those of our employees who wish to deal through these company unions, we will deal with them through the company unions." They do not say they will deal with the Communist unions, but I presume that is inferred too. "We will deal individually with such employees." They want to deal individually, rather than collectively. Now, that may, at first blush, seem a fair position, but I submit, gentlemen, that exactly parallels the situation which would prevail, if, instead of you gentlemen here representing your respective States, all of the people who voted for your opponents were represented by them, and if, for each of you, instead of you all being here, all of your opponents here were representing the people that particularly preferred them.

Moreover, this is not even quite parallel to that. This says, "You want to all meet together. We will meet one group here; we will meet another group here; we will draw bargains with each group." In industrial government, just as in political government, there has to be majority rule, when it comes to actual government. The only type of representation that individuals can have is the right of petition. The right of petition, the right to lay grievances before Congress is a right that any individual and every group must have. Similarly, in industrial government, the right of petition, the right to lay grievances before the employer seems to me is a right that every group should be accorded, and every individual. As a matter of fact, that is all the employers that are promoting the company unions have in mind. They only have the right to petition in mind; they do not have the collective bargaining in mind, in the sense of making laws for the industry through the joint action of employer and employee. That is not contemplated at all. What is contemplated is merely a right to present a point of view.

That is proper, but if it comes to determining conditions of employment by making some kind of rules of governing wages and hours, there obviously has to be a determination on the basis of majority rule, or you have pure anarchy, just as you would have in government.

To meet that situation, I suggest a possible change in subsection (2) of section 5. I would split that section into two parts. In section (a) I would make it an unfair labor practice to refuse to recognize representatives of any group of his employees who have not been duly selected by them to take up with the employer any grievance or any matter concerning their employment.

It certainly is placing no burden on the employer to meet with representatives of any group of employees that have a grievance or wish to take up some matter with him, but obviously he cannot bargain with every group of employees or with individuals. There

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cannot be any sort of industrial government whatsoever under those conditions. Consequently I would insert:

(b) To refuse to make every reasonable effort to make and maintain agreements with representatives of a majority of his employees concerning wages, hours, and conditions of employment.

With that I would amend section 207 on pages 18 and 19, something as Mr. Beyer suggested.

The CHAIRMAN. Will you give us the language there?

Mr. WITTE. Possibly Mr. Beyer's language was preferable to mine, but I would insert in lines 22 and 23, I would substitute for the word "are" the words "should be recognized as" and I would insert before the word "employees" the words "a majority of the employees."

In any dispute as to who should be recognized as the representatives of the majority of the employees, the Board is to have the deciding voice.

I would leave this in the bill the way it stands, that the Board may determine whether the proper method of representation is the employer unit, the craft unit, the plant unit, the industry unit, or any other appropriate grouping. But in any event, if a bargain is made, if you have in mind making some form of industrial government you must recognize that there cannot be bargaining unless you recognize that fundamental principle of democracy, majority rule.

Because of the lateness of the hour, I won't add anything further, except I want to endorse what Dr. Leiserson said with reference to adding a section to bar the spy. I call your attention to the fact that the spy system in industry, the industrial espionage is unquestionably widely prevalent, probably not quite so prevalent as it was following the World War, but it is again being revived on a very large scale, and the industrial espionage is a practice that business frowns on in connection with business competition, and it certainly is a practice which promotes violence, it promotes unrest, which is indefensible. I have nothing further to say.

The CHAIRMAN. We thank you. Is Mr. William J. Long present?

Mr. LONG. Yes, sir.

The CHAIRMAN. I understand you are here with seven others of the Weirton Steel Co. workers, that you are in the city on some other mission than attending this hearing, but that you desire to be heard by this committee. Am I correct in that statement?

Mr. LONG. Yes, sir.

The CHAIRMAN. Will you come forward, please? Will you be satisfied, if we refrain from attendance in the Senate and give you time to be heard?

Mr. LONG. Yes, sir.

STATEMENT OF WILLIAM J. LONG, PRESIDENT WEIR COVE LODGE, NO. 30, AMALGAMATED ASSOCIATION OF IRON, STEEL, AND TIN WORKERS

The CHAIRMAN. Will you state your full name?

Mr. LONG. William J. Long.

The CHAIRMAN. Where do you reside?

Mr. LONG. Weirton, W.Va.

The CHAIRMAN. Who was your employer?

Mr. LONG. The Weirton Steel Co., a subsidiary of the National Steel Corporation.

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The CHAIRMAN. What is the particular work that you do?
Mr. LONG. I am a tin plate roller by trade.
The CHAIRMAN. You have six other representatives with you?
Mr. LONG. Yes, seven.
The CHAIRMAN. Seven altogether?
Mr. LONG. Yes, sir.
The CHAIRMAN. What are you here for?
Mr. LONG. We are here, Senator, for one thing, to find out why our case, the case we had before Senator Wagner's Labor Board, the Labor Board that Senator Wagner is Chairman of, why it is being delayed.
The CHAIRMAN. In other words, you had hearings because of some difficulty you had with the company, some difficulty between your employer and his employees?
Mr. LONG. Yes, sir.
The CHAIRMAN. Before Senator Wagner's labor board?
Mr. LONG. Yes, sir.
The CHAIRMAN. And the decision has not yet been made?
Mr. LONG. Yes, sir.
Senator WAGNER. Oh, yes; it has.
The CHAIRMAN. The decision has been made and you want to find out why the order of the board has not been enforced?
Mr. LONG. Yes, sir.
Senator WAGNER. The matter is now before the Attorney General.
The CHAIRMAN. Have you had a strike at your plant?
Mr. LONG. Yes, sir.
The CHAIRMAN. How long ago was that?
Mr. LONG. It terminated on October 16; it began on September 24.
The CHAIRMAN. Are the men working at the plant now?
Mr. LONG. Yes; all but about 600 that are on the streets today, who are victimized through the company union domination.
Senator WAGNER. You went back at the request of the Labor Board when it rendered the decision?
Mr. LONG. Yes; when they signed an agreement.
Senator WAGNER. You terminated the strike?
Mr. LONG. Yes, sir.
The CHAIRMAN. How many are there employed at that plant?
Mr. LONG. Approximately 13,000 in the three plants, together with 5,000 in Ecorse, Mich. We have an organization there.
The CHAIRMAN. What is the nature of the organization that you belong to?
Mr. LONG. Well, Senator, the organization we belong to is an affiliate of the American Federation of Labor.
The CHAIRMAN. It is a trade union?
Mr. LONG. Yes, sir.
The CHAIRMAN. How many members have you in it?
Mr. LONG. In Weirton, approximately close to 9,000.
The CHAIRMAN. Out of a total employment of how many?
Mr. LONG. Nine thousand nine hundred and fifty.
The CHAIRMAN. Nine thousand nine hundred and fifty now?
Mr. LONG. Yes, sir.
The CHAIRMAN. You may proceed to present to us any memo that you have.
Senator WAGNER. There is also a company union, is there not?
Mr. LONG. I practically grew up in the steel mills and am employed there today. I am a tin-plate roller by trade. It has never been our

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privilege, in a period of over 23 years that I have worked for the Weirton Steel Co., approximately consecutively for 23 years, that we could exercise our rights in any manner whatsoever, so as to choose representation.

In 1913 I was just a youngster in the mills, but I remember it clearly, the Weirton Steel Co. bought what is known as the Pope Tin Plate Co., in Steubenville, Ohio. The Pope Tin Plate Co. at that time signed an agreement with the Amalgamated Association of Iron, Steel, and Tin Workers. Upon taking over this plant they refused to sign a contract with the proper representatives of this organization. These men went out on a strike and tried to get Weirton to go out with them. We were clubbed by professional thugs and gunmen. The president of the Steel Co., J. C. Williams, himself rode around high, wide, and handsome in an open touring car, with a machine gun and a submachine gun, and highpowered rifles at his command, all through the town, up and down there, intimidating the men. So we could not have the preference of joining the organization. They were intimidating and coercing us in the place there. We could not have any organization representing us.

Again, in 1920, when the National Steel strike was on, they tried to organize Weirton and they met with the same results. The plant then went on a strike for a period of 3 weeks, and they met with the same results again. They were clubbed and beaten into submission. The strike, I think, lasted approximately 3 weeks.

There has never been any representation there. The men never had a voice in the only thing that they had to sell. That is, I am speaking of the practical workman. They never had a voice. The only thing they had to sell was their labor. They have never had any voice whatsoever in any manner.

Upon the employers of the Weirton Steel Co. becoming acquainted with the fact that the National Recovery Act provided in section 7 (a) that labor had the right to organize under governmental supervision and protection, the employers of the three plants, one in Weirton, W.Va., one in Steubenville, Ohio, and 1 in Clarksburg, together with the National Steel Co., which was a subsidiary, and of course the Michigan plant—we had a total membership of approximately 8,012 signed members——

The CHAIRMAN. In all these plants?

Mr. LONG. Yes, sir; at that particular time. That is, I am not speaking of the Ecorse, Mich., plant, I am speaking specifically of the Weirton situation. The company insisted that we deal with a plan that they had put into effect in June 1933, known as the employees' representation plan. I believe Senator Wagner has a copy of the book. It is nothing more or nothing less than a plan that was adopted by the Whitaker-Glesner Co., known now as the Wheeling Steel Corporation. They merely took that plan and had duplicate copies made of it, and put the Weirton Steel Co.'s name in the front of the book.

The CHAIRMAN. At that time was there an existing trade union organization at your plant?

Mr. LONG. We were in the process of organizing.

The CHAIRMAN. You were not organized? You were in the process of organizing?

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Mr. LONG. We were approximately organized at that time, Senator, we were 75 percent organized.

The CHAIRMAN. How long before that had you been organized?

Mr. LONG. We started in April, Senator.

The CHAIRMAN. You were really in the process of organization, you had not had the year before or so, or for some years back, any organization?

Mr. LONG. No, sir.

The CHAIRMAN. So up to this time, you were an unorganized group of workmen.

Mr. LONG. Yes, sir.

The CHAIRMAN. You were in the process of organizing this trade union when this plan was suggested to you by your employers?

Mr. LONG. Yes, sir.

The CHAIRMAN. Proceed.

Mr. LONG. They put the plan into effect in the early part of June. The foremen came around and instructed the rollers—I have 900 men under me, there are 26 mills there, each mill is composed of 3 crews to the number of 27 men, that is the rollers, with 3 in charge on these different shifts—instructing the rollers that they should have their men go and vote for representatives on this plan; this agreement.

Senator WAGNER. Did they distribute the constitution?

Mr. LONG. Yes, they distributed the constitution. They selected the members——

The CHAIRMAN. Who do you mean by "they"?

Mr. LONG. The company.

Senator WAGNER. The management.

The CHAIRMAN. The superintendents?

Mr. LONG. Yes, sir; the various foremen, together with the hot mill superintendent.

The CHAIRMAN. Yes.

Senator WAGNER. You had no mass meeting in which you formed your own constitution?

Mr. LONG. We had nothing. They laid the plan on the table and says, "Take it. Here it is."

The CHAIRMAN. You assume they had knowledge at this time of the activities of the groups of employees forming a trade union?

Mr. LONG. Yes, sir; they were thoroughly familiar with it.

The CHAIRMAN. When this plan was proposed, what did the employees do about it?

Mr. LONG. When the plan was proposed?

The CHAIRMAN. Yes, I mean by the employers.

Mr. LONG. There was a small majority, Senator, that took it rather seriously, thinking that in some way it would be beneficial to them, but the majority of men who were familiar with what had taken place in the Wheeling Steel Corporation, with the plan that they had in effect there, they knew that it did not benefit them in any way whatsoever, and these men in Weirton who were familiar with that just disregarded it. Many of them were merely what you might call "wooden" men when it came to voting.

The CHAIRMAN. Was there a meeting held?

Mr. LONG. No, sir.

The CHAIRMAN. The employees never accepted the idea?

Mr. LONG. No, sir.

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The CHAIRMAN. They never accepted the idea of a company union?

Mr. LONG. No, sir.

The CHAIRMAN. Then how did the management of the company respond when they discovered the employees were not accepting the suggestion?

Mr. LONG. Well, they insisted on putting it through. They posted a notice. Senator Wagner, I believe, has a copy of the notice. They posted a notice to the effect that this company had this plan in effect and we must accept it and they would not bargain with any other group.

The CHAIRMAN. Had anybody started any bargaining with them up to this time?

Mr. LONG. Yes, sir.

The CHAIRMAN. Your union men were starting to bargain with them?

Mr. LONG. We tried to; yes, sir.

The CHAIRMAN. So that they knew that an effort was being made by the representatives of the trade union that had organized the plant, to deal with them for bargaining purposes, and they refused to do it?

Mr. LONG. Yes, sir.

The CHAIRMAN. And they posted a notice saying the only way they would deal with the men was through this company plan?

Mr. LONG. Through this plan they had in effect.

The CHAIRMAN. What happened next?

Mr. LONG. Through their insistence that we deal through this plan, knowing that we had our organization approximately 85 percent then, we rejected it.

The CHAIRMAN. Your organization rejected their suggestion?

Mr. LONG. Yes; the employees who had accepted our organization as their representation. There were efforts made to deal with them through the company representative plan, or the employees representative plan.

The CHAIRMAN. How far did you get with that attempt at representation?

Mr. LONG. We sent a man out on a small grievance that we had there, and the general manager, together with the tin plate mill manager, says, "Now, listen, you have to forget this. Remember how good we have been to you here. You will get nothing in years."

The CHAIRMAN. This was the attempt of the representatives of your union?

Mr. LONG. No, sir; this was a company representative.

The CHAIRMAN. I thought you said you never had a company union meeting.

Mr. LONG. We did not, sir. This was the committee meeting, you understand, Senator, with one individual going out there on a matter of a small grievance.

Senator WAGNER. Maybe there is one thing he did not explain. After the constitution was 'istributed, you were told to go up and vote, were you?

Mr. LONG. Yes, sir.

The CHAIRMAN. Did you vote?

Mr. LONG. I did not; no, sir.

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The CHAIRMAN. Did any of the men vote? Did they select some representatives?

Mr. LONG. They did; yes, sir.

The CHAIRMAN. And did they attempt to have a conference with their employers?

Mr. LONG. Yes, sir.

The CHAIRMAN. With what success?

Mr. LONG. No success. They would not allow us to have a voice in the matter at all.

The CHAIRMAN. Why?

Mr. LONG. Because they would never allow us to congregate in a mass form to present our grievances.

The CHAIRMAN. These representatives now were apparently, on the face of it, men chosen as the result of a company's effort to establish a company union, am I correct?

Mr. LONG. Yes, sir.

The CHAIRMAN. They would not deal with them?

Mr. LONG. No, sir.

The CHAIRMAN. Now what happened next?

Mr. LONG. We then had a grievance which was known as the "opening department", which led to a strike in the opening department.

The CHAIRMAN. You had a strike in the opening department?

Mr. LONG. Yes, sir.

The CHAIRMAN. That was over conditions of work, nothing over unions?

Mr. LONG. Over conditions of work and wages.

The CHAIRMAN. You struck because there was nobody to go and speak for you, no representatives?

Mr. LONG. There were approximately 300 men went out on strike.

The CHAIRMAN. What happened then?

Mr. LONG. They made an effort to arbitrate and settle this department strike.

The CHAIRMAN. Through whom? In what way?

Mr. LONG. The company representatives and the employees' representatives.

The CHAIRMAN. They then sent for these men that had been elected?

Mr. LONG. Yes, sir.

The CHAIRMAN. And tried through them to make some settlement?

Mr. LONG. To effect a settlement, yes.

The CHAIRMAN. Did they succeed?

Mr. LONG. No, sir.

The CHAIRMAN. What happened after that?

Mr. LONG. The men threw them out, they wouldn't even deal with them.

The CHAIRMAN. The men who struck would not deal with the so-called "company" representatives?

Mr. LONG. No, sir; because they had previously tried to arrange a settlement of their grievances and met with no success, and it led to a condition where there was a general strike threatened. They had imported men. I was the acknowledged president there of the trade union, and I told them these men could not work there in their places.

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The CHAIRMAN. So when these men in that particular section went out on strike the company imported men called "scabs"?

Mr. LONG. Yes.

The CHAIRMAN. And that led finally to a general strike all through the plant?

Mr. LONG. About 3 weeks later, Senator.

The CHAIRMAN. About 3 weeks later?

Mr. LONG. Yes, sir.

The CHAIRMAN. How long did that strike last?

Mr. LONG. Well, after they had tried to negotiate with the men and effect a settlement and found it very unsuccessful, when I went over to threaten them it would terminate in a general walkout if they let the scabs work, then they asked what steps they could take to effect a settlement, and I said, "I will go up and lead the men back, if you will talk with us towards settling this," and they said they would, they would do everything to bring about a settlement. I led the men in a march two by two, 300 strong, right on over through the main office into the mill gate and we went back to work.

The CHAIRMAN. In other words, you had succeeded in settling the strike successfully, to the satisfaction of the men and the employers?

Mr. LONG. And the company; yes, sir.

The CHAIRMAN. Then what happened?

Mr. LONG. Then we had a similar grievance in another department, the tinners. There was unrest throughout the whole plant. The wages were unsatisfactory, and the working conditions were unsatisfactory. We had a grievance in the cold roll department. It finally terminated in a general strike. We could not effect a settlement.

The CHAIRMAN. Did you attempt when these difficulties happened in these other departments to effect a settlement?

Mr. LONG. Yes, sir.

The CHAIRMAN. Without success?

Mr. LONG. Yes, sir.

The CHAIRMAN. You could not get together with the company on any basis of agreement?

Mr. LONG. No, sir.

The CHAIRMAN. The result was a general strike followed?

Mr. LONG. Yes, sir.

The CHAIRMAN. What was done to try and settle it?

Mr. LONG. Well, on the morning previous to the general strike, I went before the general committee of the company and forewarned them that there was danger of a general strike owing to general grievances through the whole plant. I met with the general manager, the general superintendent, and the various foremen and superintendents throughout the whole plant, and I warned them if it was not settled in 24 hours there would be a general tie-up, and they insisted then again that while they knew we had never met with any success in dealing with the company union—we called it the company union, and they called it the employees' representative plan—they insisted that we go back and deal through them. I asked them how could we deal through them when the representative from the cold-roll department had joined our organization and he was elected vice president and that he had won before without acting in the capacity of an employees' representative, and they laughed us out of the office.

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The CHAIRMAN. The final break, then, came because the employers, or the representatives of the employers refused to deal with anybody except the representatives of the company union?

Mr. LONG. Yes, sir.

The CHAIRMAN. And that resulted in a general strike because the other workmen, or the workmen who were not willing to deal through a company union, thought it would be unsatisfactory and useless?

Mr. LONG. Yes; after they made various attempts to effect a settlement there and to settle the grievances.

The CHAIRMAN. How long had that strike lasted?

Mr. LONG. That strike lasted 3 weeks.

The CHAIRMAN. And finally it came to the attention of the Labor Board?

Mr. LONG. Finally it came to the attention of the National Labor Board; yes, sir.

The CHAIRMAN. And some orders were issued that have not been complied with, and the matter is now, according to Senator Wagner, in the hands of the Attorney General?

Mr. LONG. Yes, sir. It resulted in an agreement being drawn up there that the strike would terminate.

The CHAIRMAN. You went back to work, I understand.

Mr. LONG. Yes, sir.

The CHAIRMAN. But the conditions that you wanted to improve or change have not been improved, the agreement has not been carried out?

Mr. LONG. No, sir.

Senator WAGNER. There was an election to be held supervised by the Labor Board.

The CHAIRMAN. The Labor Board has not held that election?

Mr. LONG. No, sir; they ignored the agreement.

The CHAIRMAN. You did have an election at which you selected the representatives?

Mr. LONG. Yes.

The CHAIRMAN. And the employers refused to recognize the men chosen under the Labor Board's election?

Mr. LONG. No, sir.

Senator WAGNER. No; we ordered the election to be held and prescribed the procedure to be followed in the election, so that the election would be free from any coercion and intimidation and that each worker would have a free choice as to who he wanted to represent him, and the plan that we proposed the company refused to accept, although an agreement to that effect was made, and they insisted on conducting their own election, which was nothing but the company union plan.

Mr. LONG. Yes, sir. We threatened another general strike.

The CHAIRMAN. And there is a threat now of another general strike?

Mr. LONG. Yes, sir.

The CHAIRMAN. Because the men are insisting that they have representatives of their own and not representatives of the company union?

Mr. LONG. Yes, sir.

The CHAIRMAN. We thank you very much.

Mr. LONG. I would like to say further, if I may, the agreement that we had reached in Senator Wagner's Board, before Senator Wagner's

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board, the Labor Board, stated that the strike should be called off immediately, that all men now on strike should be taken back to work without any intimidation, without any interference, discrimination, or physical examination; an election should be held the second week of December, the methods of procedure prescribed by the National Labor Board, the election should be held under the supervision of the National Labor Board, and any matters of dispute arising from this agreement shall be submitted to the National Labor Board for decision. Is that correct, Senator?

Senator WAGNER. Correct.

Mr. LONG. Upon returning to work we got along very well for about 2 days, and then they began to lay off men, supposedly reducing forces, something that never had been practiced there previous to that, they always introduced what they call the stretch-out system, to split the work up amongst those who were employed, and the result is we have today 600 men out of work.

The CHAIRMAN: Did it so happen that the men the company could best lay off were men who had been active in the movement?

Mr. LONG. Very active; yes, sir.

The CHAIRMAN. The movement for an independent organization?

Mr. LONG. Yes, sir.

The CHAIRMAN. Of course they did not consider that in laying off these men?

Mr. LONG. They trimmed it up with a pretty phrase, they were "reducing forces", and yet they were getting ready to operate 100 percent. They are operating today 100 percent.

In the election they held there on December 11, they supposedly nominated the employees' representatives, the committeemen. There was less, by actual count, Senator, than 3 percent participated in that vote. Less than 3 percent participated. They openly defied the orders of the National Labor Board, and then on December 15 they held an election.

The CHAIRMAN. Of their own?

Mr. LONG. Of their own, openly defying the agreement of the National Labor Board and the strikers and the companies. They held their election, and we have, I think, somewhere in the neighborhood of 3,000 affidavits stating the methods of procedure at that election where men had actually been driven to the polls on the end of a riot stick, where a man had gotten his arm fractured being dragged to the polls.

The CHAIRMAN. By whom?

Mr. LONG. By foremen of this company; where men were openly sent home and discharged, they told them that is why they were discharged, because they would not participate in the election.

The CHAIRMAN. You have affidavits of these facts?

Mr. LONG. Yes, sir. The foreman would come around and tell you that it does not matter how you vote, or who you vote for; if you want to you can cast a blank ballot, but go up and vote; all they wanted to do is get the men checked off as having voted. Comic characters out of the paper were elected in various departments; men who served on the board. Mae West was elected in one department, Popeye was elected in another department. That goes to show you how seriously the men took that. Nevertheless the company insisted that that plan go into effect.

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Senator DAVIS. Where did you hold the meeting?

Mr. LONG. What meeting do you refer to?

Senator DAVIS. The meetings to vote.

Mr. LONG. Right in the mill, Senator. Never before in the history of the company's existence had they offered to pay us on a Sunday night, and on that Sunday night it was 2 days before the regular scheduled pay day, and they put the voting booth right up close to where the paymaster would come in to pay the men, when 2 weeks previous to that we had to go out and stand in the cold, in the rain, to get the pay, not in the paymaster's office, but we were not participating in the election then. They passed the word around they were going to put the works to us on December 15 and make it tough. They shut my end of the mill down, cut me out of the mill, because I threatened to call a strike. I protested it because we were supposed to have an election under the Government supervision.

The CHAIRMAN. Mr. Long, we thank you very much for giving us this practical illustration.

Mr. LONG. In the event that this Senator Wagner bill does not go through, we have 134 letters with us from one firm down in Birmingham, Ala., that pledged their support, and there is a National Steel strike in the making right now.

Senator WAGNER. We want to avoid that, of course.

Mr. LONG. The Executive order issued by President Roosevelt has been ignored and openly defied. Why should that go on?

Senator WAGNER. All you men want is the rights that you have under section 7 (a), the right to organize.

Mr. LONG. Yes, sir; the right to select our own representatives.

The CHAIRMAN. Mr. Long, do you want the names of the other men who are with you in the record?

Mr. LONG. Yes, sir.

The CHAIRMAN. That you have with you here?

Mr. LONG. Yes, sir.

The CHAIRMAN. They would confirm what you have said?

Mr. LONG. Yes, sir.

The CHAIRMAN. Very well.

Senator WAGNER. Is there a strip mill in Weirton?

Mr. LONG. Yes, sir. I have a representative from the strip mill here with me.

Senator WAGNER. I just wanted to ask you what the size of the billet or ingot, or whatever you call it, is that you make down there.

Mr. LONG. They have various sizes there. It runs from approximately 4 inches up to 38 inches.

The CHAIRMAN. Is the same situation you have described taking place in the plant in Michigan?

Mr. LONG. Yes, sir, that is a similar case.

The CHAIRMAN. Is there a representative here from Michigan?

Mr. LONG. Yes, sir.

The CHAIRMAN. Perhaps for reasons of protection the names of these men ought not to be put into the record. What do you think?

Mr. LONG. They are not afraid, Senator. Do you want the names?

The CHAIRMAN. May we have the names, please?

Mr. LONG. Mel Moore, Charles Greenwood, Jake Entinger, Jack Reese, William Milstead, T. I. Lewis, and Charles Anderson.

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The CHAIRMAN. Thank you very much. Have you got a statement you can put in the record?

Mr. LONG. Yes, sir.

(The statement above referred to is as follows:)

STATEMENT FOR THE SENATE COMMITTEE ON EDUCATION AND LABOR, RE: COMPANY UNION OF THE WEIRTON STEEL CO.

We, the committee who appeared before the Senate Committee on Education and Labor on March 20, 1934, represent 18,000 employees of the National Steel Corporation. The Weirton Steel Co. is a subsidiary of the National Steel Corporation.

Weirton Steel Co. employees took for granted that section 7 (a) of N.R.A. guaranteed them the right to join a bona fide trade organization. The employees of said company, by popular and free choice, joined of their own free will the Amalgamated Association of Iron, Steel, and Tin Workers, affiliated with the American Federation of Labor, to act as their representative for collective bargaining and for their mutual aid and protection. Employees of the company have shown good faith in responding.

Meanwhile the company held an election in June for representatives under the employee-representation plan, which they introduced soon after they heard of section 7 (a). Previously the employees had had no representation of any kind. This plan, an exact duplicate of the plan at Wheeling Steel Corporation, was introduced for no other purpose than to defeat the intentions of section 7 (a). During this election the foremen came to men on the job and insisted that they go and vote, stating that it was compulsory. A ready-picked slate was presented to the men, with no opposition slate. The company counted the votes.

Knowing, however, what section 7 (a) guaranteed us, we took advantage of that. We have shown a majority of approximately 90 percent of the employees, now signed members in the Amalgamated Association. But Weirton Steel Co still insists that employees deal only through their representation plan.

Because the company ignored representatives that the employees chose freely at their own meetings, employees at Clarksburg, Weirton, and Steubenville finally struck September 26, 1933, and 95 percent of the employees came out. The only ones in the plant were maintenance men whom we permitted to go in at the company's request. In fact we had to coax our men to go in and carry on the maintenance the company requested.

The strike ended October 16 through an agreement drawn up before the National Labor Board. This agreement stated that all employees now on strike should go back to work immediately, without prejudice, discrimination or physical examination. An election shall be held the second week of December 1933. Methods and procedure for the election shall be prescribed by the National Labor Board. The election shall be held under supervision of the National Labor Board. Any dispute arising from this agreement shall be submitted to the National Labor Board for decision. The agreement was signed by E. T. Weir of the Weirton Steel Co., William J. Long of the strikers' committee, and Senator Robert F. Wagner of the Board.

As soon as employees returned to work, discrimination, intimidation, and coercion was immediately shown by the company, men being laid off daily by the score. Protests were sent at once to Senator Wagner on the National Labor Board at Pittsburgh November 20. The Board issued a summons for E. T. Weir, but he did not appear. Efforts to settle the controversy came to nothing because of E. T. Weir's refusal to appear before the Board.

Over 400 Weirton Steel employees who were active in the union have been laid off and discharged; some were told that this was because the company had to reduce forces, and others were frankly told that it was because of their union activities. Meanwhile by a careful check up we have ascertained that the company has hired about twice that number of new men.

We have affidavits of workers that E. M. Mentzer, employment agent and safety director for the Weirton Steel Co., told them, when they applied for work, that they were blacklisted and would never again work for the Weirton Steel Co. Sons and daughters and nephews of men who have been active in the A.A. have had difficulty getting jobs, since the strike. In some cases, after working a few days they would be dismissed, with no explanation. Such cases occurred not only in Weirton but in other towns up and down the valley. Men seeking work in other towns are not hired if they admit they came from Weirton. A sister

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of an active unionist (she had worked for the company 10 years) was discharged from the office.

Although the company had agreed to let the National Labor Board supervise the election in December, the company refused to abide by this agreement and conducted its own primary and final election. In the primary election, held December 11, less than 3 percent of the employees voted at all. The company, realizing that employees would not freely accept their plan, used more drastic methods in the final election held December 15.

They had State police patrolling the town of Weirton, which is company owned and unincorporated, and their own mill police force had riot sticks and cooperated with foremen in forcing men to poll. They used extra men to relieve regular workers to vote, and foremen stated that if we did not vote they would discharge us and give the job to the extra men. In one case in the sheet mill department, Benny Jones, a foreman, in trying to force a man to the polls, knocked him over a pile of iron, so injuring his wrist that he had to go to the hospital. Although the company shut down some departments that day so that leading unionists might not be present, they sent around to the homes of others on the crews demanding that they come down to the mill and vote; that if they did not they need not report to work any more. Pay day was moved up 2 days to coincide with this election day. And the ballot boxes were placed next to the pay windows and men were required to vote before they drew their pay.

Nevertheless some men refused to vote, and many of them have since been discharged. Their families have been told that mortgages would be foreclosed on their homes, and some have had their furniture sold. Local banks refuse to buy the bonds for home owners loans for these people.

Even now, when we hold union meetings, managers, supers, and foremen stand across the street watching to see who goes in, usually one boss from each department. When Mrs. Pinchot, wife of the Governor of Pennsylvania, spoke to a union meeting, there were 30 bosses across the street from the manager down, and Mrs. Pinchot has already reported this.

Now these union men who are discharged, and their hungry children, are really victims of section 7 (a), because they joined the union in the confidence that section 7 (a) guaranteed them that right. Almost 6 months ago they tried to organize for collective bargaining. Governmental agencies have ruled that Weir is in the wrong, but they have so far failed to coerce him in the slightest. He is still pouring funds into the company union, paying the salaries of officers, and taking revenge on those who prefer some other union. The Department of Justice has said it may seek an injunction to restrain Weirton Steel from interfering with an outside election held by the Labor Board. But this procedure may take 6 months or a year. And then the fight will start all over again to try to get Mr. Weir to recognize and contract with the union the men chose in that election.

We demand that Congress cut through all this red tape and make it illegal for an employer to finance a union. Let the workers have a union they are willing to pay for themselves, not a company union run by the other party. There can be no collective bargaining and no enforcement of section 7 (a) as long as one party to the bargain can dominate both sides.

Submitted on behalf of the Weirton, Clarksburg, Steubenville, and Ecorse lodges of the Amalgamated Association of Iron, Steel, and Tin Workers.

Wm. J. Long, president of Weir Cove Lodge No. 30; Mel Moore, president of Valley Lodge No. 31; Jake Entinger, president of Good Will Lodge No. 39; Chas. E. Anderson, president of N.R.A. Lodge No. 35; Jack Reese, president of Steubenville Lodge No. 150; Charles Greenwood, president of New Deal No. 33; William C. Milstead, president of Blue Eagle Lodge No. 32; T. I. Lewis, president of Michigan Steel Lodge No. 4.

The CHAIRMAN. Mr. Raushenbush.

STATEMENT OF STEPHEN RAUSHENBUSH, FORMER DIRECTOR OF INDUSTRIAL RELATIONS, COMMONWEALTH OF PENNSYLVANIA

The CHAIRMAN. Will you state your name for the record?

Mr. RAUSHENBUSH. Stephen Raushenbush. Former director of industrial relations, Commonwealth of Pennsylvania.

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The CHAIRMAN. You reside where?

Mr. RAUSHENBUSH. Harrisburg, Pa.

The CHAIRMAN. We will be pleased to have your views in regard to this bill.

Mr. RAUSHENBUSH. The first thing I would like to do would be to introduce for your consideration the statement made by President John A. Phillips of the Pennsylvania Federation of Labor in support of this bill.

The CHAIRMAN. You may submit it for the record.

(The statement above referred to is as follows:)

HARRISBURG, PA., *March 19, 1934.*

Hon. ROBERT F. WAGNER,
United States Senate, Washington, D.C.

DEAR SENATOR WAGNER: The Wagner bill is supported by laboring men and women throughout Pennsylvania because they have had a long and bitter experience with the privately paid and privately owned company unions. The operation of these unions has helped make Pennsylvania the low-wage State of the North. It has helped keep purchasing power in Pennsylvania low, and has made it a drag on the recovery of the rest of the Nation. These unions, originated, financed, and managed by the company officials, who have the unquestioned power of firing men, have scared every man and woman who values his job to death. They dare not attend open meetings. They dare not raise the question of a real union or a real vote. Such exercise of the rights of freedom means discharge. It takes only a few discharges to intimidate a whole community.

This bill will stop company unions if it is enforced. For that reason we are for the bill to the limit. It makes possible real democracy in choosing representatives instead of making every worker into a candidate for the bread lines. At present the slightest opposition to his employer's private organization means economic suicide for practically every worker in Pennsylvania.

Our long experience with these employe representation organizations has brought us to the conclusion that they are nothing but a fraud on the word "representation." They are part and parcel of the drive toward fascism in America. One of the most important features of fascism is control by the industries and the Government of the workers, and the abolition of free unions. These company unions fit neatly into that picture. Where they have been established for a long time, as in the steel industry and the captive mines of that industry, there has been a practice of using State police and company police commissioned as deputy sheriffs to shoot down men who are trying to get such rights as were given to them in section 7 (a) of the National Recovery Act. This was done in Pennsylvania all last summer. To shoot down the opposition to company unions is a natural part of the fascist development established by such organizations.

In behalf of the Pennsylvania Federation of Labor we ask you to stop this development from going any further and to do it by passing this bill.

Respectfully submitted.

JOHN A. PHILLIPS, *President.*

Mr. RAUSHENBUSH. The interest of Pennsylvania in this bill is partly due to the fact that it is a low-wage state and has, through the whole depression, been among the two or three lowest wage paying states in the whole north and west. We see a close connection between this fact and company unions, for Pennsylvania is a state in which these unions are very prevalent.

During my two years as director of industrial relations for the Commonwealth of Pennsylvania, reports on approximately 900 disputes were handled by the State Bureau of Industrial Relations which was working in cooperation with the United States Bureau of Mediation. The element of company unions and the fear generated by it entered into a great number of these disputes. This was especially true during the whole coal strike of the summer of 1933, which devolved out of the company town and company union system. It is only with an

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understanding of this company union system and the fear that it generates in workers, that people can appreciate the indignation of the workers against the decision by General Johnson in regard to the Budd case. The decision, made just the other day, was to the effect that the police should be assigned at a certain union election. To the laymen this meant nothing at all. To the workers, trained in the fear of discharge, the matter of signing their names to a ballot against the company, meant economic suicide, and all of them understood it in that way, that is the loss of their jobs as soon as the management found out how they had voted. The result was an indignation meeting against the conduct of the election, and a wave of resentment through the state. Only those who had known the inside workings of companies who are trying their best to keep out regular unions, and who have, in many cases, spent millions of dollars over a period of years in this activity, could appreciate the fact that a discharge or a failure to get promotion followed almost automatically any attempt to secure free expression.

During the coal strike of 1933, in the course of which I was in the field a great deal and talked with both the company union men and the others, as well as the deputy sheriffs, the picture became fairly clear that this was one of the companies which had invested some millions of dollars in keeping unions out, and that involved a very interesting development. It involved protecting the people, the members of the company union who had been "loyal" to the company for a long time, at the expense of the noncompany union men, that apparently involved some special privileges in the mines for themselves, some freedom from fear of discharge on their part, some preference, perhaps, in housing. It produced a group solidarity among the favored and hand-picked employees, which had important results.

The provision in most of the company union plans, including the Frick plan, that citizens should be American has a significance that is often neglected. In this particular case "American" meant that no foreigners could possibly get in, and many of the workers who had been brought into that district by the coal companies originally were of alien origin. The raising of this particular qualification as a barrier produced a situation in the course of which several fiery crosses were burned. In other words, the religious issue was raised, and that seemed at the time to be a natural concomitant of the whole company union plan.

President Phillips, in his statement, has pointed out that these company unions fit into a Fascist development. He says that one of the most important features of Fascism is control by the industries and the government of the workers and the abolition of free unions. These company unions fit neatly into that picture. He makes the point, which I think is important, that where these company unions have been established for a long time there has been a practice of using State police and company police commissioned as deputy sheriffs to shoot down men who are trying to get such rights as were given to them in section 7 (a) of the National Recovery Act. In other words, government police, in this case privately paid by the companies, but commissioned by the various county governments, were carrying out the will of the men who are trying to keep out real unions.

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You will hear later in the testimony of Mr. Abelman of two incidents in February, and one incident in March, in Nazareth, Bangor, and Reading of company union meetings policed by the companies, in the course of which the union men were thrown out by policemen and prevented from any participation in the meetings of the company unions.

The main point I wish to make in this connection is that where you have an uncontrolled power to dismiss, which has been used over a period of years, very definitely, people are so scared that they will not buck a company union unless they have some guaranty that their rights to free speech and free election are protected.

There has been nothing so far in the enforcement of the N.R.A., particularly in the compliance angle, which has given people faith in the protection the N.R.A. gives anybody. I have been informed from various sources that a good number of people who make complaints about compliance in regard to hours and wages have been dismissed. Of course, a few dismissals intimidate a whole community.

The need for this bill is increased because of the failure of the N.R.A. compliance to date. The situation, as far as the confidence of people in securing protection is concerned, is far worse now than it was in the early days of the N.R.A. and if there is to be an end to the restrictive power of employers to intimidate workers in company unions, it must be accompanied by a very considerable measure of enforcement power on the part of the National Labor Board in regard to the various practices mentioned.

I wish particularly to second the statement in general made by Dr. Leiserson and the amendments suggested by Professor Witte this morning. The differentiation between employee-representation plans and real unions is very important and should be incorporated in the bill in the two places suggested.

In the main, the whole problem of this act depends upon the strength and intent of enforcement, and certainly some system may be devised whereby quicker action can be secured than has been secured so far. In this connection I wish to make emphatic dissent to the proposal by Mr. Beyer that strikes should be held in status quo for 30 days or 60 days. That is exactly what was attempted in the Weir case and Budd case, with the result that the workers felt that the Government had deserted them and left them during that period of time at the mercy of the employers. In both cases there seems to have been discrimination.

The CHAIRMAN. The committee will stand adjourned to tomorrow morning at 10 o'clock.

(Whereupon, at the hour of 1 p.m. the committee adjourned until 10 a.m. of the following day, Wednesday, Mar. 21, 1934.)

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TO CREATE A NATIONAL LABOR BOARD

WEDNESDAY, MARCH 21, 1934

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The committee met, pursuant to adjournment, at 10:05 a.m., in room 335, Senate Office Building, Washington, D.C., Senator David I. Walsh (chairman) presiding.

Present: Senators Walsh (chairman), Black, Thomas, and Davis.

The CHAIRMAN. The committee will come to order. Is Mr. Karlin here?

Mr. KARLIN. Yes; Mr. Chairman.

The CHAIRMAN. Do you want to appear before the committee?

Mr. KARLIN. I appear for several labor organizations.

The CHAIRMAN. Do you desire to be heard by the committee?

Mr. KARLIN. I do; yes, sir.

STATEMENT OF WILLIAM KARLIN, LEGAL ADVISER FOR VARIOUS LABOR ORGANIZATIONS AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

The CHAIRMAN. Will you give us your full name, please?

Mr. KARLIN. William Karlin.

The CHAIRMAN. Where do you reside?

Mr. KARLIN. 230 West Seventy-sixth Street, New York City.

The CHAIRMAN. What official positions, if any, do you hold in labor organizations?

Mr. KARLIN. I am the legal adviser for the International Jewelry Workers Union.

The CHAIRMAN. How long have you been associated with that organization?

Mr. KARLIN. About 18 years. I am also the legal adviser for several locals of the Building Service Employees International Union. I am also the legal adviser for several locals of the Amalgamated Meat Cutters and Butchers Workers Union. I am also the legal adviser for at least a half dozen other labor organizations, large and small, and have, during the past 20 years or more, been in an advisory capacity to a large number of labor organizations in their industrial problems, their strike problems, and their legal problems. I have appeared in equity proceedings involving industrial and labor disputes for 20 years, and some of those were litigations of importance.

The CHAIRMAN. For whom do you appear this morning, other than yourself?

Mr. KARLIN. For the International Jewelry Workers Union.

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The CHAIRMAN. How large a membership has that union?

Mr. KARLIN. About, to be certain of, 20,000.

The CHAIRMAN. Yes.

Mr. KARLIN. The Amalgamated Meat Cutters, locals 174 and 211; the Window Cleaners Protective Union, local no. 2, of the Building Service Employees International Union; the Doll and Toy Workers Union; in all organizations the membership comprises several scores of thousands.

The CHAIRMAN. Will you proceed to present your views concerning the pending bill?

Mr. KARLIN. Yes. I think the committee will agree with me that there is no need of going into generalities as to the necessity for collective bargaining in our modern age. I just want to show you a few instances of what attempts some of my labor organizations have made for collective bargaining, and what results they have had.

I have in mind at this time the Waterbury Clock Co. which made a serious attempt to compel its workers to join a company union in preference to their own bona fide trade union which they had chosen.

The CHAIRMAN. When was this?

Mr. KARLIN. This was about 7 months ago.

The CHAIRMAN. So that these illustrations that you are going to give us are circumstances and acts that have happened since the passage of the National Recovery Act?

Mr. KARLIN. I will attempt to give you only those. If any others come to my mind, it will be a very slight deviation.

These people who were employed by the Waterbury Clock Co., No. 254, many hundreds of them had joined what is known as Local No. 90 and Local No. 40 of the International Jewelry Workers Union, and which covered two towns, New Haven and Waterbury. At the time that the Waterbury workers began to join the International Jewelry Workers Union, the company began to organize a union of its own and invited its employees to join. They issued particular literature, authorized and published by the company, and attempted to show the workers that it was for their interest to join the company union, rather than the bona fide trade union. The workers, however, did not heed the propaganda of the Waterbury Clock Co., and preferred to join an independent labor union of their own. Then the company initiated what they called a ballot by the workers, to designate their intention to join the company union. Out of the 2,500 workers, less than 500 had designated their intention to join the company union, but out of the 500 or so designated ostensibly, in reality there was an insignificant number of the industrial workers who did so. The white-collar persons employed by the company were requested to participate in that vote, and they did, and some of those white-collar people deposited as many as 12 ballots. This was officially stated heretofore at hearings conducted in preparation for a code covering the clock industry by workers who are actually employed by the Waterbury Clock Co., in the presence of officers of that company, and not one of those officers present denied the practice of stuffing the ballot boxes.

The CHAIRMAN. Now was there any trade union in existence at this Waterbury plant previous to this?

Mr. KARLIN. Yes, there was.

The CHAIRMAN. Was it in full operation?

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Mr. KARLIN. No, it was a dormant organization.

The CHAIRMAN. So that while this organization was dormant, the company itself sought to establish a company union?

Mr. KARLIN. No, it was when this labor union revived and attracted many hundred of persons, over a thousand of them, that the company made a serious attempt to organize this company union. The workers, however, resisted to such an extent that the company was never able to gather even 20 percent of its industrial workers, and so they decided to close up the shop. All the plants of the Waterbury Co. were closed up and the workers were sent home. The workers were quitely told by the superintendents and foremen of the plant what the object of closing the plant was. But the open and ostensible reason for closing it was that the company needed financing, and that they would reopen when the question of financing was taken care of.

The CHAIRMAN. How long was the plant closed?

Mr. KARLIN. For several weeks.

The CHAIRMAN. Is it now open?

Mr. KARLIN. It is.

The CHAIRMAN. Is any organization of the workers recognized?

Mr. KARLIN. No. All those workers who are officers or otherwise active in the organization, including scores of them, and particularly the dozen or so who were outstandingly active, were never taken back when the plant reopened. When the plant reopened, every worker who was at his job was compelled to sign a card, and on that card there was an indication of an intention to join the company union, and if they did not designate such an intention they were not called back. Among those who were not called back are scores of workers who had been somewhat active in the local union of the International Jewelry Workers Union.

The CHAIRMAN. Now that closes the incident at Waterbury that you wanted to bring to the attention of the committee, doesn't it?

Mr. KARLIN. I will go back to that in a few minutes with an authoritative statement by an International officer of this International Union.

Now I will refer to the case of the 11 slaughterhouses.

The CHAIRMAN. Where are they located?

Mr. KARLIN. In the metropolitan district of New York.

The CHAIRMAN. Are they managed by 11 different owners, or are they under the control of one owner?

Mr. KARLIN. They are owned by 11 different owners ostensibly, but really controlled by the four largest packers in the United States, including Wilson & Co., Cudahy & Co., Swift & Co., and Armour & Co. They do business under various names, but their financial structures are imbedded in the large companies, and those large companies have all the policies made for all slaughterhouses and all packing houses throughout the country in Chicago. If you go to one of these local houses to make a proposition involving collective bargaining or otherwise, they frankly tell you they have to communicate with the home office, which invariably is Chicago, and after Chicago decides, they know what to do.

The CHAIRMAN. Now when did the incident you are going to testify to take place?

Mr. KARLIN. February 26 up to the present date.

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The CHAIRMAN. Prior to February 26, was there any trade union in these 11 slaughterhouses?

Mr. KARLIN. Yes, sir; an active trade union.

The CHAIRMAN. What kind of trade union?

Mr. KARLIN. The Amalgamated Meat Cutters and Butcher Workmen's Union of North America, affiliated with the American Federation of Labor, and the locals in each of these slaughter houses.

The CHAIRMAN. How many men are employed in these plants?

Mr. KARLIN. About 3,000.

The CHAIRMAN. They are about evenly divided between the 11?

Mr. KARLIN. No, some of these are smaller plants and others are larger.

The CHAIRMAN. And all of these employees belong to one central union or to different unions?

Mr. KARLIN. No, they belong to the different local union in the metropolitan district.

The CHAIRMAN. Was that union active in February last?

Mr. KARLIN. Yes, it had been active for months prior to that time.

The CHAIRMAN. While that union was active for months prior to that time, what happened?

Mr. KARLIN. The International Union sent out agreement forms to all the local unions to present to their respective employers. Among these local unions that got these forms of agreements were the unions in the metropolitan district, and they sent contracts, or proposed contracts, to these 11 slaughter houses. The contracts were all uniform as to the labor conditions, wages, working hours, and standards of operation. The companies paid no attention whatsoever to these communications which had been sent them weeks before. On or about February 26, I do not recall the exact date, the matter had been called by me to the attention of the Regional Labor Board at 45 Broadway, New York City, that these employers had shown no recognition whatsoever, even by way of the courtesy of a reply to any of these communications from the union of the proposed agreements.

As fortune would have it, the day that our news broke, the Government of the United States had apprehended these large companies fixing prices in the dark of the moon, and it was published, broadcast all over the country, and that gave us the opportunity for a little spotlight at the time, and every one of these companies came to 45 Broadway. Ordinarily they would not show up, and I am telling you that from previous experience with similar companies also affiliated with these packing houses. As a rule they do not show up. They may or may not send down an attorney. But on this occasion, all of the 11 slaughterhouses were represented, and because of the extraordinary publicity that had been given in the papers, this story of ours also got some publicity.

Each one of these representatives of the 11 slaughterhouses said they were ready to meet us. We said, "We are ready to go on right now and do some bargaining." They said, "No, not now; you have to come to our places of business." And so John J. Walsh, the vice president of the International Union, with which these locals are affiliated, visited each one of these slaughterhouses.

The CHAIRMAN. Had these slaughterhouses entered into a code agreement prior to this time?

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Mr. KARLIN. They had what they call a temporary agreement in lieu of an N.R.A. Code.

Senator DAVIS. Are the slaughterhouses locally owned?

Mr. KARLIN. No; owned and controlled by the packers in Chicago.

The CHAIRMAN. The witness testified they are owned by the Chicago packers.

Mr. KARLIN. They said we will have to come to their places of business, and when John J. Walsh went to each one of them he was told there must have been a misunderstanding. The phrase was almost the same in Swift & Co., Armour & Co., and all the others. It was just around that time that we called them to the N.R.A., and before the scandalous publicity that they got, and each one of them sent us a stereotyped reply. That reply, strange to say, had the same phraseology, not only the same argument, but in some cases it had the same phraseology, as to how much welfare work they were doing for their employees, and how well they were taking care of them, and that there was no need of dealing with any other organization when they could just as well deal with their own organization, and that these men are getting all that the company can possibly give them.

And now you remember before we sent our complaint to the N.R.A. they never answered us, and now they gave us that stereotyped reply. It stands to reason that that reply was concocted in the same office, and the form letter was sent to each one of the companies. Now, imagine hundreds and hundreds of places all over the United States sending to the International Office of the Butcher Workers Union the same stereotyped reply.

The CHAIRMAN. I suppose there isn't any doubt but that they were in agreement with each other, having signed a code and having entered into agreements, they naturally would proceed in unison.

Mr. KARLIN. I appreciate that the Chair gives them the extraordinary benefit of the doubt. My own version of it is not nearly as charitable as that of the Chair. I haven't any doubt at all that for the purpose of making prices, for the purpose of marketing, and for the purpose of everything else, except dealing with labor, these companies are deliberately well organized.

The CHAIRMAN. Well, I do not want to appear to be making a defense for them, but as I understand it, your testimony is that the men who are working as employees of these different slaughterhouses, are cooperating with the same union, and are working in unison.

Mr. KARLIN. That is exactly what I say, but they are denying us collective bargaining, Mr. Chairman.

The CHAIRMAN. I think we should not over emphasize the fact that they act jointly in resisting you, improperly, perhaps. The point is that they may be denying their employees what they are doing.

Mr. KARLIN. With all due respect to the Chair, I have only one purpose in emphasizing, that is that they are dealing collectively and we are entitled to collective dealing with them, and if they do not do it while they are flying the Blue Eagle, there is only one way to compel them to do it, and that is by means of this bill that Senator Wagner is now attempting to have made into law.

The CHAIRMAN. My comment is they are acting collectively and they have a right under the code to do it. The inference is that the employees have a right to do the same thing. What happened next?

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Mr. KARLIN. Mr. Walsh went to these places and they would not bargain with him at all. They told him there was a misunderstanding. Mr. Walsh left himself an opening for coming back there again, and he came back there on another occasion, to each one of these places. So within 2 weeks he canvassed them twice until he was complete, certain of the fact that they did not intend to deal with these unions collectively, that they did not intend to recognize these organizations and that they had organizations of their own with which they preferred to deal.

The CHAIRMAN. Now, did they have organizations of their own?

Mr. KARLIN. The companies have organizations of their own.

The CHAIRMAN. You haven't said anything about that yet.

Mr. KARLIN. Yes.

The CHAIRMAN. When did they start these organizations of their own?

Mr. KARLIN. The company unions, the so-called "welfare organizations" were more or less dormant until the advent of the N.R.A., and with the advent of the N.R.A. and the threat of labor unionism to spread into their plants, they revived these organizations.

The CHAIRMAN. And the real picture is that there were trade-union organizations that had been established for some time, seeking to deal with these owners?

Mr. KARLIN. And never succeeded.

The CHAIRMAN. And they had this same company organization that they preferred to deal with?

Mr. KARLIN. That is right. Now, in fairness to these companies, however, it must be stated that there are certain sections in the United States where labor-union sentiment is strong. For instance, in the provision-manufacturing establishments where there is a public demand for union-made goods, these companies gave us recognition, and some of the companies gave us recognition in the provision departments in New York City, among them, the largest packers of provisions.

The CHAIRMAN. What has been the outcome of this controversy?

Mr. KARLIN. There has been no outcome.

The CHAIRMAN. In other words, this contention on the part of the employers that they prefer to deal with their own company organizations, rather than the trade-union organizations, has continued up to the present time?

Mr. KARLIN. It is continuous.

The CHAIRMAN. Has there been any strike?

Mr. KARLIN. No; there has been no strike.

The CHAIRMAN. But the point you want to make is that friction is continuing up to date.

Mr. KARLIN. That is right.

The CHAIRMAN. The employers are unwilling to recognize the trade-union employees.

Mr. KARLIN. Yes; and there are impending strikes because of that fact.

The CHAIRMAN. There are threatened strikes, you mean, because of that fact?

Mr. KARLIN. That is right.

The CHAIRMAN. I think we understand the situation. Now, will you go to the next case?

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Mr. KARLIN. Now, we come to the case of the Newark jewelry manufacturers.

The CHAIRMAN. Where are they located?

Mr. KARLIN. They are all located in Newark, N.J.

The CHAIRMAN. Have they a series of different plants?

Mr. KARLIN. They have between 39 and 50 plants.

The CHAIRMAN. Are they small plants, all of them?

Mr. KARLIN. Some of them are larger plants, employing as many as 60. One plant employs 90. Most of the plants employ between 10 and 20 persons.

The CHAIRMAN. Where are they located?

Mr. KARLIN. In Newark, N.J.

The CHAIRMAN. So that all over the city of Newark, N.J., there are this large number of small jewelry plants located, and there are a number of employees operating or working in these plants who have sought to organize?

Mr. KARLIN. Yes, sir.

The CHAIRMAN. Were they organized before the N.R.A.?

Mr. KARLIN. It was a dormant organization.

The CHAIRMAN. After the N.R.A. they began to revive the organization?

Mr. KARLIN. Until they numbered all the workers who were working in the plants, with the exception of 39.

The CHAIRMAN. In all these various plants?

Mr. KARLIN. In all these various plants.

The CHAIRMAN. Now how has the company treated this labor organization? Is that organization affiliated with the American Federation of Labor?

Mr. KARLIN. Yes; it is known as "Local No. 2" of the International Jewelry Workers Union, which, in turn, is affiliated with the American Federation of Labor.

The CHAIRMAN. How many members has it?

Mr. KARLIN. The paper membership is as high as 1,800, but since there are only 600 people employed, for the sake of this discussion we must count the membership of 600, to be truthful, because the paper membership in a lot of organizations could not be the measure of strength.

The CHAIRMAN. Are the working hours and wages of these various jewelry plants the same?

Mr. KARLIN. No.

The CHAIRMAN. How could they be other than the same under the N.R.A.?

Mr. KARLIN. Because the N.R.A. has no salary classifications. That is one of the things I have been fighting for, in 16 different codes in Washington. The salary classifications have been omitted by some mysterious process that I cannot state here.

The CHAIRMAN. Isn't there a minimum wage in all the codes?

Mr. KARLIN. There is a minimum wage for people whom we do not consider jewelers of 40 cents an hour. Forty cents an hour is not considered a wage for the jeweler. They fixed wages for everybody, that is, the women workers, the unskilled workers and sectional press hands, and such, but they did not fix any wages for jewelers.

The CHAIRMAN. In other words, you state that these codes that have been made under the direction of the National Recovery Ad-

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ministration fix wages for large classes of employees, among them you have named several, but have not fixed a wage for the regular jewelry employees.

Mr. KARLIN. The answer is in the affirmative, with this statement, however, Mr. Chairman, that the overwhelming majority of the workers in the jewelry trade are skilled hands, and their wages were not fixed.

The CHAIRMAN. Very well. I understood there was a minimum wage stipulation in every code.

Mr. KARLIN. There is a minimum wage of 40 cents an hour fixed. Our people do not work for 40 cents an hour.

The CHAIRMAN. That is in these codes.

Mr. KARLIN. Precisely.

The CHAIRMAN. So you have a situation in this group of small jewelry concerns in the city of Newark where the wages are not uniform.

Mr. KARLIN. Correct.

The CHAIRMAN. And each owner bargains with his own group, fixing the wages and laboring conditions as he sees fit.

Mr. KARLIN. Hitherto.

The CHAIRMAN. Now, on the other hand, there are the employees who are all organized in one union, the employees from these various shops, and they are seeking to get uniform wages and uniform working conditions?

Mr. KARLIN. Exactly.

The CHAIRMAN. What success have they had with that?

Mr. KARLIN. In order to give you the picture of it, I want to start with what happened in New York a few days previously. On October 23, 1933, we entered into an agreement with over 300 employers in New York City, in which wages were fixed for piece workers and time workers, so that a skilled diamond setter would receive not less than $1.25 an hour working on platinum work, and as high as $1.50 an hour working on the better kind of diamond setting; that skilled jewelers would get not less than $1 an hour, and platinum jewelers would get not less than $1.25 an hour, and the so-called "Class B" mechanic would get not less than 70 cents an hour. If you recall, Mr. Chairman, that the code provides for 40 cents an hour, you will see how little relation the code has to this situation of salaries in our trade.

The CHAIRMAN. You mean the minimum named in the code.

Mr. KARLIN. Yes. This involved all the workers that were actually employed in New York, and they have 3,300 jewelers, about 1,200 were employed. When we got this contract in New York, the Newark workers got the fever and they also wanted a similar contract, and prevailed upon their international union, for which I am speaking here today, to present a similar contract to the Newark employers. When it was presented, the employers did not reply.

The CHAIRMAN. You say a contract was made with the jewelers in New York?

Mr. KARLIN. Yes, sir.

The CHAIRMAN. What was the percentage of difference in the wages paid in Newark and those agreed to in the contract in New York, approximately?

Mr. KARLIN. The most highly skilled jewelers in Newark were making far below subsistence wages. My own personal acquaintance

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with some of these highly skilled mechanics in Newark is that they were earning $15 a week, men who were making pieces of jewelry that sold for hundred and hundreds of dollars each piece, were making less than $15 a week, most of the time, and very seldom as much as $20 a week. Occasionally a man would put in a full week and would earn a little more than $20. The condition of the Newark workers was far below the subsistence wage, taking them by and large, and the employers had that advantage over them, for the reason that out of 1,800 jewelers in Newark, a little less than 600 were employed. That enabled the employers to unscrupulously reduce the wages to far below the subsistence level.

When we presented our agreement, as I said a minute ago, Senator, we got no reply. Then we called upon the regional labor board in New York City, to ask them to come in, and some of them did come in, 18 or 20 responded the first time. When they came down they said that they were not organized and they only came down to listen. They listened for a while and went home without saying what they intended to do, but with the ostensible understanding that they were going back to organize, and when they organized they would come back and give the regional labor board a reply. They did not come back again until they were called for again, and when they came back the second time, there was a much larger group of employers, but they said they did not know whether we were representing the union.

The CHAIRMAN. May I divert you again? Will you answer my question as to what the difference is between the wages paid to men and women working in the jewelry shops in Newark, compared with those doing the same kind of work in New York?

Mr. KARLIN. I have already told Senator Davis, for the record. If you want me to repeat it, I will tell you.

The CHAIRMAN. I wish, having been called out for a few minutes, you would briefly tell me. Is it 10 percent, 15 percent, 25 percent, or what?

Mr. KARLIN. You cannot state it in percentages, except it is far below the subsistence level.

The CHAIRMAN. But it is important——

Mr. KARLIN. It is far below.

The CHAIRMAN. Wait a minute. It is important, because a company recognizing collective bargaining will be driven out of business, if it must compete with a company that will not recognize collective bargaining, if one agrees to pay higher wages than the other. Isn't that true?

Mr. KARLIN. There is a great deal of truth to what you say, Mr. Chairman.

The CHAIRMAN. Is there any doubt about it? If five employers recognize collective bargaining and pay higher wages, and another five have an open shop and recognize no collective bargaining, and pay the men lower wages, will they not have an advantage?

Mr. KARLIN. I will have to qualify the answer, because there is a reasonable doubt in my mind about it. I would be unfair to you if I told you you are perfectly correct.

The CHAIRMAN. I have been trying to make an argument for collective bargaining, in the interest of the employer, but I have not succeeded very well.

Mr. KARLIN. Here is the fact: The unorganized frequently benefit from the efforts of the organized, and since the organized in a com-

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munity establish a higher scale of wages, the employers in the open shops who want to avoid dealing with the union altogether frequently come up to the standards of wages that were established in the organized shops. So, if I were to tell you that invariably it works out that way, that the closed shops would have to go out of business, it would not be so, because in practice it does not work out that way. There are closed shops and open shops in the United States in the same industry, and they have existed for some time for the reason that this economic rule applies. I know it to be a fact that the open shops come up to the margin in order to keep their employees when there is a scarcity of labor, or otherwise, to keep them from organizing.

Senator DAVIS. That only applies where there is a scarcity of labor?

Mr. KARLIN. It does not only apply there, no. Where the firm wants to prevent the employees from organizing, very often the firm has a militant influence in their shop, and to prevent them from organizing they will come up to the scale of wages and give them the same thing, or pretty nearly the same thing that they will get in the closed shop.

The CHAIRMAN. Sometimes better?

Mr. KARLIN. Yes.

The CHAIRMAN. Of course the difficulty is that that does not last. That exists when there is danger of the employees getting together to organize a union independent of the employers.

Mr. KARLIN. Yes. Now the other point of your statement was perfectly correct. Inconsistent as it may appear, in view of what I have said, it still stands up, because in the long run the employer who pays higher wages will either go out of business, or cut wages. That is why the union is constantly active in trying to equalize the wage scale. If it were not for this union activity, the employer in the open shop would never raise wages. It is the union activity that compels him to raise wages.

The CHAIRMAN. Now what is the situation today in Newark?

Mr. KARLIN. While you were out, Mr. Chairman, I told Senator Davis that the first time the employers came to the regional labor board in response to our request and complaint, that they did not answer, there were a comparatively small group, about 18 or 20, and they said they wanted to go back and form their own lines first before they could give any response. When they came the second time they had a much larger group, but they said they did not know that we represented their men, they wanted to be shown. I might just as well tell you what happened at that time. I took out my watch and I looked at it and I said, "Now, it is 20 minutes to 1. If we can get the people out of the shops by 1 o'clock, will that be proof that we represent them?" Knowing very well that we did represent the men, they did not accept that challenge, but they walked out without giving us any recognition or willingness to bargain collectively.

The regional labor board was constantly, for weeks, endeavoring to convince the employers that they ought to make some test to find out whether we represented them or not. One of them was to conduct a vote. The employers refused that, until finally the union had to call a strike. For 12 weeks that strike was raging, but the employers would give no recognition. Finally the regional labor board prevailed upon the National Labor Board to take the matter up. The National Labor Board did take the matter up. They called in the employers,

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and then, for the first time, they entered into an agreement to test, by a vote, mind you, whether we represented those men or not.

Now yesterday a very eminent authority on these questions said that such a vote is silly.

The CHAIRMAN. Is what?

Mr. KARLIN. Silly, he said. You will recall yesterday's record so shows.

Now I told the National Labor Board that it would be academic—I used a very much more careful term—but the vote took place just the same, and the vote showed, by an overwhelming majority, that the union represented the men in the Newark district. Since then they were supposed to get together and bargain collectively.

We wanted to bargain here in Washington, to sit down with the employers and bargain it out, but they saw the wisdom of going into each shop separately. They chose that method. We have been going to the shops, and shop after shop, where the union representative case, and mind you, the international officers came, they were told that they would not deal with them, and seven employers out of the many involved said they would only deal with the union if all the others would deal with them first. You see, they would not deal with us in Washington when the whole group was involved. They would not deal with us in a majority of the cases, and seven employers said they would only deal with us if the others would deal with us also.

The CHAIRMAN. Now, may I ask you in order to save our time to prepare in writing similar illustrations of the difficulties that employees have had with employers in arranging for collective bagaining for the record?

Mr. KARLIN. I will tell you, Mr. Chairman, of one or two more illustrations.

The CHAIRMAN. I have given you 40 minutes, and there are several other witnesses here.

Mr. KARLIN. Will you give me about 3 or 4 minutes, possibly 5?

The CHAIRMAN. Certainly. You may make any illustrations now that you desire. I do not want to prevent you from putting into the record all that you desire.

Mr. KARLIN. The Optical Workers is one of the cases I expect to put into the record in writing.

The CHAIRMAN. It will be very helpful to have it. You may put in any others that you have in mind.

Mr. KARLIN. What I have in mind, above all things, is to impress upon this committee the importance of passing legislation that will make collective bargaining practical, and that will make it work. We cannot have individual bargaining any more where thousands and thousands, and in some cases scores of thousands, are working for the same employer, and even where you have 50 working for the same employer, or 15, or 10, because there are industries in which the capital investment is small, and a living is easily made by an employer employing from two to three or four men. I could give you several illustrations of such industries. It is important that this bill cover all the industries.

The CHAIRMAN. Your argument about the situation in Newark would seem to indicate the importance of including employers who have a small number of employees.

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Mr. KARLIN. Precisely. You are perfectly right, Mr. Chairman. I heard one of the men say yesterday that it should be 10. Why, I could show you hundreds of employers in several industries, to my knowledge, who employ from two to three people and who make a living out of it. If they did not have to bargain with them collectively, they would have a terrific advantage over employers who employ a slightly larger number, and who would be held to collective bargaining.

I, too, was once a lawmaker, and I know how easy it is to debase a measure. I helped to make quite a number of our codes, and I know there have been changes and exceptions, and those changes and exceptions have debased most of the codes, to my knowledge.

Now I want to get in the record something that appeared in the current number of the Wall Street Journal, which is of importance, with respect to measures of this kind. I will not quote the whole thing, I will quote just a part of it. The editor says: "Do not worry so much about the President's appeal to cut hours still more without cutting pay-roll totals. So many exceptions will be granted that the rule will become the exception."

Now, as far as these company unions are concerned, I know that they are under the thumbs of the employers, in a great majority of cases, and there is no doubt but that these company unions will control wages, hours, and conditions. They are ostensibly formed as welfare organizations, but they are really formed with a view to telling the workers, "See, here, we will give you something, and you do not need a trade union. You just rely upon the cooperative spirit that your organization in this plant will have with the organization. We will get along much better that way." But the real purpose of that is to prevent a genuine trade union.

Now I say it is up to Congress to challenge and destroy this new feudalism in American industry. There are hundreds and hundreds of communities in the United States where the plant owner decides who is going to rule the town, where the plant owner decides which workingman is going to work and which is not going to work. There are hundreds and hundreds of communities in the United States where trade unionism hasn't got a chance, if the workers join the trade unions and they are discharged. This is a practical situation, in spite of the fact that the N.R.A. had carried the company by surprise and gave the workers an outlook, it gave them a hope for independence, and they were just disillusioned.

I ask you to take into consideration that if the N.R.A. is to be carried out, it has to be policed. If it has to be policed, it cannot be policed by company unions, it has to be policed by workingmen's unions of their own kind, thoroughly bona fide, without any question at all.

Now, with the advent of the N.R.A. we were looking forward to a reestablishment of the standards of living that could be compared to 1926–29. But there is no such hope. I would be misinforming you if I told you that my connections with these many, many thousands of people with whom I have come in contact, in their actual problems, that they felt they have been improved. They feel they have not been improved. They have been discharged. They come to my office and they want to be reinstated.

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We make a complaint and they are not reinstated, because under the law they cannot be reinstated, because the law has been misinterpreted to mean that if an employer makes an agreement with a union to the effect that only members of the union would be employed, that it would be contrary to the N.R.A. I say nothing is further from the truth. But lawyers of prominence have made such a misinterpretation. The law has to be made categorical, so there will be no question about it.

The CHAIRMAN. We thank you, Mr. Karlin. Your practical contact with this question has been helpful to us.

Mr. KARLIN. Thank you.

The CHAIRMAN. Is Mr. Gorman here?

STATEMENT OF FRANCIS J. GORMAN, VICE PRESIDENT, UNITED TEXTILE WORKERS OF AMERICA

The CHAIRMAN. Your full name?

Mr. GORMAN. Francis J. Gorman.

The CHAIRMAN. And your residence?

Mr. GORMAN. Providence, R.I.

The CHAIRMAN. And your official position or positions, if any?

Mr. GORMAN. Vice president of the United Textile Workers of America.

The CHAIRMAN. Is that the organization of which Mr. McMahon is the president?

Mr. GORMAN. That is affiliated with the American Federation of Labor.

The CHAIRMAN. How many members in the organization, approximately?

Mr. GORMAN. Approximately 200,000.

The CHAIRMAN. Does that include the textile workers in the Southern States as well as the Northern States?

Mr. GORMAN. In all parts of the country, Senator.

The CHAIRMAN. Are the textile workers in the Southern States; North Carolina, South Carolina, Tennessee, Alabama, and Georgia, as fully organized as in New England?

Mr. GORMAN. No, they are not, Senator.

The CHAIRMAN. What percentage of the textile workers in the Southern States are organized, approximately?

Mr. GORMAN. At this time, of course, there is a wave going through now——

The CHAIRMAN. Let us say prior to the N.R.A. It was very small, wasn't it?

Mr. GORMAN. Very small.

The CHAIRMAN. In percentage?

Mr. GORMAN. Insignificant.

The CHAIRMAN. Insignificant?

Mr. GORMAN. Yes.

The CHAIRMAN. What percentage of the textile workers in New England and New York State were organized at that time?

Mr. GORMAN. I would say about 20 percent.

The CHAIRMAN. At that time?

Mr. GORMAN. Yes, sir.

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The CHAIRMAN. Whatever organizations there were of the textile industry were in that part of the country?

Mr. GORMAN. Practically in that part, Senator.

The CHAIRMAN. In some localities textile organizations are numerous and in other localities there are scarcely any organizations?

Mr. GORMAN. That is right.

The CHAIRMAN. For instance, in Fall River you are pretty well organized, aren't you?

Mr. GORMAN. Yes, sir.

The CHAIRMAN. And in New Bedford?

Mr. GORMAN. Yes, sir.

The CHAIRMAN. In Lawrence not so much so.

Mr. GORMAN. Not as great as in those other centers that you mentioned.

The CHAIRMAN. And in the communities where the textile plants are not concentrated, you have not been able to organize?

Mr. GORMAN. We have; yes, sir.

The CHAIRMAN. Where there are individual textile plants?

Mr. GORMAN. Yes.

The CHAIRMAN. Like Fitchburg and Maynard?

Mr. GORMAN. That is right.

The CHAIRMAN. I mean prior to the N.R.A.

Mr. GORMAN. In some cases.

The CHAIRMAN. I am surprised that the number of textile organizations was at about 20 percent of the number of employees prior to the N.R.A. I thought it was larger.

Mr. GORMAN. Well, that is a rough estimate, Senator.

The CHAIRMAN. When you say 20 percent, do you mean 20 percent in the northern area, or 20 percent of the entire country?

Mr. GORMAN. Generally, throughout the country.

The CHAIRMAN. Of course, that would mean that in the northern area the organization percentage would be 50 or 60.

Mr. GORMAN. It would be greater, yes.

The CHAIRMAN. Thank you for answering my questions. You are interested in this bill, I assume?

Mr. GORMAN. I am, Senator.

The CHAIRMAN. We would be pleased to have your views.

Mr. GORMAN. We feel that the passage of this bill will give us the needed relief.

The CHAIRMAN. Did you give us the total number of textile workers who are organized?

Mr. GORMAN. At this time I would place the approximate number at 200,000 active members. We have additional members that we term "inactive", by reason of unemployment and other reasons.

The CHAIRMAN. Has there been an increase in the number of new unions since the N.R.A.?

Mr. GORMAN. Oh, yes, sir.

The CHAIRMAN. How much of an increase?

Mr. GORMAN. We have, I would say, approximately 65 percent.

The CHAIRMAN. Increase?

Mr. GORMAN. Increase.

The CHAIRMAN. In new unions?

Mr. GORMAN. Yes.

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The CHAIRMAN. In new local unions? I think that is the term you use.

Mr. GORMAN. That is right.

The CHAIRMAN. Would that same percentage hold true throughout the numerical increase of membership.

Mr. GORMAN. Just about.

The CHAIRMAN. Sixty-five percent increase?

Mr. GORMAN. Just about. We have now about 500 organizations in various parts of the country, 500 so-called local unions, some small and some large.

The CHAIRMAN. Is your organization affiliated with the American Federation of Labor?

Mr. GORMAN. We are, sir. We have been since 1901.

The CHAIRMAN. Are you making progress toward organizing in the Southern States?

Mr. GORMAN. We are making progress, but we are impeded by the attack of the employers against us, in the discrimination against those who join the union.

The CHAIRMAN. Do you want to discuss that subject?

Mr. GORMAN. I would like to, Senator.

The CHAIRMAN. As well as your general views on the measure?

Mr. GORMAN. I would like to.

The CHAIRMAN. Proceed in your own way.

Mr. GORMAN. I will say, in reply to your question, that we have made considerable progress since the N.R.A. There are in the textile industry over 1,000,000 textile workers. The cotton textile industry has about 500,000.

The CHAIRMAN. What is the number in the woolen industry, the woolen textile? The cotton textile industry, you say, is about 500,000?

Mr. GORMAN. That is right.

The CHAIRMAN. Then there is the woolen, and then there is the linen and the other textiles.

Mr. GORMAN. The hosiery and silk goods.

The CHAIRMAN. The rayon and the others.

Mr. GORMAN. I might say, Senator, that we have discovered, in the preparation of codes, that there are approximately 100 codes within the textile industry, pointing out the diversification of the industry. They are so numerous it is somewhat unbelievable to the ordinary observer. But the cotton and woolen, of course, and the silk, predominate. Rayon is becoming more extensive throughout the country. There are approximately 50,000 rayon makers, workers who make rayon. It is a comparatively new industry.

The CHAIRMAN. That is the raw proudct?

Mr. GORMAN. That is, making the rayon.

The CHAIRMAN. Which is the basic product?

Mr. GORMAN. That is right.

The CHAIRMAN. For the making of rayon yarn and rayon cloth.

Mr. GORMAN. Yes. The cotton textile industry, being the largest division of the industry, was noted for the methods of exploitation prior to the code. We recognized the advancement, the betterment that the N.R.A. gave us in the way of increasing the minimum wages from approximately $8 to $12 in the South, and $13 in the North. We believe that was progress.

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The CHAIRMAN. How many employees were affected by that provision in the textile cotton codes, approximately?

Mr. GORMAN. Oh, I would say, off hand, about 50 percent.

The CHAIRMAN. Fifty percent of the employees?

Mr. GORMAN. Yes.

The CHAIRMAN. Now, it has been represented in some quarters that that increase to the underpaid or smaller paid employees has been offset by the net reduction in the wages of those who were getting higher and larger wages prior to the N.R.A.

Mr. GORMAN. I wanted to discuss that point, Senator.

The CHAIRMAN. Fine. You see, I have some knowledge of the textile industry.

Mr. GORMAN. I know you have. It did do that, however. It raised the minimum level from approximately $8 to $12 and $13.

The CHAIRMAN. But the absence of any classification of wages in the other classes has resulted in lowering the higher wages.

Mr. GORMAN. It has resulted in the lowering of the maximum wages down to the level of the minimum.

The CHAIRMAN. That is always one of the difficulties in fixing the minimum, isn't it?

Mr. GORMAN. Yes. We argued and contended for the classification and definition of the various operations in the mills, but the administration told us that they were only interested in the setting of minimum standards, minimum wages, and maximum hours, that the question of wages in the higher brackets must be taken care of by the collective bargaining clause in the code. That is the position of the administration, I believe, today. As a matter of fact there is some legal question involved, and some of the administration officials believe if they set the wages in the higher brackets, it might endanger the safety of the recovery program. They told us that.

The CHAIRMAN. That amounted, you think, to an invitation by the National Recovery Administration for all workers to organize and have collective bargaining with the employers in order to protect themselves in the higher brackets of wages.

Mr. GORMAN. We were given that assurance. At first we believed that section 7 (a) did give us the needed protection, but we found, I would say, in the South, in 75 percent of the cases, that the employers accepted section 7 (a) with their fingers crossed, with their tongues in their cheek, and often those who had agreed to bargain with us would bargain and give us nothing. Those who traditionally have pressed us and exploited women and children were defiant enough to tell us, "All right, join the union, if you will, but you do not work here."

The CHAIRMAN. Are the southern textile manufacturers actually and really living up to this minimum wage provision of the code?

Mr. GORMAN. You say the minimum wage, Senator?

The CHAIRMAN. Yes.

Mr. GORMAN. Generally speaking, I would say they are. Of course there are exceptions, as you know, on substandard workers.

The CHAIRMAN. I did not know that.

Mr. GORMAN. There are also exceptions for persons who may be termed disabled or incompetent, which we opposed. It permits the lowering of the minimum to 80 percent of the amount. We have cases of thousands and thousands of able-bodied young men and

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women who have been reduced to $10 a week under that amendment to the cotton code. That went through against our protest.

The CHAIRMAN. Has there been a doubling up of the work to meet the cost of the minimum wage?

Mr. GORMAN. There has been an increase in the task and a lowering of the basic piece price levels, making it difficult for the workers to make the minimum wage. There have been some outright increases in the machine load, and an intensification of the stretch-out. There are several ways of stretching out the workers besides increasing the machine load. They can lower the base rate and make the task so impossible that the worker cannot just make the minimum. That is very pronounced in the minimum rate at the present time.

The CHAIRMAN. If they cannot make the minimum what happens?

Mr. GORMAN. Well, in some cases they just get what they make, and they are told if they make it next week they will get it. But then again there is the substandard clause which permits them to put them down to the $10 level, $10.40, whatever it is.

The CHAIRMAN. How much of a reduction has taken place in the wages of the employees in the textile mills, the higher brackets, by reason of the codes, approximately?

Mr. GORMAN. Well, that is a difficult question to answer, Senator.

The CHAIRMAN. Is it generally a reduction?

Mr. GORMAN. In the South I would say it is.

The CHAIRMAN. In other words, the class of men and women, I assume men mostly, loom fixers and others who were getting from $20 to $30 a week, all complain of the reduction?

Mr. GORMAN. That is not exactly true with the loom fixers.

The CHAIRMAN. I should have left them out.

Mr. GORMAN. Take the other operators, for example, the weavers——

The CHAIRMAN. Yes; the weavers.

Mr. GORMAN. Who should never be considered as unskilled workers, together with thousands and thousands of workers, are not receiving any more than the minimum wage. You see, that is the fault of not having protection in the higher brackets.

The CHAIRMAN. In other words, in the readjustment of the wage on piecework, they have been able to bring these employees, such as the weavers, down to the minimum wage?

Mr. GORMAN. Down to the minimum. There are thousands and thousands of workers in the industry who cannot make any more than $12 or $13 a week, and that is where the collective bargaining clause comes in, that we cannot seem to convince the employers to accept for its true value. They may say, "All right, you can have your union", but when we face the problem of adjusting these conditions, we are just up against a stone wall.

As a matter of fact, I talked with our office in New York this morning, and I was told that there is a petition in there from our organizations in the South clamoring for the calling of a general strike as the only means of protecting the worker against discrimination and the methods now being used by the employer. You see we have an agency in the cotton-textile industry known as the "industrial relations committee" where we send these complaints. We have furnished thousands and thousands of affidavits. I have not any of them here with me this morning; they have them in their possession.

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The difficulty is getting adjustments. When one employer is successful in discriminating against our active members and officers it is an encouragement to another employer in the next city or town to practice the same method, and it is growing from day to day, until the clamor is becoming such that the officers of the organization must very shortly recognize the necessity of meeting it. If we cannot get it through the Government agencies we must meet it through giving sanction to the workers to try to force it by way of a strike.

Now this bill would prevent that, Senator. This bill would give us, on the question of collective bargaining, that protection, and on the question of industrial disputes, a national labor board with some power.

The CHAIRMAN. Has it been your experience that you have only been able to get collective bargaining through a strike in the past?

Mr. GORMAN. Well, I would say generally that would be the case.

The CHAIRMAN. Especially when major issues were involved?

Mr. GORMAN. Yes.

The CHAIRMAN. I suppose on the minor and lesser complaints, the union would take those up with the employers and you would usually get a settlement.

Mr. GORMAN. Yes.

The CHAIRMAN. Where it comes to major issues, that often results in a strike?

Mr. GORMAN. That is right.

The CHAIRMAN. Are you confronted with the situation that has been complained of here by several witnesses, that the employers, realizing that under the N.R.A. the right to collective bargaining is granted, are seeking to establish company unions that are more or less dominated and controlled by the employers?

Mr. GORMAN. We are not finding that, Senator, much of a difficulty. It exists, but not on the same scale as in the automobile or in the other industries. I might explain my reason why I think we are not, if it would be of an advantage.

The CHAIRMAN. Yes.

Mr. GORMAN. The employers have tried out all the schemes, from outings in the summer, to giving the workers stock in the company, by giving them insurance, by their so-called "welfare work", for example in the South where they built the houses within the shadow of the mill in order that the owner can at all times supervise and know what the workers are doing 24 hours in the day, giving them social activities, dances, and all that sort of thing; paternalistic methods. That has fallen down; that has not proven successful.

The CHAIRMAN. Of course the rental in these company houses is cheaper than the rent in an independent home.

Mr. GORMAN. Yes; I would say it is cheaper.

The CHAIRMAN. Yes.

Mr. GORMAN. I might also add that in some of the southern villages the houses are very well equipped and livable in some places, and others they are not.

The CHAIRMAN. There is the implied control of the worker by the worker's realization that if he does anything to offend his employer, he may not necessarily lose his job, but he can be put out of the company house.

Mr. GORMAN. That is right.

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The CHAIRMAN. The employer would not only have to seek a home, perhaps with difficulty, any home at all, but he would have to seek a home where he would have to pay more rent.

Mr. GORMAN. That has happened several times. I say that is, in my opinion, the reason why the employers in our industry have not given more attention to the creation of company unions, because all of that sort of thing has been tried before and it has collapsed.

The CHAIRMAN. Haven't you also had this difficulty, that the wages that have been paid in the textile industry, in many branches of the industry, have been so low that your people could not afford to pay the membership fees of the union?

Mr. GORMAN. That is so, too. That is so today, in a large number of cases. We have numerous complaints of textile workers, for example a man with a large family who must have his wages supplemented from the relief rolls, we have numerous cases of that sort.

The CHAIRMAN. Have you any statistics as to the average wage paid to the textile industry workers now?

Mr. GORMAN. On the whole, they are not compiled in that way, Senator. They are compiled by divisions. For example, the cotton textile industry, and the woolen and worsted textile industry, so on and so forth, all of those rates vary.

The CHAIRMAN. Where is the wage the cheapest?

Mr. GORMAN. The cotton, of course. Always has been.

The CHAIRMAN. Yes.

Mr. GORMAN. In the cotton textile, prior to the code it was somewhere in the neghborhood of $11.

The CHAIRMAN. The average?

Mr. GORMAN. The average.

The CHAIRMAN. The average wage for every class of employment?

Mr. GORMAN. In that industry. There might be some difference of opinion about that, but we contend that the average throughout the industry before the code was $11. The employers said $12, and their statistics will show that the minimum was raised from approximately $8 to $12 in the South, and $8 to $13 in the North.

The CHAIRMAN. Does that take into consideration the periods when the mill is not operating, or is it assuming that every employee works the full number of working days in the year?

Mr. GORMAN. Those figures that we compiled were based on weekly earnings.

The CHAIRMAN. Actually in the plant?

Mr. GORMAN. Yes.

The CHAIRMAN. But practically all of these plants close down in the summer time for two weeks, don't they?

Mr. GORMAN. Most of them do.

The CHAIRMAN. Sometimes a month?

Mr. GORMAN. Yes.

The CHAIRMAN. And Christmas and New Years, stock-taking and other purposes, for a week or 10 days.

Mr. GORMAN. That is right.

The CHAIRMAN. I was wondering if the average was reached on the basis of assuming continuous employment, or was reached upon the actual amounts paid out in a given industry.

Mr. GORMAN. Weekly earnings, I would say, Senator, time work.

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The CHAIRMAN. In other words, they take the pay roll of a week and find out the number of employees and reach the average in that way.

Mr. GORMAN. That is right.

The CHAIRMAN. But as a matter of fact, if that is so, in view of these shut-downs that you referred to, that is quite common in the industry, the total average would not amount to that sum week in and week out.

Mr. GORMAN. No; it would not. We believe this bill, Senator, will give us that opportunity to protect the wages of the workers in the higher brackets. We are really now up against a stone wall with that problem.

The CHAIRMAN. Now you have unions. Isn't that one of your difficulties, that you haven't found the whole industry sufficiently organized to be able to deal with all the employers? In other words, if you have a union at Fall River; you would go and deal with those employers there?

Mr. GORMAN. In Fall River.

The CHAIRMAN. The argument you get is, "Why don't you organize the men in Utica, N.Y., or Fitchburg, Mass., or Lawrence, or New Haven?"

Mr. GORMAN. That is our difficulty.

The CHAIRMAN. They say:

You are not organizing there, you are forcing us to go out of business. When you are organized in all these other establishments you may come to us and we may do some business.

Mr. GORMAN. That is right. We have a similar condition now, if I may be permitted to bring it out, Senator, we are now negotiating here in Washington, the arbitration proceedings, with the largest mill in the country, located in Manchester, the Amoskeag Co.

The CHAIRMAN. I know the Amoskeag Co.

Mr. GORMAN. We have friendly relations with this company.

The CHAIRMAN. Some representatives are in the room, so be careful in what you say.

Mr. GORMAN. I know they are, Senator. I want to make this quite clear, that if all the employers in the country took the same attitude that the employers in the Amoskeag Manufacturing Co. are taking, in following out the collective bargaining clause of 7 (a), I think our difficulties would be overcome. They are meeting with us this week, and what you say is the actual fact. We are confronted with that competitive condition.

Now our wages in Manchester are low. We are asking for an increase, but when we do we are faced with the employer in the southern part of the State, the southern part of the country, making this product for miserable starvation wages. We feel the adoption of this bill is the only way we can cure this evil.

The CHAIRMAN. I am pleased that you made the reference to the concern at Manchester, N.H., because my observation has been that it has shown a very conciliatory attitude toward dealing with labor.

Mr. GORMAN. It has been splendid. They will meet us at any time. They are not taking the position, like several employers, "We will meet our committee, but we will refuse to meet all outside representatives." They forget that the employers' associations have spent thousands and thousands of dollars for legal talent, for detective

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service and for spies, but they object because we, as textile workers—and all of us who represent our industry are textile workers, we come from the mill, we are selected by our fellows to represent them—the employers say, "We will have nothing to do with those fellows who are trying to cause trouble." It is just an evasion, an attempt to destroy the purposes of the recovery program.

The CHAIRMAN. I wanted to ask you about another thing, if you have finished, as I assume you have.

Mr. GORMAN. Yes.

The CHAIRMAN. Is your organization experiencing any difficulty in competing with organizations that are growing up among textile workers that are alleged to support Communistic principles?

Mr. GORMAN. Yes; we are combated on every side, Senator, by that influence. These people come in wherever we create an organization, and we not only have to fight the employers but we have to fight them. They are aiming to destroy the organization for the advancement of their own political philosophy.

The CHAIRMAN. Have they actual organizations among some of the workers?

Mr. GORMAN. They haven't anything to speak of, Senator, because just as soon as the workers learn the true nature of the organization, they leave it.

The CHAIRMAN. Have they attempted to organize?

Mr. GORMAN. Oh, they are now in all parts of the country. They have their representatives. They go wherever we go. They attempt to poison the minds of the workers against the representatives of the legitimate labor movement.

The CHAIRMAN. In other words, as soon as your representatives go to Manchester, N.H., or Fitchburg, Mass., to start a union, they are there?

Mr. GORMAN. They are in there always.

The CHAIRMAN. And they are combatting your attempt to organize the workers?

Mr. GORMAN. That is right. We have to fight them and fight the employers.

Senator DAVIS. Do you know, Mr. Gorman, who finances the organizations such as the chairman pointed out?

Mr. GORMAN. Yes; I am not in a position to say, since the recognition of the Soviet, but we did have definite information that they were subsidized from Russi. .

The CHAIRMAN. And that is the reason why, I suppose, organized labor opposed recognition of Russia, one of the reasons?

Mr. GORMAN. That is one of the reasons, and of course there are others, too, that you are aware of.

The CHAIRMAN. Have these Communistic groups clubs among the workers?

Mr. GORMAN. Yes. They do a lot of house-to-house work. They take young children, 8 or 9 years of age, and train them into the tenets of communism. They take them when they are young.

The CHAIRMAN. Do they maintain schools?

Mr. GORMAN. Yes, they do.

The CHAIRMAN. Are they in the open?

Mr. GORMAN. Secret. We are now getting the result of that. These young people are spreading out throughout the country, these

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young people that have been trained, and they are preaching these destructive philosophies. Their whole attack is against the American labor movement, of course, and they aim to get control of it. I do not believe there is an industry in the country that is more affected with that sort of thing than ours.

The CHAIRMAN. That is why I have asked these questions of you.

Mr. GORMAN. I might bring out at the same time, Senator, it has been said here in Washington, by certain administration officials, that this industry was not thoroughly organized because of that, that we were not receiving the consideration that we should, but they forget that besides fighting the terrific opposition of the employers, with all their political, industrial, and financial resources, we have to fight that communistic element that is always seeking to destroy the unions, that is preaching secession and insidious propaganda to the workers, trying to discourage them. I mean, we have got that opposition. If that was lifted, if this bill was passed, if this National Labor Board was made permanent and it had some force, there isn't any doubt in my mind, Senator, but what we would organize this textile industry close to 100 percent. We have the material now to do it. In the South we have these young men who are learning. There is a whole lot of difference in 10 years. These young men now have greater educational opportunities. They are thinking for themselves. They are not going to be intimidated, they are not going to be scared by the threats of the bosses. They are going through the South and are forming these unions.

The CHAIRMAN. Another difficulty that you have had is the fact that you have had to deal with the newest arrivals from foreign countries to this country, largely.

Mr. GORMAN. Almost every nationality, Senator.

The CHAIRMAN. That applies to your industry more than to any other industry.

Mr. GORMAN. Absolutely.

The CHAIRMAN. And there has been, unfortunately, as I have observed it in years that have passed, a philosophy among the employers in the textile industry, that by mixing the racial groups, and employing people who did not speak the same language, they would be in a position to combat organization?

Mr. GORMAN. That is right.

The CHAIRMAN. And thereby have a greater control over their employees.

Mr. GORMAN. That is right, Senator.

The CHAIRMAN. And that has added to your problem. In repayment, the employers are now beginning to realize that the seeds of something worse than the trade union have lodged among some of their employees in their plants. Is that true?

Mr. GORMAN. That is true, Senator. I am mindful of the first attempt made to use those tactics. It happened in your own State, where this big company went over into southern Europe and brought these people over here from all parts of the world, they put a Frenchman next to an Irishman, an Italian next to a Pole, they split them up all along in the departments, so they could not talk to each other. The idea of that was, if they talked to each other they would want to organize. But you remember that that company broke down in the spring of 1912. It was ruinous. We did have that to contend

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with. It is not so extensive today as it was then, of course, on account of the curtailment of immigration. I think we can overcome that, Senator.

The CHAIRMAN. And the education that the children have been able to get in our schools, the workers now in 1934, most of them, although they may be of imigrant descent, have had some education in America.

Mr. GORMAN. Yes, they have, and because of that they are not subject to that sort of tricks.

The CHAIRMAN. Are there any other questions by any of the members of the committee?

Senator DAVIS. The majority of workers in the southern textile industry are more or less native, aren't they?

Mr. GORMAN. They are, sir. There are very few foreigners.

Senator DAVIS. Are there any company stores in these corporate owned towns in the South?

Mr. GORMAN. Yes, there are some.

Senator DAVIS. Are they compelled to buy in the company stores now?

Mr. GORMAN. Well, I would not say that they are exactly compelled. In some places they are intimidated to the extent that they do, but outright compulsion, I would not say that, Senator.

The CHAIRMAN. Thank you, Mr. Gorman.

Mr. GORMAN. Thank you very much.

The CHAIRMAN. The next witness is Mr. Wagenet.

STATEMENT OF R. G. WAGENET, DIRECTOR, NEW YORK BUILDING CONGRESS, NEW YORK CITY

The CHAIRMAN. Your full name?

Mr. WAGENET. Russell Gordon Wagenet.

The CHAIRMAN. Your residence?

Mr. WAGENET. Georgetown, Conn.

The CHAIRMAN. And your official positions, if any?

Mr. WAGENET. I am appearing here, sir, as an individual.

The CHAIRMAN. What is your occupation or profession?

Mr. WAGENET. I am an executive director and have been a labor manager for several years, interested in labor since 1914.

The CHAIRMAN. The description of you on the calendar is you are a director of the New York Building Congress.

Mr. WAGENET. Yes, sir.

The CHAIRMAN. What is that?

Mr. WAGENET. That is an organization or an association of all the branches of the building industry in metropolitan New York, including labor.

The CHAIRMAN. How much time would you like?

Mr. WAGENET. Just a few minutes.

The CHAIRMAN. How many members in this organization?

Mr. WAGENET. At the present time about 600 to 700.

The CHAIRMAN. You are appearing here in your individual capacity?

Mr. WAGENET. Yes.

The CHAIRMAN. We will be pleased to hear you.

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Mr. WAGENET. Last fall I was called upon to act as temporary mediator for the National Labor Board in several cases coming before that board. In each of the cases—if you care to, I will name them.

The CHAIRMAN. We will be please to have you do that.

Mr. WAGENET. The first was the strike in one of the large plants of the smoking pipe-making industry. The second was the strike in the shipyards industry in New York Harbor. The third was a strike in the shoe industry in Lynn, Mass., and the fourth was the Ford Co. strike at Edgewater, N.J. In each of these cases, if the present Wagner bill had been a law and equalization of bargaining power had been established, and the clarification of section 7 (a) had been established, there would have been no necessity for weeks of struggle, loss of wages, and loss of production to the manufacturers.

In the case of one of the industries, the smoking pipe, the strike lasted approximately 9 weeks. After the first 3 weeks, the employers in the association called me into conference in New York City, where we spent 6 hours together, at the conclusion of which those employers who had their men still working decided that the way to handle the organization of the industry was to stop all work, in effect create a lock-out that would extend for some weeks. That was done, much against the advice of the mediator. That situation extended for some time, and with great difficulty, and certainly with much hardship, eventually the workers went back under the direction of the Regional Labor Board.

In the case of the shipyards industry, the strike lasted again for several weeks, involving from three to four thousand men, and eventually had to be sent to Washington for settlement. In that case I discussed section 7(a) in detail with the president of one of the largest shipbuilding companies, and he said, in effect, that he recognized what 7(a) meant, but decided that he would disregard it, which, in my opinion, is a denial of the right that (7a) contains as to collective bargaining.

I believe that the Wagner bill by establishing equalization of bargaining power will mean more stable management for American industry. I think it would mean a better security of work for the workingman. I believe without a doubt that it will reduce the unnecessary cost that goes now to pay for such things as secret service in industry. I think that the bill would set up and encourage a cooperative method of settling disputes, which would continue indefinitely, which would, once and for all, after each industry had set up this method which we might term an impartial machinery, which would once and for all stabilize conditions in the industry.

Insofar as labor management is concerned, I look at this largely as a problem of management. I think until genuine collective agreements providing for the contractual relationships of two independent persons are permitted, we will not reach a condition where we can say that American industry is actually on a stable basis. Without that, there will always be the threat of labor trouble from some angle or another.

I have not had very much to do with company unions, only from the point of view of observing and studying some of them. I say that the company union is not the answer to the collective bargaining problem facing the country today.

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The CHAIRMAN. The N.R.A. had, as one of its objectives, the elimination of ruthless competition that the producer found in the sale of his merchandise because of different hours, because in a given industry the hours and wages differed. Now I wonder if you are in accord with my view, that the N.R.A. now leaves the producer-employer subject to ruthless conditions in the rate of wages to be paid. One of the witnesses this morning testified that in certain branches of the jewelry industry the wages are fixed and standardized, but there are employers manufacturing the same product, where there is no organization, nobody to collectively bargain with, and they can arrange their wages and make other arrangements with the employees. Why should this first group of employers subject themselves to bargain and to this disadvantage as against those who do not subject themselves to it? Isn't that one of the results of the N.R.A.?

Mr. WAGENET. That they are at a disadvantage?

The CHAIRMAN. Yes; that they are. The employer who lives up to the spirit of the collective bargaining idea and who recognizes the union and meets the wages simply cannot survive unless all the industry is subjected to collective bargaining.

Mr. WAGENET. No question about it. I can tell you one instance in Massachusetts where that particular point with the shoe industry, would come on to a collective-bargaining basis, where they persuaded that particular employer to deal with the union there.

The CHAIRMAN. Prior to the N.R.A. and previous to the codes there was chiseling by producers and employers in every direction possible in order to outdo the other fellow.

Mr. WAGENET. Certainly.

The CHAIRMAN. That could be eliminated, but the matter of wages won't be eliminated unless there is collective bargaining among all employers and employees in a given industry.

Mr. WAGENET. Exactly. I was going to make the point, Senator, that without the Wagner bill that competition will continue, in my opinion, and through the Wagner bill, with the equalization of bargaining power, there will be sufficient incentive for the workers and sufficient power given them to standardize the wages throughout the industry for the benefit in the long run of the employers of that industry, and through that will generally bring back the recovery that certainly was the intention of the N.R.A.

The CHAIRMAN. Thank you. Have you any other observations?

Mr. WAGENET. Just one more point, and that is this: I think that American industry is largely beset by a fear complex. The employer is afraid—not all, of course—by and large employers are afraid of unions and the workmen are afraid of the employers in the unorganized industries, and I think that has a very bad reaction on people generally. I think if one might compare a well organized industry operating under collective bargaining, with one operating under a company union or operating without any form of collective bargaining, one would see the difference at once, both in the organization of the company, the attitude of the company toward its whole management problem, and in the attitude of the workmen, and I think it is a detrimental attitude for any self-respecting community and country.

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I have seen so much of that particular thing and I have been so much impressed with it that I mention it here that we should remove the fear psychology, and here through the Wagner bill is an opportunity to do it.

Thank you.

The CHAIRMAN. Thank you, sir. Mr. Suffern?

STATEMENT OF ARTHUR E. SUFFERN

The CHAIRMAN. Will you state your full name?

Mr. SUFFERN. Arthur E. Suffern.

The CHAIRMAN. Your residence?

Mr. SUFFERN. New York City.

The CHAIRMAN. You are listed here as a member of the Federal Council of Churches, New York City, and professor of economics, New York University. Is that correct?

Mr. SUFFERN. I am not a member of the Federal Council of Churches and I am not a professor in New York University. I come representing myself, primarily as a student of labor problems for the last 25 years.

I happen to be a lecturer on labor problems at New York University. I am not a professor but a lecturer on labor problems, and I am not speaking for New York University. Although I have done some work for the Federal Council of Churches I am not speaking for the Federal Council of Churches. I am speaking for myself as a student of labor problems.

The CHAIRMAN. We will be pleased to hear you.

Mr. SUFFERN. As an economist, I have been engaged in the study of labor problems, as I say, for the last 25 years. I have worked in factories 6 years and know conditions both from the standpoint of the wage earner and that of management.

In two books, Conciliation and Arbitration in the Coal Industry of America, published in 1915, and the Coal Miner's Struggle for Industrial Status, published in 1926, I have tried to present in plain terms the significance of the struggle for status of the workers in the coal industry. This struggle is typical of what has been going on in many industries for over 75 years. It represents the efforts of supposedly free citizens to acquire an economic basis of democracy comparable to the democracy they are entitled to enjoy politically under a representative form of government.

The difficulty has been that the workers have received very little assistance from Government in equalizing the advantages which employers enjoy under the institution of private property and the protections given that institution by the Constitution. The coal industry has been an outstanding illustration of the chaos which can exist when employers own whole communities and the institutions in them as well as the property devoted to mining. The drive among employers for competitive advantage and the autocracy of management possible under the rights of ownership has reduced the workers on many occasions almost to the status of industrial serfs. On the other hand, the pace of competition set by the most unscrupulous has reduced most of the employers at various times to the stage of bankruptcy. Similar conditions can be pointed to in other industries and the results can be attributed for the most part to the same forces which explain the developments in the coal industry.

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The full force of these factors was demonstrated widely throughout the economic system during the depression of 1929–33. The cutting of wages in order to cut prices resulted in a creeping paralysis which threw millions out of work and cut off the market for goods, even for those who were most determined to seek competitive advantage. Business and bank failures finally brought the whole economic system to a standstill.

Only then were those most responsible for these conditions willing to consider a new approach for a savior. However, they were among those most clamorous for a savior. The logical outworking of unlimited competition had brought chaos, and they knew no methods of business and finance adequate to meet the situation. They wanted Government to do something for them, and they forgot temporarily their old slogan of less government in business and more business in government.

Fortunately for them and for everybody else the Nation was headed by a man who believed that the best way to help people is to give them an opportunity to help themselves. This would be a "new deal", indeed, if carried far enough to help those most in need of it, as well as those able to help themselves. However, the "new deal" had hardly gotten under way before it became evident that many employers proposed to make all the use they could of their opportunity to organize and act collectively under their codes, but they did not propose to grant employees the right to organize and bargain collectively for wages and working conditions.

At this point the National Labor Board was created to see whether meaning could be put in section 7 of the Recovery Act. One of the vice presidents of the American Federation of Labor has discovered that "the act is not a labor magna charta. It is merely a pious declaration of the right of labor to organize and to bargain collectively. Then it goes on to assure the right of every employer to determine his own course as he will, regardless of the wishes of the workers. It means that the employer can say, "All right boys; come in and we'll talk it over"; hear the demands for higher wages and say, "Sorry —we can't pay more."

If the men object, he can answer: "We've had our collective bargaining. The act doesn't say anything about reaching an agreement."

This view, moreover, is supported by the interpretations of section 7 rendered by the administrator and the chief counsel of the N.R.A. Furthermore, as far as I can see, there is nothing in the law that requires an employer even to confer with employee representatives. With these handicaps, the remarkable thing is that the National Labor Board has succeeded as well as it has in mediating and conciliating industrial disputes.

The question is, however, whether it is not running against a stone wall when it has to deal with employers who do not propose to deal with unions which the employees organize themselves. In other words, these employers refuse to grant to labor the right which they enjoy themselves of organizing and to selecting whomever they wish to represent them. This is a good illustration of how meaningless some rights are in our economic system unless those to whom the rights belong have the economic power to enforce them. It also illus-

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trates the fallacy of expecting that the rules of the game will be fair, if those with power and selfish interests at stake are allowed to make them. If Government has any justification in modern civilization it is to be found in its duty to protect the weak against the strong and to define and enforce standards which list the level of human relations.

This bill attempts to meet these requirements. It defines as unfair labor practices certain activities and methods devised to deny labor its right to organize and bargain collectively through representatives of its own choosing. Furthermore, it defines as an unfair labor practice the refusal of an employer to recognize or deal with the representatives of organized labor.

This is the crux of the employer's power to make ineffective labor's right to organize and bargain collectively through self-chosen representatives. Even if an employer voluntarily refrains from interference and coercion in connection with labor's attempts to organize and select representatives or even if he is prohibited from doing these things by section 7 of the Recovery Act, he can nullify largely if not entirely the right of labor to bargain collectively merely by refusing to recognize and deal with its representatives. Furthermore, strikes are frequently ineffective as a means of compelling an employer to deal with representatives of organized labor. The strike is even a less effective weapon for unorganized workers and company unions which have not accumulated funds needed to pay strike benefits and other expenses of conducting such a struggle.

The result is that labor's right to organize and bargain collectively is largely a fiction. On the other hand the employers through corporation organization, trade associations and now under code authorities are able to act as a unit in setting wage rates and establishing working conditions. This disparity in bargaining power frequently results in an exploitation of labor which drives workers down to a subsistence level or below. If workers cannot find employment and earn living wages employers expect the community to come to the aid of those in distress. This leaves employers free to shirk their responsibilities of so managing the economic system as to make it serve its main purpose of providing the population with the best possible living. In an industrial society worthy of the name, owners and employers should be leaders and builders as well as profit takers. Is there any way of holding them to these responsibilities as long as they are free to refuse to deal with their employees on a basis which enables their employees to protect their economic right to employment at the best possible terms?

Assuming that the opponents of this bill as well as its advocates want to save the capitalistic system, can they do better than to give employees a status of partnership in industry? By partnership status I mean something which establishes rights and obligations, attitudes and methods similar to those expected between partners as business men. Enlightened employers in some industries have found this to be "good business." It gives employees the feeling that they have a stake in the business and enlists their cooperation in eliminating wastes, reducing costs, and improving industrial processes.

The CHAIRMAN. Is it not true that where there is a failure of cooperation between the employees and employers, it is due in large part to the class of employees which the employer himself has chosen to work for him, to a large extent?

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Mr. SUFFREN. To a large degree, but there, of course, comes in the same questions of leadership in industry.

The CHAIRMAN. You spoke of the enlightened employer, and my observation has been that where the enlightened employer that you refer to has been able to cooperate and make happy and pleasant relations between himself and his employees, he has had the class of men and women employed by him who were receptive to advice and suggestion and were educated to the extent of being cooperative rather than stubborn I have found that where there is a good deal of trouble between the employer and employees it is in that class to which I referred this morning, where there has been an attempt to amalgamate the different racial groups as employees and where there has not been a meeting of the minds among the employees themselves.

Mr. SUFFREN. A study of the various so-called "cooperative experiments" shows that in most of them the employer has taken what he happened to have. Something happened that introduced the idea that possibly he might get along better with his employees if he made another approach, particularly so in dealing with unions, and one of the outstanding examples of that is the Baltimore & Ohio Railroad.

The man who sold that idea to the Baltimore & Ohio Railroad, Otto Byer, the engineer, who went to Mr. Willard with Mr. Johnston, the president of the Machinists, and showed Mr. Willard how they could improve the service of the Baltimore & Ohio Railroad and gain better cooperation out of the employees.

Well, it was not an easy idea to sell; they had something of the idea that it was a Soviet or something like that, but when it was tried out in one of the worst shops on the railroad and had proved to be effective it was then extended over the railroad and has proven to be one of the greatest things that has ever happened as a means of improving the esprit de corps.

The CHAIRMAN. That class of employees is somewhat superior to the class of employees found in many industries? They are American-born, most of them, and they have had a fair general education?

Mr. SUFFERN (sic). Well, you will not find a worse bunch of roughnecks, you might say, among workers in the country than you will find in many of the mining camps, and this very thing I am speaking of has worked out remarkably well with the Rocky Mountain Fuel Co., who took an ordinary bunch of folks as they happened to find them, they were denied unionism but were organized as a union in the United Mine Workers, and they have given a remarkable example of what it is possible to do when workers have good industrial leadership, in respect to improvement of general conditions, both for employers and employees.

As I say, it is good business, not only for particular plants but for whole industries and for the economic system as a whole to establish relations between employers and employees which give employees a greater stake in the returns from industry than they have had in the past. It makes possible the development of attitudes and methods in employer-employee relations designed to establish amicable solution of common problems. Conflicting interests are minimized in an effort to produce and share in greater returns.

In every case, however, where experiments along these lines have been tried, it has been found necessary to give labor a collective status. I would go farther than the bill does and require employers in each industry to deal collectively through representatives with the

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employees in that industry, if the employees organized a majority and demand that form of dealing. Even under these conditions employees would not have any better status than employers now have under the codes of the Recovery Act.

The main purpose of such collective dealing is to establish minimum standards in wages, hours, and working conditions. Always, where minimum standards have been set, they have been to the advantage of employers as well as to the advantage of employees. Limits have been put on those whose main emphasis has been in cutting wages in order to cut prices. When efforts to establish such limits have been ineffective, the failure can be attributed for the most part to the fact that regulations could not be applied universally throughout an industry. Experience indicates that the necessary universality can be established only by Government whose job it is to make new rules of the game when the old rules are obviously inadequate.

My main point is that the principal emphasis should be on establishing such relations between employers and employees that they will have increasing incentive to work out partnership attitudes and methods. While they are going through the evolution to this end doubtless there will be many occasions where Government should intervene for the purpose of limiting those determined to be arbitrary. At this point the National Labor Board should have an important part to play.

Much evidence exists that indicates the need for prohibiting the various unfair practices enumerated in this bill. These practices range all the way from crude methods of force, intimidation, and violence to willful and subtle means of thwarting the efforts of employees to enlist their fellow-workers in an effective organization. On the question of employer-employee relations many employers are as benighted as farmers who insist on farming by the moon after agricultural experiment stations showed them how to get better results. In many cases the more progressive and enlightened employers have set up experiment stations in employee relations the results from which are available to all employers. Those who refuse to make use of this experience obviously need a guiding hand supported by authority to introduce new methods. Government owes this much to the employees subjected to benighted and autocratic management. If Government's concern should be the greatest good to the greatest number in industry it has been very remiss in allowing a vast working population to be exploited by irresponsible and autocratic employers whose practices have not been subjected to review and restraint.

The unfair practices enumerated in paragraphs 3 to 6 in section 5 are obviously common in connection with company unions. Investigations by impartial research organizations have shown that company unions are frequently used to deny workers the rights assured them by law and court decisions. In many cases the fundamental right of collective bargaining is so limited that it has little value. Management holds the veto over all acts and grants only as much power over wages, hours, working conditions, discipline, and discharge as it sees fit. Employee representatives are in the pay of the company and fear to press aggressively the claims of their constituents. Management representatives talk down the opposition of employees representatives and if necessary resort to reprisals to force docility.

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Investigations have shown in some cases that at the election of employee representatives ballot boxes have been passed around by representatives of management and the ballots of employees have been marked. If such methods are not adequate to obtain the kind of employee representatives wanted, management retains the right to discharge them.

Under these circumstances a system of handling evidence of grievances can have little meaning. Employees feel that it is useless to present their complaints to representatives who in turn are afraid to displease foremen and superintendents by carrying grievances to higher officials. Even where cases are carried to higher officials they are frequently slow to reprimand or discipline foremen and superintendents. Thus the tyranny of authority is allowed to defeat the ostensible purpose of an employees representation plan.

When it comes to the establishment of wages and hours neither the employee representatives nor employer representatives can participate in fixing standards throughout an industry. The employer, however, retains the power to force lower standards in order to gain competitive advantage. Thus company unions are inadequate at the very point needed to deal with present day industrial conditions. The level of competition needs to be lifted in order to prevent the decline of an industry to the point where it is at a disadvantage in exchanging its products for the products of all other industries. Since its relative position in the economic system is always expressed in terms of the prices and income it receives, both the employers and employees become poorer and poorer consumers of the products of other industries the more an industry is depressed by unfair competitive and unfair labor practices. Thus in order to balance production and consumption in the economic system there must be not only better distribution of income between employers and employees but the price ratios between the products of the various industries must be such as to permit the maximum number of exchanges of goods.

The employers and employees in the railroad industry have supported legislation under which they have obligated themselves to make every effort to adjust wages, hours, working conditions in conference between representatives designated by the respective parties for that purpose. The employers are obligated not only to deal with employee representatives but to refrain from any interference or coercion in connection with their selection and the self-organization of the employees. There is every reason why the employers and employees in all industries should have a similar status. As in the railroad industry they need a national tribunal to supervise their relations. The National Labor Board as proposed in this bill would fill that need.

If the Board needs the support of the courts to enforce its rulings it should have it. It is to be hoped that the Board will be helped and not handicapped unnecessarily by the courts. When labor is given the improved status defined by the bill the courts will be given an opportunity to give more consideration to the claims and needs of labor than they have in the past under the law of conspiracy. If employers are to have greater freedom from prosecution under the law of conspiracy as codified in the antitrust acts, employees should have greater privileges.

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In short, I regard the bill as one of the most significant efforts ever made in the United States to improve the status of labor. Employers will not be denied any rights necessary to their proper functioning in an industrial society. Insofar as they may be limited in the exercise of autocratic power, the result in the long run will be to their advantage as well as to the advantage of society. A regime of cooperative dealing between employers and employees offers much more than constant struggle which accentuates the division between classes.

In conclusion I would like to call attention to some statements that are being made by the automobile manufacturers now in denouncing the Wagner labor bill and point out something which it seems to me this committee should have in mind in connection with the stand that they are taking on it and which they are publishing in the press, this propaganda which they are paying for as full-page advertisements, one of which I have as an exhibit here.

In connection with this full page advertisement in the New York Times on March 20, entitled "To Employees of the Automobile Industry", which is the way it is designated, I would like to raise the question with the committee as to whether they think this is done primarily to appeal to the employees not to strike, as the ostensible purpose is, publishing it in New York and elsewhere, or whether it is done primarily to bring public pressure on this committee in connection with the Wagner labor bill.

The automobile manufacturers declare that "the bill would in effect unionize every industrial worker in the country, regardless of his own wishes, and would set up a labor dictatorship with power and authority exceeding anything yet experienced in the United States and it would result in giving a labor union official virtual domination over American industrial life. Everybody, from the farmer with more than one man in his employ to the larger manufacturer with thousands dependent upon him for their livelihood, might be subject to the whim of some irresponsible professional labor organizer."

This is a good illustration of the attitudes of benighted employers toward organized labor. No impartial student of labor problems seeks to justify what are evidently abuses of power by organized labor. But speaking of dictatorship and monopoly of employment, who has it now? The employers not only have a monopoly on jobs but as a rule an employee has to accept whatever terms dictated.

Speaking of the domination of irresponsible labor organizers, could it be as great as the irresponsible domination of the management of large corporations which not only dominate and exploit labor but dominate and exploit stockholders by maintaining a self-perpetuating industrial hierarchy that increases its salaries and bonuses in a period of depression at the same time it is cutting dividends and wages? Industrial dictators operating on such a basis are not in a position to cast any stones at unions and labor officials who, the industrialists say, are "dipping heavily into the pocketbooks of the men and women of America." Nor should they be allowed to assume that they can set themselves up as the self-appointed protectors of "the best interests of the employees."

The automobile manufacturers declare that—

> higher prices, constant labor trouble, strikes, and lockouts would be among the consequences of this act. The effect also would be to subject the whole country to the dangers of a universal closed shop and a national strike involving the workers in every industry in the United States.

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It may be asked who does the exacting of higher prices now? Who has the power not to turn hundreds of thousands of workers out in the street when the owners do not see an opportunity for profit? This is a closed shop with a vengeance which falls not only upon their employees but upon the consuming public.

Furthermore, the automobile manufacturers reveal how little in sympathy they are with the "new deal" which seeks to give more people employment and increase their purchasing power to aid recovery. Although they boast of the high wages in their industry and the increased employment they have given, they fail to mention that high labor costs do not necessarily accompany high wages. If employers are efficient, labor costs decrease and wages can be increased. But the automobile manufacturers evidently do not want to share with their employees, as much as they should, the increased returns from the industry.

They declare that—

> no industry, entirely union in character, has made substantial progress in this country, and the effect of the Wagner bill is to force closed-shop unionism on all industry.

They should be asked to point to an industry "entirely union in character." Furthermore, most industries are nonunion in their labor policies and many of them are very unprogressive. The Hoover commission appointed to study wastes in industry attributed most of the wastes to management. Those who know most about the struggles of workers to gain a collective status know that organized labor has had very little opportunity to cooperate in the development of progress. The employers have been too busy trying to cut wages in order to cut prices and trying to break down working standards and the unions themselves so that the employers could regain their power to exploit the workers under unlimited autocratic management.

However, some employers who deal with organized labor have discovered that there is nothing about organized labor as such to hinder progress. On the contrary they have found that when employers want to enlist their workers in a plan of cooperation in reducing costs and improving processes, the labor organization is a very convenient means to this end. They have discovered also that organized labor is just as responsive or more so than company unions which are regarded as so essential by many of the big industrialists, automobile manufacturers included.

If the automobile manufacturers were as progressive as they pretend to be they would know about these things and would be making use of a new discovery instead of wasting their efforts in pursuing an outmoded philosophy of industrial relations. They may be leading the world in technical matters but in industrial relations they are backwoodsmen.

Why are they not as quick to learn from other people's experience in industrial relations as they are to copy new features of cars? Doubtless the answer is that they are so fearful of losing some of their power to manipulate human beings as they do machines that they are blinded to the fact that human beings are different from machines. After many years of study I am convinced that there is much more to this statement than appears on the face of it. Many hard-boiled employers treat their employees worse than they do their machines. They do not have to invest any capital in wage workers. I would

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like to challenge such employers to give the same careful study to ways and means of getting the most out of their employees that they apply to their mechanical equipment. If they accept the challenge they will discover that they have been wasting one of the most valuable assets at their command. And they can have this asset for much less money than they invest in their machines.

The absurd thing about the refusal of hard-boiled industrialists to treat their employees as human beings is that they refuse to apply to them the very attitudes and methods they have found necessary in order to get the most out of those with whom they are most closely associated, particularly those they regard as more nearly equals than they do the general run of their employees.

If the industrialists of this country devoted more of their time to discovering what their job is as leaders and constructive builders of a coordinated system of production and consumption they would find that they have not any time to waste fighting labor. The time, effort, and expense devoted to fighting labor would yield much bigger returns if devoted to trying to understand the problems of labor and to enlisting labor in a program of cooperation. In fact the industrialists by fighting labor are passing up one of the biggest opportunities ever offered any controlling group in the history of civilization. The labor forces of this country are not indoctrinated with destructive views. On the contrary they are very ready to respond to suggestions and plans for making the capitalistic system more workable and equitable. They are asking to be treated as citizens who have some economic as well as political rights. Only those drunk with power and with determination to exploit the workers can fail to see this.

If the industrialists do not rise to their opportunity, Government will find that it faces the supreme task of throwing its weight against forces which threaten its overthrow. Looking at the whole situation in perspective it would seem that at present the chief threat to the overthrow of representative government comes from employers who are determined to maintain their economic hierarchy and if necessary mold the Government to suit their purposes. This administration has the support of the masses and it should use the occasion to establish institutions which will promulgate welfare and democracy as needed in relation to changing conditions. We are at the crossroads to a new era and if the present Government does not lead in building new foundations it will sson find iself without followers. A National Labor Board as provided in this bill should stand as a bulwark against the abuse of economic power, whether by employers or employees.

I think that is all I have, Senator, except that I would like to see that advertisement go in the record as an exhibit with a question as to what its main purpose is.

The CHAIRMAN. You quoted from it before you made your reply?

Mr. SUFFREN. No; that was another thing I quoted from. What I quoted from was a progaganda statement in the New York Times of March 17.

The CHAIRMAN. You would like it inserted in the record, the advertisement of the automobile manufacturers, published in the New York Times?

Mr. SUFFREN. The New York Times of March 20.

The CHAIRMAN. An appeal to the employees not to strike? It may go in the record.

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(The matter referred to is as follows:)

[From New York Times, Mar. 20, 1934]

TO EMPLOYEES OF THE AUTOMOBILE INDUSTRY

This is what is happening:

The American Federation of Labor and other outside unions are trying to force you to join their union and pay dues to support professional labor leaders.

They are trying to destroy the present satisfactory arrangement between you and the management under which your right to collective bargaining is fully recognized.

These employee representation plans—which the labor leaders call company unions—have been set up by more than 80 percent of the employees themselves. They are working satisfactorily. Any one of you can see his supervisory officer at any reasonable time and settle any questions that may arise. Most of the questions that have come up have been peacefully settled.

No one has to join any union. Your employment does not depend on your membership or nonmembership in any organization. It depends on merit alone.

The outside labor leaders are trying by force, by coercion, by intimidation of you and your families and threat of strike to make you join their union. Regardless of what you want, these labor leaders want the right to speak for all of you. They want dues-paying members.

But the N.I.R.A. does not say that the American Federation of Labor or any other union shall speak for you.

It is up to each one of you to decide for yourself whether these outside unions can secure any right that you cannot secure yourself.

It is up to you to say whether you want to surrender to professional labor leaders your own right to deal with the management of your companies.

To get what they want, regardless of what you want, the American Federation of Labor is using its usual weapons, namely a threat to call a strike.

Sunday's newspapers quoted William Green, president of the American Federation of Labor, as saying:

> The question as to whether a strike in the automobile industry involving more than 100,000 workers shall or shall not occur on Wednesday morning, March 21, rests with the automobile manufacturers. Their decision will decide the question. The cause of the strike is directly traceable to the attempt of the automobile manufacturers to impose company unions upon their workers and to force them to accept.

That is not the issue.

You know that the companies have not coerced you into employee representation plans.

You well know that you have taken part voluntarily in setting up employee representation plans.

You know, too, that hours have been shortened voluntarily to an annual average of 36 hours per week, that wage rates have been increased more than 30 percent within the past year, and in many cases are higher than they were in 1929 at the peak of prosperity, and that twice as many men are at work today as during the depression.

That is only one fundamental issue here namely:

Whether the automobile industry is to be run by the American Federation of Labor or any other outside union;

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Whether you have to get a union card in order to work in these plants;

Whether your job and your advancement in the industry will be based on merit;

Whether the employee representative shall be ousted in favor of outside labor leaders who have interests to serve other than your interests.

If the strike comes, it won't be because you want to strike.

The strike threat comes from the American Federation of Labor and not from the automobile workers.

Let there be no misunderstanding as to the companies' attitude toward the automobile representation plans.

The automobile manufacturers intend to abide by the employee representation plans as they may be modified from time to time by the employees themselves.

And bear this in mind, the automobile industry is unquestionably leading the way back to prosperity. People are buying more automobiles than they have been for years.

This increased demand means more jobs at good wages; not only in the automobile industry but in thousands of other industries, supplying materials and parts to the automobile manufacturers.

A strike at this time will not only work hardship on you and your families but will interfere with the recovery efforts of the President of the United States.

The automobile industry has reached its present state of high efficiency, low cost, with the consequent wide demand for its products, high wages, and plentiful jobs without the help of the American Federation of Labor and without any serious labor trouble.

Unasked and unwanted, the American Federation of Labor is now trying to get control of this industry and destroy what we have taken years to build.

This industry does not intend to yield to such un-American and unpatriotic procedure.

National Automobile Chamber of Commerce, members: Auburn Automobile Co., The Autocar Co., Buick Motor Co., Cadillac Motor Car Co., Checker Cab Manufacturing Corporation, Chevrolet Motor Co., Chrysler Sales Corporation, Continental Automobile Co., De Soto Motor Corporation, Federal Motor Truck Co., H. H. Franklin Manufacturing Co., General Motors Truck Corporation, Graham-Paige Motors Corporation, Hudson Motor Car Co., Hupp Motor Car Corporation, International Harvester Co., Mack Brothers Motor Car Co., Moreland Motor Truck Co., The Nash Motors Co., Olds Motor Works, Packard Motor Car Co., The Pierce Arrow Motor Car Co., Plymouth Motor Corporation, Pontiac Motor Co., Reo Motor Car Co., Sterling Motor Truck Co., Stewart Motor Corporation, The Studebaker Corporation, Stutz Motor Car Co. of America, Inc., Walter Motor Truck Co., Willys Overland Co., and the Fisher Body Division, General Motors Corporation.

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The CHAIRMAN. Are there any other witnesses?

(No response.)

The CHAIRMAN. I will ask the stenographer to insert in the record two letters I have received dealing with this subject.

(The letters referred to are as follows:)

THE JOHN W. COWPER CO.,
Buffalo, N. Y., March 15, 1934.

CHAIRMAN SENATE LABOR COMMITTEE,
Senate Office Building, Washington, D. C.

DEAR MR. CHAIRMAN: I understand you are holding hearings on the bill recently presented by Senator Wagner, giving broader powers to the National Labor Board.

May I have the privilege of offering you a copy of a letter (hereto attached) I have written to Senator Wagner giving my views on this subject, and respectfully ask that this letter be made a part of the record.

With great respect, I am

Yours very truly,

J. W. COWPER, *President.*

THE JOHN W. COWPER CO., INC.,
Buffalo, N. Y., March 13, 1934.

Hon. ROBERT F. WAGNER.
United States Senate, Washington, D. C.

MY DEAR SENATOR: I have read with a great deal of interest your bill, introduced in the Senate on March 1, giving broader powers to the National Labor Board. In offering the following comments, which I hope you will find constructive, I wish you first to understand that we are employers of union labor, therefore I can speak without prejudice.

Under section 3, paragraph 2, "Definitions", the bill states, "It shall not include United States or any State municipal corporation or other governmental instrumentality. This exception may be reasonable enough if it applies purely to governmental agencies but where these governmental divisions are engaged in pursuits, competing with private enterprise, then there should be no exception and such agencies should be under the same restrictions as a corporation or private employer.

As an example of what I mean, where different departments of the Government are engaged in construction projects, buying materials and hiring labor, doing such work without guaranties as to cost, in competition with private enterprise. The same is true of municipal or governmental utilities, such as power, light or other plants of this nature not affecting safety and health; the Navy Department in their yards constructing new ships, running foundries, paint plants and other activities, in direct competition with private enterprise. Also such agencies as the Tennessee Valley Authority and many other governmental agencies, building and operating various projects, that are directly competing with private enterprise.

Of course, this act, whether designed to or not, in actual practice will mean legalized unionism. It may be desirable that labor should be protected against unfair practices of many employers but it is not desirable to attempt to cure this evil by a law that will create greater evils on the other side.

Under section 5, paragraph 6, I quote, "Nothing in this act shall preclude an employer and a labor organization from agreeing that a person seeking employment shall be required, as a condition of employment, to join such labor organization." This practically eliminates the employment of any other than members of the Union because in actual practice, the union will not agree to this. I think this part of the clause should read: "Nothing in this act shall preclude the employer from employing a person seeking employment who is not a member of the labor organization and the employer shall not in any way attempt to prevent such employee from joining such labor organization."

Section 207 raises the question as to representatives of employees. Under unionisms the representative of the employee is elected by all members of the union or local and employees of many individual employers often may have little or no say in the selection of their representatives and, as you may know, in many cases coercion is used by labor organizations in electing their officers. While there are many capable fairminded men representing labor organizations, there

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are also many who take the job solely for the purpose of racketeering. Being from New York, you must know that this has been so in many of the building trades unions.

So it seems to me if you are going to legally establish the union and give them the broad powers that this bill will do in actual practice, then as an employer, I say groups of employees should be entitled to elect their own representative from among themselves.

By all means, if such a bill is enacted, it should go further and safeguard the interest of the employer to the same extent that you propose to safeguard those of the employee. To do this would mean to prohibit the calling of a strike for any cause whatever and the matter shall be heard by the Labor Board, or such of its agencies as are competent to act, and a decision rendered by them. The Labor Board must have the power to enforce its mandates on labor as well as on the employer. By the same token, lockouts should be prohibited in the same manner.

Probably in order to do this, it will be necessary to enact legislation compelling the Labor Unions to incorporate, giving them in a legal way responsible representatives with whom to deal. If it be admitted that the present methods of dealing with labor need correcting, I feel that in correcting them, we should do so in a really constructive manner and not legislate a favoritism for labor that will create an evil on the opposite side as great as we have had in the past. In other words, if you are going to legislate a correction of these things, make it equal, equitable, and just for both sides.

I trust my remarks will be of some help to you, and I have the honor to be

Yours very truly,

J. W. COWPER, *President.*

UNITED STATES SENATE,
COMMITTEE ON BANKING AND CURRENCY,
March 19, 1934.

Hon. DAVID I. WALSH,
Committee on Education and Labor, Washington, D. C.

MY DEAR SENATOR: I quote you from a letter received from Mr. William B. Terry, 190 Magnolia Avenue, Hillsdale, N. J.

"I believe that industry and labor would be materially benefited and recovery would be speeded up if we had legislation along the following lines:

"1. A national minimum wage law, with no differential for any section of the country.

"Any manufacturer who has to compete with plants located in the South, for example, will verify that it is impossible today to successfully compete and that if a differential is going to be maintained in the South it is going to mean removing manufacturing plants to that area to take advantage of the materially lower manufacturing costs. This means a further shifting of industry and an increasing of the unemployment problem in the areas affected.

"2. A national maximum working hour law, with no differentials or exceptions.

"This does not mean that productive machinery cannot work two or three shifts if necessary, but that labor can only be employed a maximum number of hours per week.

"3. All collective bargaining organizations, whether affiliated with the A. F. L. or voluntary associations of employees within a plant, be incorporated and that their books be audited by a certified public accountant and that the actual expense be prorated among the members. The payment of fixed dues, usually dependent upon the average pay roll of the employees, had led to many abuses and should be prohibited. The subject of sick benefits, unemployment benefits, and old-age pensions should not be made a part of legislation of this type, which affects only strictly industrial relationships."

The above being Mr. Terry's views, it occurred to me your committee would like them for the record.

If you wish Mr. Terry to appear before your committee, I shall be glad to so advise him.

Yours very truly,

HAMILTON F. KEAN.

The CHAIRMAN. I wish to announce that the last meeting for hearing those who are in favor of the bill will be held tomorrow at 10

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o'clock, and on Monday morning the opposition will commence their presentation of their views.

Mr. DUNN. Mr. Chairman, I would like to renew my request at this time which I made last week.

The CHAIRMAN. You are opposed to this bill?

Mr. DUNN. As the representative of the Trade Union Community League.

The CHAIRMAN. Are you opposed to this bill?

Mr. DUNN. I wish to be heard before these employers that are listed with me in your committee schedule. We were the first organization to say that section 7 (a) would not do what it said it would.

The CHAIRMAN. What is your organization?

Mr. DUNN. The Trade Union Community League.

The CHAIRMAN. Is that one of the organizations which have been referred to here as communistic?

Mr. DUNN. I have not heard it referred to here as communistic, but the press refers to it as communistic occasionally.

The CHAIRMAN. Do you admit or deny it?

Mr. DUNN. It is not a communist organization. It is a trade union representing 125,000 organized workers.

The CHAIRMAN. I would be very glad to give you a hearing. I cannot do it this morning, because several others have made that request and I have denied them. I do not want to hear you until after the proponents of the bill have concluded their testimony. Perhaps tomorrow morning after we have finished with the witnesses that are scheduled we might hear you.

Mr. DUNN. The thing I am objecting to especially, Senator, is that we are listed in your committee schedule with such organizations as the United States Steel Corporation, whose motives for opposing this bill are certainly not ours.

The CHAIRMAN. You may list the witness as representing a branch of organized labor that is opposed to this measure. Is that right?

Mr. DUNN. Yes. When can I be heard, Senator?

The CHAIRMAN. If we finish with the other witnesses tomorrow morning we will hear you then. We will attempt to arrange it so that you will not be contaminated by the employers who appear in opposition.

Mr. DUNN. It is not exactly contamination but it might give rise to a certain misunderstanding.

The CHAIRMAN. Thank you very much.

(Whereupon, at 12:30 p.m., the committee recessed until tomorrow, Thursday, Mar. 22, 1934, at 10 a.m.)

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TO CREATE A NATIONAL LABOR BOARD

THURSDAY, MARCH 22, 1934

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The committee met, pursuant to adjournment, at 10 a.m., in room 335, Senate Office Building, Washington, D.C., Senator David I. Walsh (chairman) presiding.

Present: Senators Walsh (chairman), Metcalf, Davis.

Present also: Senator Robert F. Wagner.

The CHAIRMAN. The committee will come to order. Mr. Hogue?

STATEMENT OF RICHARD W. HOGUE

The CHAIRMAN. Your full name, please?

Mr. HOGUE. Richard W. Hogue.

The CHAIRMAN. Your residence?

Mr. HOGUE. 125 Third Street NE.

The CHAIRMAN. Washington?

Mr. HOGUE. Yes, sir.

The CHAIRMAN. You are listed as a director of workers' education, Pennsylvania State Federation of Labor.

Mr. HOGUE. Formerly a director of workers' education.

The CHAIRMAN. What is your occupation now?

Mr. HOGUE. Director of the independent legislative bureau here in Washington.

The CHAIRMAN. Representing whom?

Mr. HOGUE. At this hearing representing only the request of Senator Wagner after knowing of my work with the division of labor. I represent no organization, Senator.

The CHAIRMAN. How much time would you like?

Mr. HOGUE. I want to hurry through briefly. They told me yesterday I would be on at 11 o'clock, and I was getting ready a very effective little statement when they told me to come at 10; so it is not ready.

The CHAIRMAN. Who told you to come at 10?

Mr. HOGUE. The clerk, at Senator Wagner's request. I suppose they had more important witnesses that they wanted to get out of the way. I will try to be brief, but it is difficult when you are hurried and have not formulated things effectively.

The importance of this measure, it seems to me, looms very much, not only in itself, but as a means to an end. In other words, there are some of us who feel that measures like this, and particularly this measure, have their greatest importance in the end toward which they take us, rather than in the immediate subject of present difficulties,

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and it seems to me that the facts of today justify us in feeling that unless some such step is taken as this, the end will not be desirable to peace-loving people, above all to justice-loving people, and will come in ways that very few of us will relish. That is not a threat but simply a statement of fact, that where industrial conditions will continue over too long a period as they are in a country, the inevitable result, unless you have a body of possessing and owning tyrants and a body of subservient slaves, is that you do have very serious difficulty. We are having that difficulty today with the strikes that are being threatened.

The first thing I wanted very briefly to say is that my experience in Pennsylvania led me to feel that few of us fully appreciate, Senator, what is apt to happen, what is now happening. The industrial system of America has grown up with one primary, dominating, and determined motive, the motive of profit.

The industrial realm of America has never been regulated on any large scale, nor ever been given proper attention from a standpoint of human rights. The result is, therefore, that we have an owning and possessing and a dictating class in the main, and either a subservient or a protesting and a rebelling class. Democracy cannot exist with that, that is all.

In the midst of a political democracy, where we have a right to vote for everybody from the lowest magistrate to the President, you have an industrial autocracy where the right of industrial franchise is generally denied, where when it has been granted, it has been granted as the result, not of the far-seeing wisdom of those in control of industry, but as the result of pressure and frequently as the result of violence and suffering.

The thing that makes me feel so deeply about this, and that I have a right to say a word on it, is what I saw in Pennsylvania, and very recently, which in a more or less degree exists over the country, certainly bodes ill for all of us.

I have seen workers, American citizens, men whom I have lived among and known well enough to admire, and come to love, seen them with their families, wives, and little kids, just as we have ours, seen them not only oppressed with burdens that in a decent society and in a profitable country ought never to be permitted, their children deprived of proper education, themselves deprived of jobs without any fault of their own, living in an atmosphere of industrial insecurity, and human anxiety, so much so that if we did not have a sense of the tragic it would be humorous in a country like this.

I have been among them when they have never known whether the man next to them was a spy, an agent provocateur, or one of the contemptible types of men that are regularly employed in certain industrial disputes.

In other words, we have in America commercialized strike-breaking agencies, where one side in the industrial world, by the power of finance, employs representatives of this recognized agency in Chicago, New York, and elsewhere, in order to break-down the right of other men to organize and express themselves through the power of collective bargaining. I have seen these spies, I have talked to them, I have seen a street-railway strike broken up, strike breakers brought in specially guarded trains from New York, 1,000 of them.

I have seen when those men got out at the station in Altoona then destroy everything in sight that they could not eat or smoke, and

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when the police tried to arrest them, I have seen them attack the police, and while living in Harrisburg, I learned when they wired the chief of police in Harrisburg to stop the train on its way to New York and arrest the men, instead of that, influence of the industrial leaders upon the Pennsylvania Railroad was such that they not only did not arrest them, but sent them to New York, and kept the facts out of the newspapers.

I have been up in the mine regions and lived in the tents in the yards of miners. I remember one fine Scotch family where the husband worked in mines underneath ground formerly owned by the family of the wife, and where by methods very common in our industrial world that family lost those mines, and where those self-respecting Scotch people, once the possessors of the very land beneath which the wealth of the coal rested, were these slaves of a nonunion company, receiving treatment that was almost unbelievable, where the meetings that we held were intimidated by the firing of shotguns and the burning of the cross by the Ku-Klux Klan.

I have seen those dignified, respectable, decent citizens, members of the church, the owners of the industry, not hesitate to stoop to methods that are simply incomprehensible in any enlightened age.

What I am leading up to is this—I do not want to take any more time—that the natural reaction in the minds of the workers frequently is bad. You cannot get a group of people who depend upon the labor of their lives for the support of their families, the education of their children, and the security of their future, you cannot get them baffled and beaten and oppressed and maltreated and exploited at every turn unless you get evil results in their own hearts at times. So, you get articles like this in yesterday's paper, when Mr. Raymond Kloever portrays the labor difficulties that the administration is now facing, and in it gives the last section—I think this leads directly to the situation—gives the last section to an account of the racketeer in the labor movement.

It is a very vivid and a very interesting account of the amount of salary, the amount of rake-off, that certain labor leaders get.

Surely it is true. When you get a group of people, themselves very largely deprived of education that would make for sanity of thought and self control, fighting all their lives against conditions that are not only inhuman but are monstrously unnecessary and unjust, you are going to have things like that develop.

This is my point, Senator, that these kinds of things are going to continue, so it seems to us, unless one definite thing happens; and that definite thing is not a conversion of your capitalist class to the viewpoint of a perfect development nor the development of your labor class to the viewpoint of perfect human conduct; we have got to have an orderly, systematic industrial arrangement that does simply one thing, that no longer inhibits human beings who have enough intelligence and enough interest to labor their lives in an industry, from the full expression of their collective opinions and their collective needs, and you cannot have that, it seems to us, short of what this bill is aiming at. I am not speaking now of its technical provisions. How important that is is shown on all sides.

The fundamental aspects of the measure before you and its long range effects are, I think, of primary importance. With all of the

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promise that the N.R.A. holds for labor it was scarcely launched before industrial unrest broke out in the great coal fields of Pennsylvania, where strikes and the closing of mines were followed by open conflict and bloodshed. What is the cause of this sudden clogging of the machinery of recovery? What is the meaning of labor's attitude?

The explanation has its roots in the past. Labor has too often seen the promise of a new day dissipated. There was such a promise in the war-time administration of President Wilson. To security of employment and adequate wages were added the zeal of a great cause and the hope of a larger life for the workers. The post-war period brought disillusionment and the loss of all their gains. It revealed the war itself as a mad delusion that made a mockery of their patriotism and all but wrecked the world, burying the workers beneath the wreckage.

Labor saw the victory and peace it helped to win turned to chaos and conflict. It witnessed the collapse of the employers' devotion to the public good. It saw profiteering, masked as patriotism, produce over 2,000 war-made millionaires. It saw the power of their great wealth used for the destruction of organized labor. Through the national "open-shop movement" employers sought to close the doors of industry to union labor. Through the "yellow-dog contract" and the abuse of the injunction they sought to force the workers into involuntary servitude. Then came the great financial crash, destroying millions of jobs and bringing sweatshops, starvation wages, bread lines, and all the human misery of a deep, prolonged depression.

Rightly or wrongly, intelligent labor leaders see the sequence of cause and effect in these events and proclaim it to their followers. Rightly or wrongly, they cherish a bitter distrust not easily uprooted.

The N.R.A.'s open recognition of the full right of collective bargaining was hailed by most labor leaders as a new Magna Carta for the workers. Again the hope for a new day seemed about to dawn. Powerful opposition arose to meet them. Many employers hastened to organize company-controlled unions in order to shut out the American Federation of Labor. Its representatives were barred from approaching the workers in many industries. Industrial codes were formulated which stripped the right of collective bargaining of all meaning. The steel industry's code actually proposed that the Government place its stamp of approval on the company union. That industry owns or controls large coal companies. The latent distrust of labor flared into flame in the coal fields of Pennsylvania.

Wage earners and their families constitute a majority of the population. Politically they have the rights of a majority. Whether they exercise these rights wisely or not, they possess them. Industrially they find themselves practically disfranchised, often dispossessed of their human rights. In many lands, notably in England, organized labor is recognized and dealt with as an integral part of the industrial system. In America it has had to fight for every modicum of recognition and every inch of progress. Its fight has been waged against the most powerful antilabor forces in the world. Nowhere else have the workers encountered such a combination of organized wealth and industrial power, with their control over jobs and their influence on politics, the press, public opinion, and the courts.

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There is no parallel to the reign of the industrial autocracy in a political democracy which has existed in America. That such a situation should not and must not continue is the contention of responsible labor leaders of this country. That contention is sustained by a few leading industrialists as well as by competent historians and students of economic and industrial problems. Will the effect of the National Recovery Act be to close the era of industrial autocracy? Will it go further and lay the foundations for a new industrial order?

Industrial leaders and employers as a whole must face these searching questions. Will they continue to regard the workers as mere hirelings, to be controlled by coercion and the fear of unemployment? Will they continue to act on the assumption that the primary function of business is to create security and furnish profits for the few? Will their attitude toward the N.R.A. be that of enforced submission to be succeeded by renewed hostility and opposition to organized labor? Will they conclude that their own best interests are largely dependent on the conditions and the state of mind that prevail among the great body of wage earners? Will they unite in conserving the orderly processes, cooperative spirit, and human gains attained under the emergency recovery program? Will they concede to labor the same full rights of collective organization and action which they themselves exercise? How will they meet the growing claim in behalf of the workers that they are partners in a joint enterprise and are justly entitled to a more equitable share of control and of the product of their own labor?

What is the general public reaction to the Government's exercise of direct and rigid control over industry and to such proposed legislation as this? A marked change is noticeable in the public psychology. There is less faith in the ability and the character of financial and industrial leaders. Were they not either chiefly responsible for creating or wholly unable to prevent the orgy of artificial inflation and wild speculation that produced the stock-market crash, with all its disastrous results? Have they not remained impotent in the face of business stagnation and wide-spread unemployment? What contribution have they made to their Government except to evade taxation and oppose legislation for the public good? These are common questions today and those who ask them answer them. The answer finds expression partly in strong approbation of the Government's drastic control of business and industry.

More significant still is the changed attitude toward labor. There are several reasons for this. Unemployment has spread rapidly and widely beyond the ranks of wage earners. The professional and salaried classes must share this bitter experience of the workers. Class-conscious security has weakened with its familiar maxim that only the worthless and lazy are among the idle. The sharing of common hardships tends to break down isolation and develop a sense of understanding and of common interest. The public is feeling the effects of unemployment on those who are employed. It has increased the cost of family budgets. It has exhausted local and State resources. It has compelled the levying of additional taxes to supply relief. Through the depletion of purchasing power it has choked the channels of trade and prolonged the depression.

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All these factors have helped to create a new public psychology, keenly conscious of the close relation between pay envelopes and community purchasing power. Labor's demand for shorter hours and a living—and spending—wage does not appear so unusual. Higher wages mean better trade. Shorter hours mean more people employed and more money in circulation. The right of collective bargaining to attain these ends is no longer the arbitrary claim of a selfish group. It is a step toward industrial peace.

Will this changed public attitude persist when prosperity returns? Or will it give way to the old forces of narrow self-interest and class prejudice that have always failed to conserve the social gains which make for order, stability, and justice in the industrial world? The answer to this depends largely on the leadership of the Government. The fate of this measure will constitute a crucial test of this leadership. The consequences of its defeat would be very serious indeed.

I wish to submit the following brief quotations from statements made in London to an American research group.

Former Prime Minister Ramsay MacDonald:

> No country will ever have peace whilst its work-class masses have no responsibility for their own conditions * * * The piece of work which now has to be done is to take the workman into full social partnership, to use him not only as a hewer of wood and a drawer of water, but as a colleague in the management of industry. * * *
>
> We are seeing a breakdown of the private ownership of labor.

Typical of the position of British employers in general is that of Mr. B. Seebohm Browntree, managing director, Rountree Cocoa Works:

> Now, the first thing we want to get into our minds is that industrial unrest is not an inevitable condition of industry. People seem to think that we must have it always with us, like the law of gravitation. But that is nonsense. Industrial unrest is a serious reflection on the intelligence and ability of the employing classes. It is a grave indictment of their efficiency at their job.
>
> * * * Now, I suggest to you that it is perfectly possible to eliminate industrial unrest, in the sense in which we generally use the term, that of a great upheaval in industry. I do not mean mere grousing, nor do I mean the spirit that perpetually strives after something better. That is not unrest, it is merely growth and development. The unrest that we are concerned with means lockouts, and strikes, and incessant friction, and the paralysis of labor and industry. That is what we must eliminate.
>
> I suggest that if you want industrial peace, there is no use in sitting still and waiting for it to arrive. * * *
>
> The third point, and to my mind the most important, is the economic insecurity of labor. I think that if we were to seek out the central cause of industrial unrest among the workers we should find that it was their sense of insecurity, their feeling that their energy was merely a chattel to be bought and sold, and that there was no regard for them as human beings, since as soon as ever their labor ceased to be required they were cast on the scrap-heap. Unrest will not be allayed so long as that state of things continues. * * *
>
> My fourth point is the status of the worker. Both America and England are ostensibly democratic countries. As my boat entered the Hudson River I saw the great Liberty statue, and liberty is preached a good deal in America. We preach it a good deal here. We tell people that they are members of a democratic nation. Yet when those to whom we have been talking about democracy enter the factory gates, liberty ceases. Take the case of a man who has been 20 or 30 years in a factory, a man of mature years. He sees a notice about which he has never been consulted, making fundamental changes in his conditions of work, and perhaps he demurs. He is told, "If you don't like it, you know what to do. There are plenty of other places where you can look for a job."
>
> All the conditions of work are determined in the manager's office, and then the notices are put up on the wall. What about this democracy? Where does it

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come in? The workers do not see it here, and yet the war taught them to live and die for it. They were told that their country could not do without them, and that they had rights as well as duties. Now, they are asking for a recognition of those rights and for a real voice concerning the conditions under which they work, and not merely a few extremely superficial details.

The moment you allow masses of working people to become educated, as we do, and put a premium on it, even having compulsory education for children, you spoil a good worker and ruin a citizen unless you at the same time let his mind function in his interest. You cannot put this portion of his life which occupies most of his time and to which he gives most of his energy into a separate compartment from all the rest of his compartments of his whole life, and tell him he cannot organize collectively and fight for himself.

Now, the company unions, as I have seen them in Pennsylvania, and I have seen many of them, are makeshift substitutes for the rightful self-expression in collective fashion of any group of men working for any industry, and in order to perpetuate the company-controlled union, things have been done and are being done which, as I said before you came in, Senator Wagner, are leading us, and I think very rapidly, toward an industrial conflict that will be extremely regrettable. To foster the company union, to prevent national unions, things have been done with which you are familiar, and which I need not repeat. One I will mention, that in the coal-mining towns in Pennsylvania, no man, whether he be a minister of the Gospel, a social worker, or an eminent citizen, is allowed to speak in any building, or on any street of that town if he mentions the word "organization."

I will mention one of the towns, if you want me to, Vintondale, where I had the privilege of being driven out by armed thugs of the coal companies. The result, some of us think, is that if conditions continue as they are, to be paradoxical, they are going to get worse than they are, and infinitely worse.

The CHAIRMAN. Do you think this measure will tend to prevent the occurrences of labor troubles in the future?

Mr. HOGUE. I do, Senator Walsh. I think short of it, we may prevent them temporarily in spots, but until you have a measure which gives to one side of an industry the established and permitted and recognized legal right to the same self-expression of their rights that the other side has, in its Chambers of Commerce and Associations and other organizations, you are going to have this industrial conflict, and it will increase.

The CHAIRMAN. Is the language of the bill satisfactory to you?

Mr. HOGUE. I think so, Senator.

The CHAIRMAN. You do not care to discuss its details?

Mr. HOGUE. I would rather not.

The CHAIRMAN. Then you are in sympathy with the objective?

Mr. HOGUE. Yes, but let me say just one word in conclusion.

Among the men to speak to our group in England was Sir Alan Smith, who at that time was the president of the British Federation of Industries, who was known as the Judge Gary of Great Britain, and at that time also he had a strike on his hands in his own industry of the engineers, as they call them, the machinists, as we call them here, and in the period of questions and answers after his address one of us asked him what he thought of labor unions, and this comes to the crux of the whole thing.

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He said: "What do you mean?"

In other words, he was astounded that such a question should be asked, "What do you think of organized labor on a national scale, a national trade-union movement?"

He said, "No employer in England would do without it. It is our protection as well as their right."

And, until you get the nationally recognized federation of labor in any country, you are going to have all the evils of the competing company unions, the rivalries, the strikes, the spies, the open-shop movement—but when you do once get your recognized and established national federation of labor with its leaders self-elected, and, therefore, responsible, you are going to cure largely the evils inherent in the labor movement itself, and you are going to remove a blot from the industrial civilization of our day.

The CHAIRMAN. Thank you, Mr. Hogue.

Mr. Gray?

STATEMENT OF JOHN H. GRAY

The CHAIRMAN. Your full name is what, please?

Mr. GRAY. John H. Gray.

The CHAIRMAN. Your residence?

Mr. GRAY. 1323 Jackson Street NE., Washington, D.C.

The CHAIRMAN. You are listed as director, American Civil Liberties Union.

Mr. GRAY. That is an error. I am a member, and am here representing that society.

The CHAIRMAN. Tell us something about that society.

Mr. GRAY. That society has been organized for a good many years, and has taken a very active and very effective position toward maintaining the civic rights of people who are largely not able to maintain them themselves.

The CHAIRMAN. How many members have you?

Mr. GRAY. I do not know, sir. I am sorry I cannot answer that question.

The CHAIRMAN. You may proceed.

Mr. GRAY. We desire very little of your time. I ask permission to read into the record about one page of a letter. We rest our case entirely on the memorandum submitted to this committee by the International Juridical Association.

Our anxiety is that the right of labor to organize and bargain collectively and to strike in case of necessity shall not be abridged. I will read the letter, if I may, sir. It is addressed to you, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. GRAY (reading):

SIR: In considering the bill before you to create the National Labor Board by statute, we desire to voice the view of a considerable number who regard the regulation of labor relations by the Federal Government as dangerous to the rights of labor to organize and strike. Experience under the administration of the N.R.A. and the existing National Labor Board has made that evident.

No such piece of machinery as is proposed, with its various devices for conciliation, can help but impair labor rights in the long run, however much its authors may intend precisely the contrary. The net effect of the N.R.A. on labor relations and the intervention of the National Labor Board in strikes has been to weaken the power of collective bargaining in terms of building bona-fide

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unions, of enforcing union recognition and of raising the woefully inadequate wages fixed in the codes.

The sole interest of the American Civil Liberties Union in this bill relates to those clauses affecting the rights of labor to organize and strike. That, we submit, is also the primary interest of the organized working classes of this country as a whole. Nothing should be done to curtail such rights, inherent in the proclaimed principles of civil liberty.

The Government has in the last year been so thoroughly committed to a policy of regulating labor relations that we assume it will be written into law in some such form as the bill before you. While we oppose the restrictions on labor's rights inherent in such a set-up, we desire to point out those aspects of the bill which most signally fail to protect the right to organize and strike. Rather than repeat here what will be presented by the International Juridical Association, we desire to say that the analysis of the bill on these points prepared by their attorneys constitutes the most adequate statement of such criticism we have seen. We trust that these criticisms will have the serious attention of your committee.

I submit that to you, sir. It is signed by the officers of the association and myself.

The CHAIRMAN. We appreciate having these views for the record.

Mr. GRAY. Thank you, sir.

The CHAIRMAN. Thank you, sir. Mr. Carmody?

STATEMENT OF JOHN M. CARMODY

The CHAIRMAN. What is your full name?

Mr. CARMODY. John M. Carmody.

The CHAIRMAN. Your residence?

Mr. CARMODY. New York City.

The CHAIRMAN. Will you tell us something of your interest in industrial and labor problems; what your affiliations with those problems have been?

Mr. CARMODY. Yes. Over the years I have been a manager of industrial plants, production manager, and industrial relations manager; a mediator at one time for the National Labor Board.

I have participated in labor negotiations leading up to agreements; have been responsible for the management of a company union, known as the "Rockefeller Union" when I was vice president of the Davis Coal & Coke Co., which had the Rockefeller plant, which was used also in Colorado.

The CHAIRMAN. What is your present occupation?

Mr. CARMODY. I am at present with the Civil Works Administration, chief engineer, having charge of labor relations.

The CHAIRMAN. We will be pleased to have your views respecting this proposed legislation.

Mr. CARMODY. I am interested in this bill particularly because I think we have reached a crisis in our labor relations. My experience as a mediator indicated to me that the people generally have got the impression that when the National Recovery Act was passed, that it gave industry the right to organize, and to arrange its affairs under the codes, to give them rights that they did not previously have, and that, correspondingly, section 7 (a) gave labor the right to organize, and as that right was denied in many places throughout the country, unrest developed.

It strikes me that we have reached the point where we must determine whether the Government has a right and whether Congress has a right to insure people rights that they heretofore have found denied them.

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From a practical point of view, it seems perfectly simple to enter into collective bargaining arrangements. It has been done, for instance, for a whole industry since the passage of the National Industrial Recovery Act. I refer to the coal industry, with which I am familiar.

The conditions in that industry were commonly known to have been very bad from every conceivable angle. We were exhausting a national resource at great loss to the owners of that resource, and correspondingly, we had bad labor relations, as was commonly known.

Within the past 3 months the industry has begun to make money, peace has settled over the industry in areas that heretofore have not known industrial peace, the operators are not spending as much money for guards and espionage and that sort of thing as they spent before, and by orderly process they have an agreement by which they work out their difficulties and their differences, and conditions are better generally.

I think of that as an industry that heretofore has given a great deal of trouble because men were denied the right to organize.

I suspect the same thing could happen in many other industries. I happen to have been assigned by the National Labor Board to the tool and die strike in Detroit last fall. There was nothing in that situation that could not have been worked out if the manufacturers had felt that section 7 (a) really gave the men the right to collective bargaining, and on an equal basis; in other words, if the same processes had been gone through there to a conclusion that had been gone through in the mining industry, there need not have been this threatened strike at this time.

I had occasion to meet with the gentlemen who are meeting with the President now, the whole group of them, Walter Chrysler, Fisher, Knudson, Roy Chapin, and the rest. This question of whether or not the men had a right to organize came up, the question of whether or not if they made the settlement that I suggested meant the recognition of the union, and I said it did, and our negotiations then broke down at that point because they would not recognize the union.

I said, on the basis of my experience and some acquaintance with the automobile industry, that they would have the situation back in their laps at the height of the busy season, without having heard any such remarks made by anybody concerned with the organization.

The CHAIRMAN. Have you anything further?

Mr. CARMODY. No; I have not.

The CHAIRMAN. Have you any questions, Senator?

Senator WAGNER. You know something about the company unions? Do you know something about the recent organization of the company unions, and the methods pursued?

Mr. CARMODY. Yes; I have seen them being organized as I went about. Let me tell you an experience, if I may, for just a minute.

Senator WAGNER. Yes.

Mr. CARMODY. I was sent to Buffalo to adjust the strike in the grain industry that had been on for several weeks, and was getting worse. When I went there I met with the grain elevator owners and managers, and I found that the principal elevator owner in that community had organized a company union, had taken the men to a hotel in the evening, and had organized them, and his plant was not on strike; it was the only elevator that was not on strike at the time.

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As we went into negotiations, he became chairman for the owners' committee. He was interested in getting the strike settled, and he said to the rest of the men that they must negotiate an agreement inasmuch as their men were organized and on strike. He told me, however, that his men were not out, they were satisfied, and would not go out, and asked me to meet the committee representing his men that night.

I met the committee, and in the course of the discussion one of the men said, "I wonder what Mr. Grammar would say if we suggested to him that we take our company union organization over into the other union as a body. We have better conditions than anybody else in Buffalo, and if the rest of the elevators had as good conditions as we have, we believe the tone of the whole enterprise would be raised."

I said, "I don't know. You have in the agreement which you made the right to withdraw from the contract you signed with him by giving him proper notice."

They asked Mr. Grammar when he came in, and he said they might do that, they had that right.

Mr. Grammar then said he would ask those fellows to canvass the employees, and he would be guided by my judgment as to whether they should go into the union or not.

They made the canvass, they did not report to me, they reported to him, and the next day the company went into the general union in Buffalo. Mr. Grammar himself dictated the agreement in the presence of all the rest of us, and the presence of the union, and the union finally accepted the agreement. He dictated a closed shop agreement because he told me that inasmuch as his men were going in, he did not want any monkey business about it, he wanted a perfectly straight agreement that would protect the industry.

That is a company union that was organized in order to prevent the men going into a local organization, but within 2 days they went over as a body.

Senator WAGNER. He was an enlightened employer?

Mr. CARMODY. I think he was an enlightened employer. He took the leadership of the industry in Buffalo, and he was given credit for taking leadership. They have had no trouble in that industry, so far as I know since that strike was settled last fall.

Now, those of us who have helped organize company unions, and who have worked with them over the years, as I have done in industry, know that they are innocuous, that they are straw men. That is known. There are cases where they are well-managed after 7 or 8 years of careful nursing and watching, but they are straw men. They are set up in order that they may put into——

Senator WAGNER. In other words, so that the employer might control labor?

Mr. CARMODY. Of course. I have helped organize them, and for what other reason would we do it?

Senator WAGNER. That is what I wanted to find out, what other motive would you have except so that you could control them?

Mr. CARMODY. Of course.

Senator WAGNER. That is not genuine industrial democracy?

Mr. CARMODY. Oh, no. It is not so considered.

Senator WAGNER. It does not give the men a fair chance?

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Mr. CARMODY. It is not intended to do that.

Senator WAGNER. In spite of all these misrepresentations that have been made in the propaganda that has been organized all over the country—we are so familiar with it here that it does not concern me very much—but an attempt has been made to characterize this bill as providing for the imposition of some definite type of union upon the employer. Do you see any such requirement in the act?

Mr. CARMODY. I do not read that into the bill.

Senator WAGNER. Is there anything here beyond giving the worker the right as a free man, if he wishes to organize, to organize?

Mr. CARMODY. I do not see anything.

Senator WAGNER. And he can join any kind of an organization he cares to?

Mr. CARMODY. I assumed that.

Senator WAGNER. And if he wants to join a company union he can?

Mr. CARMODY. Yes.

Senator WAGNER. He can join any kind of an organization, so that all the bill does is to make him as free as the employer?

Mr. CARMODY. Yes.

Senator WAGNER. Yet we have this propaganda which has aroused some people——

Mr. CARMODY. As a matter of fact, I have said over the years, to scientific bodies, to engineering bodies, and to personnel associations whom I have been asked to address, that I think one of the worst elements in our American industry is fear, fear on the part of the man that they may not use their own discretion with reference to their associations, because of espionage, as has been mentioned here—I am trying not to go over ground that I know has been gone over many times—it is common practice in many industries to have espionage arrangements. I have personally come into contact with it as a manager. I have had these organizations come to me and ask me to engage them. I have also had friends of mine tip people off around the plant who were being watched, officials to whom reports were coming about people, and their activities, and it gave me an opportunity to tell them. I just have had that experience, and there is no argument about it at all.

The CHAIRMAN. It is fear of dictatorial and what employees believe to be unfair demands on the part of labor leaders that are not under their direct control? Is that not one of the fears that is common?

Mr. CARMODY. Fear on the part of the employer?

The CHAIRMAN. Yes.

Mr. CARMODY. Yes; I suspect that is one of the fears on the part of the employer. He lacks the courage that men have acquired, for instance, with the coal industry, when they get on the firing line and negotiate their own agreement without special counsel.

As a matter of fact, when we talk about agitators who would agitate men to organize, we ought to remember that there are many agitators who are making their living by keeping employers blind to some of the newer things that they may accomplish themselves by direct negotiation with their people. I refer to these organizations that supply information that keep manufacturers really from doing the things that they themselves would do, that common sense and good business practices would dictate their doing.

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The CHAIRMAN. You made some reference to the Rockefeller plan in your earlier testimony?

Mr. CARMODY. Yes.

The CHAIRMAN. Just what is that?

Mr. CARMODY. That was a company union that was developed largely by McKenzie King and sold to John D. Rockefeller to put into operation in the Colorado Fuel & Iron Co. plants after the disastrous strike out there some 9 or 10 years ago.

The CHAIRMAN. With what success did it seem to meet?

Mr. CARMODY. For a good many years it operated, but it has since been abandoned. Following the strike of 1927, I believe, when Josephine Roche organized her own arrangements at the Rocky Mountain Fuel Co., the Rockefeller plan broke down that throughout the field, because the men themselves recognized that it gave them fewer rights than they could get through a straight trade-union agreement.

The CHAIRMAN. Was the Rockefeller plan constructed along the line of a company union?

Mr. CARMODY. Oh, yes; it was a company union, with the men having the right to elect pit committeemen; in fact, it went a step farther than most of the company union plans in operation today, in that these men had the right to engage their own commissioner on a salary, and that commissioner represented the men in negotiation with the company.

I was for a period not only vice president in charge of industrial relations, but the company commissioner dealing with the commissioners elected by the men. It was very difficult to keep the company from arranging to have the right commissioner chosen by the men.

Senator WAGNER. Is that mine organized now by outside unions?

Mr. CARMODY. Yes; all of these mines are now under the Appalachian and the District Agreement.

Senator WAGNER. Did that improve conditions?

Mr. CARMODY. I am told that it improved them. I have not been back to those properties, but I have talked to the men in touch with those properties on both sides, operators and men.

Senator WAGNER. This does not prohibit, of course; it leaves the men free, and they may organize a company union so long as it is not dominated by the employer?

Mr. CARMODY. Yes.

Senator WAGNER. They may decide to have a union or an organization within the plant only. The only question is that the men themselves should determine it.

Mr. CARMODY. On the whole, I should say that this Rockefeller plan, which really was the result of McKenzie King, came nearer to the ordinary trade-union arrangement than any other company-union plan I know of, but still, when the men, having the right under section 7 (a), and having the backing of a strong union, abandoned it and took another agreement, that is to me one of the best evidences that it had weaknesses from their point of view that we did not recognize.

Senator WAGNER. But so long as that union was not dominated by the employer, it could exist under this form?

Mr. CARMODY. If the men chose to have it.

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Senator WAGNER. If the men chose to have it; that is all there is to this.

Mr. CARMODY. That is all; thank you.

The CHAIRMAN. Thank you, Mr. Carmody.

(The stenographer will insert in the record the article referred to in the earlier hearings entitled "Problems of Conciliation and Arbitration, A Study in Comparative Law", by E. Kuttig, Research Division, International Labor Office.)

PROBLEMS OF CONCILIATION AND ARBITRATION: A STUDY IN COMPARATIVE LAW

(By E. Kuttig, Research Division, International Labor Office)

THE NATURE AND PURPOSE OF CONCILIATION AND ARBITRATION

Almost all industrial countries have institutions for the adjustment of industrial disputes; but the nature and the purpose of these institutions are not everywhere viewed alike. One school—to which most of the principal industrial States of continental Europe belong—has worked out a theory of the nature of such adjustment as distinct from the ordinary administration of justice. It regards it as having to do only with those collective labor disputes which may be described as classes of interest, where it is in effect the balance of power between capital and labor that is in question, and in which the object of the parties is to regulate their mutual relations, i.e., in practice, to fix conditions of employment, or, in other words, to create new law in this field. This conception of the adjustment of disputes distinguishes it sharply from the administration of justice, which is the application by the courts of existing law to disputes in which the parties are in conflict as to their respective legal rights. It is almost superfluous to say that disputes concerning legal rights, too, can be settled amicably by agreement between parties without recourse to a judicial decision; and in countries with a special judicial authority for the settlement of individual disputes on points of labor law, efforts in this direction are even strongly encouraged. But here, too the procedure for amicable settlement of such individual disputes is distinct, both in its fundamental idea and in law, from adjustment in the sense just described.

In English-speaking countries, with the exception of Australia and New Zealand,[1] which have developed on distinctive lines, the position is somewhat different. While in these countries there is no doubt some recognition of the distinction between disputes concerning legal rights and clashes of interest, this has by no means always led to the adoption of separate procedure for the two types of dispute. The reason may lie in the nature of English civil procedure, which is not merely the application of existing law to individual cases, in the strict continental sense, but also, and far more than in continental countries, the creation of new law; it has not only an administrative but also a legislative function, in which it resembles adjustment in the sense described above. In Great Britain, for instance, even disputes in which individuals contest each other's legal rights can be brought either before a conciliation or arbitration board set up by agreement between the parties or before a State body (e.g., the Industrial Court) if there is the possibility of fear of a strike or lockout ensuing.

But this difference in the conceptions of the nature of conciliation and arbitration does not alter the fact that in the English-speaking countries, too, the adjustment institutions have in practice to deal chiefly with clashes of interest. It is only in the case of such disputes that the conciliation and arbitration system shows its peculiar characteristics; and it is just in these cases, where the battle is fought out with extraordinary tenacity and bitterness because the vital interests of powerful groups in the community are at stake, that the necessity for a solution leads to action, the initiative in creating the appropriate machinery being taken either by the parties themselves or by the State, which intervenes in order to protect itself, its economic system, and its citizens from the dangers involved in

[1] Since completing this article the writer learns that in virtue of an act of Apr. 27, 1932 (Legislative Series, 1932 N.Z. 1) the compulsory adjustment of collective labor disputes in New Zealand has in practice ceased. This does not, however, affect the present discussion, which is not a description of facts but a comparison of legislative principles, and only takes the former New Zealand system as one example of a certain type of adjustment—the compulsory type—of which other examples may be found elsewhere.

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such disputes. In view of the close economic connection between states in the modern world, these clashes of interest, and the open conflict which follows if no agreement is reached, have come to constitute a problem of international importance.

As regards the purpose of conciliation and arbitration, this follows from its nature. It is to reconcile the two contending classes of capital and labor, and to combine them into a single productive entity. The adjustment institutions have been happily compared [2] to an industrial first-aid party, ready to intervene wherever a clash of interest endangers the harmonious collaboration of employers and workers in productive activity. These constant clashes are as constantly checked by the institutions, which for the purpose create new legal regulations adapted to the circumstances of each case and thus promote a peaceful settlement. Whatever form conciliation and arbitration procedure may take, it thus amounts to the creation of law on conditions of employment—a task the importance of which can hardly be overestimated.

Considered in closer detail, however, the purpose of conciliation and arbitration is wider in some countries than in others. The variety is confusing; but some order may perhaps be introduced by dividing the national systems into three groups.[3]

The first confines itself to what is the primary aim of all adjustment of disputes—the maintenance of industrial peace. It is composed mainly of the English-speaking countries, excluding Australia and New Zealand. The second is an intermediate group, which aims, beyond the simple maintenance of peace, at the legal recognition and extension of collective labor agreements, and uses conciliation and arbitration to help employers and employed to conclude such agreements whenever they cannot do so without outside aid. This group is not perhaps, so sharply defined, but Austria, the Netherlands, Norway, and Sweden, as well as France (according to the new bill before the Senate), may be regarded as belonging to it.

The German legislation explicitly states that the purpose of conciliation and arbitration is to assist in the conclusion of collective agreements, and, if this were all, the system of that country could undoubtedly be classed in the same group; but it also gives the conciliators and the Federal Minister of Labor the power to declare decisions—which are normally mere proposals for agreement, to be accepted or rejected as the parties please—legally binding in certain specified circumstances. This is a step further than the second group proper is prepared to go, and makes Germany the connecting link between it and the third group. There provision is ordinarily made for the issue by the conciliation and arbitration authorities of awards binding on the parties, and often for their enforcement by civil or criminal penalties. This is the system of compulsory arbitration, which adds to the typical purpose of the second group—the promotion of collective agreements—another, namely, the regulation of conditions of employment by the State. Besides Germany (in respect of this side of her system), the principal members of this third group are Russia, Italy, Australia, and New Zealand, and, according to recent legislation, Spain and Mexico.

Within this narrower threefold definition of the purpose of conciliation and arbitration, the national systems oscillate between the two rival principles of conciliation and arbitration. In fact, there are numerous transitional stages between the laws which content themselves with mediation between the parties and those which provide for State regulation of conditions of employment. The nature and extent of the acceptance of the principle of arbitration, with its compulsory issue and application of awards, and the exact view taken of the purpose of adjustment, have everywhere a marked influence on the form taken by the whole procedure. The closer a national system is to the principle of arbitration, and the more completely and logically it applies it, the more strictly will the whole procedure be regulated, and the more will that too be subject to compulsion.

It is proposed in the following pages to describe and compare the ways in which the legislation of several States has dealt with certain specially interesting questions concerning the adjustment of disputes. The capacity to be a party to the proceedings, the suspensive prohibition of strikes and lockouts, the determination of the facts, the legal nature and consequences of decisions, and finally, the conflict between the rival principles of conciliation and arbitration—that is, the problem of compulsion—will be considered in turn.

[2] Cf. Weddigen: "Angewandte Theorie der Schlichtung", in Jahrbuch für Nationalökonomic und Statistik, March 1929.

[3] This division is based partly on Sinzheimer's speeches at the session of the Gesellschaft fur soziale Reform held at Mannheim in October 1929 (cf. "Die Reform des Schlichtungswesens", in Veroffentlichungen der Gesellschaft fur sozialle Reform, vol. 83, pp. 17 et seq.; Jena 1930) and partly on an article by Sitzler in Neue Zeitschrift fur Arbeitsrecht, 1930, vol. 1.

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THE PARTIES TO THE PROCEEDINGS

The definition of the scope of conciliation and arbitration institutions and of the right to use the machinery provided for the adjustment of disputes, that is to say, the question of capacity to be a party to proceedings, is the most important question relating to the parties. The nature of the proceedings themselves and their chances of success depend very largely on the manner in which it is answered.

A glance at the principal systems shows that the practical issue is whether and to what extent individuals or groups of persons, in particular organized groups (such as trade unions, staffs of undertakings, etc.), may be parties to proceedings, whether on the employers' or the workers' side, and that this question has been answered in a wide variety of ways. Certain interesting comparisons are nevertheless possible, and they show that there is a striking correlation (in general, even if not in every detail) between the particular task entrusted to the system for the adjustment of industrial disputes in each country and the answer given to this question of capacity.

It will be found that States which restrict the purpose of their systems primarily to the maintenance of industrial peace allow the machinery to be used not only by trade associations but also by informal groups of persons or by individuals on both sides. In systems where more emphasis is laid on the conclusion of collective agreements and the regulation of conditions of employment by the State, correspondingly greater restrictions are imposed on the persons who may make use of the machinery, until finally, in systems which clearly belong to the third group, only trade associations in a special category, at least on the workers' side, are allowed to use the machinery.

In the systems of the first group, which consists mainly of the English-speaking countries, excluding Australia and New Zealand, and whose sole or principal object is the maintenance of industrial peace, it seems that the problem does not arise. A typical example is the industrial courts act of Great Britain, which definines the trade disputes covered by that act as follows:

"The expression 'trade dispute' means any dispute or difference between employers and workmen, or between workmen and workmen, connected with the employment or nonemployment, or the terms of the employment, or with the conditions of labour or any person."

This definition makes absolutely no distinction between collective and individual disputes. It is therefore easy to understand why no rules or restrictions have been laid down with regard to the parties. The position is the same under the Canadian industrial disputes investigation act of 1907 as amended in 1925; this is shown by the provisions defining industrial disputes, and concerning the representation of workers who are not members of a trade union.

In the systems of the second group, in which the purpose of conciliation and arbitration is primarily the conclusion of collective agreements, a corresponding preference is given to trade associations as parties. Austria, France, the Netherlands, Norway, and Sweden belong to this group.

The provisions of the Swedish act of May 28, 1920, seem to show that the right to use conciliation and arbitration machinery is not restricted to any definite organized groups of persons or trade associations. The French bill clearly shows that trade associations have not ipso facto rights in this matter; it is only when the dispute concerns an existing collective agreement that the trade unions or groups that have signed the agreement are de jure entitled to use the conciliation machinery. Both France and Sweden have legislation on the subject of collective agreements, and it is probable that—especially in Sweden, where the legislation is quite recent and the importance of collective agreements is great and rapidly increasing, the work of the conciliation and arbitration boards in promoting these agreements will continue to extend, so that in practice the workers' associations will acquire increasing importance as parties to the proceedings. The regulations in the Netherlands under the act of May 4, 1923, may be considered as on a par with those in Sweden. As in that country, there is no definite distinction between collective and individual disputes. If a dispute has caused or threatens to cause a strike or lockout affecting not less than 50 workers, then the conciliation procedure is applicable to it. Since 1927 the Netherlands has had legislation on collective agreements. This will presumably, as in Sweden, lead to an increase in the importance of trade associations on both sides as parties in conciliation proceedings, although by law they have no monopoly.

The new French bill clearly aims at preventing such a development. The Austrian system may also be mentioned in this connection. The preamble to the conciliation boards act of December 18, 1919, indicates clearly that no sharp

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distinction was intended to be made between the treatment of individual and collective disputes. Here, too, therefore, the right of the workers to use the conciliation and arbitration machinery is not restricted to organized groups. In view of the extent to which collective agreements have been adopted in Austria the part played by the trade associations, at least on the workers' side, in the conciliation and arbitration procedure is in practice of decisive importance.

The German regulations on the subject state explicitly that the task of the conciliation and arbitration authorities is to promote the conclusion of collective agreements. They may not undertake other tasks. It follows that the parties allowed to use the adjustment machinery must be identical with the parties who have the right to conclude collective arrangements, which in German law include agreements for a whole trade (collective agreements in the strict sense) and works agreements for a single undertaking. Consequently on the workers' side only certain specified groups—the trade unions in the case of collective agreements for a whole trade and the staff of an undertaking in the case of works agreements—can be parties to the adjustment procedure.

The German system is the link connecting the second with the third group, in which the right to issue binding awards, which are subject to criminal penalties for nonobservance, means the intervention of the State in the fixing of wages and other conditions of employment. In Germany this function developed out of the adjustment authorities' primary duty of promoting collective agreements, through the provision of the law which makes it possible, in certain definitely specified and exceptional cases, to declare awards binding on the parties.

In systems of the third group, however, this has become the explicit and essential function of the conciliation and arbitration machinery. This group includes the systems of Russia, Italy, and especially Australia and New Zealand. In the last two countries the regulation of conditions of employment is naturally linked with the fixing of minimum wages, which in most cases has been the starting point of the conciliation and arbitration system. This last conception of the purpose of the machinery clearly affects the question of the parties that may make use of it.

According to the New Zealand legislation, an industrial dispute means "any dispute arising between one or more employers of industrial unions or associations of employers and one or more industrial unions or associations of workers in relation to industrial matters." Consequently, the party to a dispute referred to a council of conciliation or a court of arbitration must logically be, on the workers' side, an industrial union, which in addition must be registered. The situation is similar in New South Wales, where apparently only registered trade unions may be parties to the proceedings. Such a rule is not so strictly enforced in the other Australian States, but the principle is everywhere the same.

A perfect example of the correlation between the tasks of the conciliation and arbitration system and the determination of the parties to the proceedings is offered by the Italian system of jurisdiction in labor matters (magistratura del lavoro), according to the act of April 3, 1926, concerning the legal regulation of collective relations and the administrative regulations of July 1, 1926. The Italian system, though in the last resort it takes the form of judicial proceedings before the labor court, fulfills all the three tasks of maintaining industrial peace, promoting collective agreements, and regulating conditions of employment. We find as a consequence that even on the employers' side only recognized associations may take part in the proceedings.

In Russia, on the workers' side, only the trade unions may appear before the conciliation board or arbitration court in the case of collective disputes. In Russian law there are no associations of employers, so that on the employers' side an individual employer has the right to be a party to the proceedings. It must, of course, be remembered that in practice, in most of the more important cases, the trade unions will be opposed by a State undertaking or an association of such undertakings. There can be no doubt that such an association has the right to be a party to conciliation or arbitration proceedings.

What, then, is the real reason for this correlation between the tasks of the various systems and the question who may be a party to the proceedings? The more the task of conciliation and arbitration machinery is extended from the simple maintenance of industrial peace to the conclusion of collective agreements, and thence to the official regulation of conditions of employment, the more necessary does it become to have as parties to the proceedings responsible organizations which can apply the agreements arrived at or the authoritative awards issued.

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This necessarily becomes particularly clear when the decisions of the conciliation and arbitration authorities are enforced not only by civil but also by criminal penalties, as in Italy and in most of the Australian States. In such a case the legislator has to make sure that, at least on the workers' side he is dealing with organized groups which can be held liable for the nonobservance of the decision and for the outbreak of any illegal strikes. This is why the Italian act mentioned above states that recognized associations of workers shall have legal personality; for the same reason many of the Australian States and New Zealand provide that industrial unions must be registered before they can take part in conciliation and arbitration proceedings.

THE SUSPENSIVE PROHIBITION OF STRIKES AND LOCKOUTS

A particularly effective means of insuring that the adjustment procedure shall be properly set in motion and carried out has been adopted in a number of countries, including some which do not otherwise apply compulsion; open conflict (a lockout or a strike) is explicitly forbidden, or at least desclared to be illegal, until all the possibilities of conciliation and arbitration have been exhausted. Such an important limitation of the freedom of action of trade organizations cannot but have an effect on the procedure, an effect which is usually expressed in an obligation, either explicit or implicit in the law, to give notice of differences or to apply for a settlement.

The best known regulations on the subject are those of the Canadian act of June 12, 1925 (amending the original act of 1907), which provides for a suspensive prohibition of strikes and lockouts and also of changes in conditions of employment, and makes it obligatory to give at least 30 days' notice of any proposed change and to apply for the appointment of a board of conciliation and investigation. These regulations are enforced by heavy fines for any infringement of the prohibition of open conflict (up to $1,000 per day for employers and up to $50 for workers).

Similar regulations are contained in the legislation of Belgium, China, India, New South Wales, New Zealand, Norway, Queensland, Rumania, South Africa, and western Australia, and of Germany in virtue of an emergency order issued by the President on November 10, 1920, and in force together with the actual conciliation order. The regulations vary greatly in respect of the disputes to which they apply, the period during which open conflict is prohibited, and the civil, criminal, and other consequences of contraventions.

In Belgium, China, Norway, New South Wales, Queensland, and western Australia, the suspensive prohibition of strikes and lockouts applies to all undertakings, irrespective of their nature and size. In Rumania the prohibition applies only to undertakings that regularly employ at least 10 workers, in Canada to important undertakings with at least 10 workers, notably in the transport industry, and in India and South Africa principally to public-utility undertakings. In New Zealand there is a general prohibition, and in addition notice must be given of intended strikes or lockouts in public-utility undertakings. The order of November 10, 1920, issued by the German President, applies only to undertakings that supply the public with gas, water, and electricity.

The period during which open conflict is prohibited varies. According to the acts already mentioned of Belgium, Canada, China, Queensland, Rumania, South Africa, and Western Australia among others, strikes and lockouts are prohibited during the whole period before and during the conciliation and arbitration proceedings and until it is recognized that the possibilities of settlement are exhausted. In Germany, according to the President's emergency order, they are even prohibited for 3 days after the publication of the decision of the competent adjustment authority. The Belgian regulations do not explicitly prohibit strikes and lockouts, but merely attach legal consequences to them when premature; in effect, they support the opponents of the party declaring the strike or lockout. It is to be noted that the German emergency order just mentioned provides penalties, not for an illegal strike as such, but only for incitement thereto, while in the case of a lockout the action as well as the incitement is punishable.

A number of countries do not prohibit open conflict for the whole period of the negotiations, but provide only for the observance of certain time limits before which a lockout or strike cannot be legally declared. Instances are India, New Zealand, and New South Wales; in the last-named State this time limit applies to strikes only, lockouts being completely prohibited. The object of imposing such a time limit—usually from a fortnight to a month—before a

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strike or lockout is permissible to naturally give the competent authorities an opportunity to intervene and to settle the dispute by friendly means.

In the majority of cases contraventions of the prohibition of open conflict render the guilty party liable to criminal penalties; frequently, however, the prohibition is enforced by proceedings under civil law or labor law. Criminal, civil, and other consequences may also exist side by side. Where penalties are provided, they take the form of fines or imprisonment or both.

Penalties under criminal law are provided for contraventions of the suspensive prohibition of open conflict in the legislation of Canada, India, New South Wales, New Zealand, Norway, Rumania, South Africa, and Western Australia, and also in States with a general prohibition of strikes and lockouts, such as Italy and South Australia. Some of these countries prescribe fines only, while in others imprisonment also is provided for. The penalties vary greatly in the different regulations; the comparatively high fines in the Canadian system have already been mentioned. When imprisonment is permitted it is often used only to punish illegal strikes and lockouts in public utility undertakings, or it may be particularly severe in these cases, as in Rumania and Italy. The imprisonment specified in the different systems varies from a month to 2 years, or even in particularly aggravating circumstances (in Italy, disputes in public utility undertakings in which one or more persons are killed), to 3 years.

The consequences in civil and labor law which the legislation of many countries attaches to contravention of the suspensive prohibition of strikes and lockouts also deserve mention. Under the German Civil Code, for instance, persons guilty of contraventions of the emergency order of November 10, 1920, are liable for damages. It may be assumed that in other countries, too, a party to the dispute who is injured by the contravention of the prohibition, or a third party who is injured by it without being concerned in the dispute, can claim damages according to general legal principles. When there is civil liability for contravention of the suspensive prohibition of strikes, and lockouts, its legal basis lies outside the special regulations for conciliation and arbitration; but these regulations themselves sometimes provide for measures based on labor laws to enforce the prohibition. Belgium and New Zealand are a noteworthy examples.

In New Zealand the measures relate to the right of association, on which they impose appreciable restrictions. They affect workers' organizations only, and may, though they need not, be applied in addition to the imposition of a fine. The most important is that the court inflicting the fine may order that the registration of the convicted union or association shall be suspended for such period as it thinks fit, not exceeding 2 years. This suspension has very important consequences. During the period of suspension, the union or association is "incapable of instituting or continuing or being a party to any conciliation or arbitration proceedings under this act, or of entering into any industrial agreement, or of taking or continuing any proceedings for the enforcement of an award or industrial agreement, or of making any application for the cancellation of its registration."

The Belgian act does not explicitly prohibit strikes and lockouts, but tries to induce the parties to have recourse to the procedure for conciliation and arbitration by supporting the opponents of the party which declares a strike or lockout before exhausting all possibilities of settlement. In the case of premature lockouts and of strikes due to the premature change of conditions of employment by the employers, the way this is effected is that the workers concerned are treated as involuntarily unemployed and are granted unemployed benefit, which places them in a better position to carry on the struggle forced on them by the employer. In the converse case, the workers (or the association to which they belong) who prematurely go on strike or alter conditions of employment lose their right to support from their unemployment society and the national emergency fund.

The suspensive prohibition of strikes and lockouts, combined with the related obligation to give notice of proposed action and to apply to an adjustment institution, is the first important measure of compulsion in the procedure. It is of great significance for the parties since it limits their freedom to engage in militant action at the moment they consider most favorable, and thus perhaps makes such action impossible. But the consideration on which it is based, namely, that for economic and psychological reasons a settlement after the outbreak of open conflict is usually much more difficult than before, should certainly be given due weight. In Canada the prohibition seems to have had satisfactory results, perhaps partly owing to the provisions for preventing its abuse, especially in the form of deliberate delay of the proceedings. As a matter of fact, the prohibition

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applies chiefly to strikes and lockouts, in public utility undertakings, which in practice are likely to be of most importance in this connection.

In any case such temporary prohibition is to be sharply distinguished in principle from a general prohibition of all strikes and lockouts combined with compulsory enforcement of the awards of the conciliation and arbitration institutions. The former merely serves to insure that the institutions shall be utilized by the parties to the dispute before they begin open hostilities, while the latter deprives them completely of their freedom to engage in militant action and leads as a rule to State regulation of all conditions of employment. While in most countries the legislature has recoiled from these far-reaching consequences, it has often thought it useful to insure that the parties shall exhaust the possibilities of settlement through the institutions created for the purpose of maintaining industrial peace before they are permitted to take the law into their own hands. It is therefore comprehensible that in the many countries in which a reform of the conciliation and arbitration system is now under consideration, the question of the suspensive prohibition of open conflict, as described above, is being given considerable attention. During the discussions now in course in Germany, for instance, on the reform of the adjustment system, ideas of this kind are being defended, notably by employers and also by many economists. The suspensive prohibition of strikes and lockouts is described as the "basic safeguard of peaceful negotation", and the most energetic means—e.g., the payment of heavy deposits as security, support of the opponents of the recalcitrant party, and statutory prolongation of the conditions fixed by the existing agreement between the parties—are often advocated for its enforcement.[4]

THE DETERMINATION OF THE FACTS

The direct object of adjustment proceedings is to ascertain the facts of the case. In this they resemble legal proceedings proper. But there is a difference in the use to which the knowledge of the facts is to be put in the two cases, corresponding to the difference in nature between the administration of justice and the adjustment of clashes of interest. For the former such knowledge is needed to enable the judge to make his decision in application of the law; for the latter it is needed to enable the conciliation or arbitration authorities to discover and decide on a settlement of the dispute that will be voluntarily adopted by the parties or can reasonably be imposed on them. In the first case, therefore, the determination of the facts is the basis for a declaration of the legal position by a judge; in the second it is the basis for the creation of new law, whether in the form of an agreement between the parties or of a solution imposed by the court or board on its own authority or directly by the State.

The facts may be determined in two ways: By hearing the usually contradictory statements of the parties; or by the evidence of witnesses and experts, the examination of books, personal inspection at the scene of the dispute, and other investigations, e.g., into the economic position of the industry concerned in the dispute.

The statements of the parties are not, as in civil cases, used by them to stake out their legal position but to obtain an estimate of the opponent's strength and so of the likelihood that it will maintain or reduce its claims. The function of the mediating institution is to find in the expositions of the parties a basis for compromise which both may accept and to overcome psychological obstacles to their agreement. At this stage of the negotiations, when the institution has a purely psychological function in the search for a compromise the oral exposition of the parties is often quite sufficient to determine the facts of the case. It may then be needless, for instance, for the mediator to know what the industry in question is actually capable of; it is enough for the exercise of his functions, which are purely psychological, to hear the statements and explanations of the parties on the subject.

The position changes as soon as the mediating institutions are no longer limited to psychological assistance and persuasion, but begin to exert, according to the methods of the particular system in question, some form of pressure on the parties in the direction of a particular settlement. As this pressure increases so also does the part played by the conciliation or arbitration authority in the eventual settlement, and with it that authority's responsibility. If it is to carry this responsibility, it must have corresponding means of supplementing what it

[4] Weddigen: Einigungs- und Schiedsgrundsatz (Schriften des Vereins fur Socialpolitik, Bd. 179: Munich and Leipzig, 1930), pp. 82 and 73, and the quotations given there from the Verhandlungsbericht der Mannheimer Tagung der Gesellschaft fur Soziale Reform.

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can learn of the psychological position from the statements of the parties by further objective inquiry into the facts of the situation. The transition from the former to the latter position often takes place unnoticed; it becomes evident when the mediating insititution collects official information on the industrial position and the labor market, and tries to use this information to influence the parties.

The transition is obvious when a court or board is explicitly given the function of investigating conditions in the industry, in order to influence the parties toward agreement on a given basis by publishing the information it obtains. Finally, there is a complete reversal of the situation in the case of systems which, if voluntary negotiations fail, provide for compulsory settlement if by the competent authority, which must, therefore, be allowed wide powers for the determination of the facts—by the interrogation of witnesses, the taking of statements on the spot, etc. In this important matter, too, therefore, the correlation between the exact aim of conciliation and arbitration and the form and nature of the procedure is apparent.

If the manifold provisions of national conciliation and arbitration legislation, dealing with the determination of the facts are passed in review, the impression gained is that the legislatures have groped their way step by step without always finding a satisfactory or final solution. The difficulties begin as soon as the system allows measures of compulsion for this purpose and vary with the degree of compulsion. The legislator must decide how far he may go in the way of the compulsory investigation of the economic or technical secrets of an undertaking, without running counter to the principle of the freedom of private enterprise—a principle still very generally accepted, despite the modern development of the capitalist system and the many limitations and obligations it has brought with it. It is in principle the same problem as is raised in its most pronounced form by the compulsory application of awards in collective disputes which will be discussed more fully in the last section of this article.

The various regulations concerning the determination of the facts may be conveniently divided into four groups.

The first group includes the regulations in which the proceedings depend solely on the parties, will to agree, while the mediating institution limits itself essentially to overcoming the psychological obstacles to agreement, without intervening in an authoritative way itself. The systems in Great Britain (the Industrial Courts Act)—except the inquiry procedure, which will be mentioned later—Denmark, Finland, Sweden, and also Germany belong to this group. In all these countries the hearing of the parties is the principal method of determining the facts, other methods being sometimes not even mentioned. When mentioned, they are obviously regarded as of less importance, and in any case depend on the acquiescence of the parties.

It should be emphasized that the German act avoids any compulsion with regard to the determination of the facts, although, as is well known, it provides in certain conditions for a declaration that the award imposed on the parties is binding in civil law. It differs in this respect, as will be seen from the subsequent discussion of the fourth group, from the other systems that recognize the compulsory application of awards, though in most of these compulsion is carried further and has criminal penalties attached to it; clearly it may thus be grouped with the systems that wish to maintain the principle of voluntary agreement between the parties and base their rules for the determination of the facts on this principle. Here, too, the determination of the facts remains dependent on the voluntary cooperation of the parties.

The second group includes the systems that do not recognize compulsion in the execution of awards, but consider it advisable to give the adjustment bodies wider powers with regard to the determination of the facts. The principal systems belonging to this group are those of the Netherlands and Norway, and also Switzerland under the appropriate provisions of the Federal Factory Act. In these countries the parties, witnesses, and experts are liable to fines and other penalties for failure to attend, take part in the proceedings, and to give evidence; in Norway they are further bound, on pain of a fine, to submit original documents, and the conciliator is empowered to investigate at the scene of the dispute and to acquire information in other ways. In the arbitration proceedings of the Netherlands, which can, however, only be instituted with the consent of the parties, persons who fail to give the information demanded of them are liable to imprisonment up to 6 months. Not only witnesses and experts, but also the parties to the dispute may be interrogated under oath. These severe regulations may be explained by the fact that arbitration is intended to be used in disputes which

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closely affect the interests of the community and are therefore no longer a purely private issue.

Besides proceedings before the State conciliator alone, before the conciliation council, and before the arbitration court, the Netherlands act also provides for separate investigation proceedings. It thus forms the transition stage from the second to the third group, including systems that provide a special procedure for the determination of the facts.

Statutory investigation proceedings are a characteristic part of the systems of English-speaking countries, and in particular of Canada and Great Britain. In these countries complete dependence on the parties' will to agree must at times cause dissatisfaction, particularly in important disputes which closely affect the public interest. In English-speaking countries great weight is attached to public opinion, and so it was regarded as desirable to bring its influence to bear on the settlement of disputes. For this purpose the public has to be provided with material enabling it to form an opinion. This is effected by the publication of a report by the competent authority (conciliation board or court of inquiry) on the causes of the dispute and the technical and economic possibilities of some particular settlement. The report naturally cannot be drawn up without an impartial investigation of the facts. This scheme enables the principle of voluntary negotiation to be maintained, while at the same time allowing public opinion to exert an effective pressure to the general advantage.

The success of such methods of investigation depends on and therefore justifies certain measures of compulsion for the determination of the facts. Such measures are in fact permitted by the British industrial courts act, and the Canadian industrial disputes investigation act. In the British act, the competent minister may make rules regulating the procedure of any court of inquiry, including rules as to the summoning of witnesses, the administration of the oath, and the submission of documentary evidence. The Canadian act clearly specifies the possibility of compulsion.

Even without special investiture by the Minister, a board of conciliation and investigation has all the powers of a court of record in civil cases—that is, it has "the powers of summoning before it, and enforcing the attendance of witnesses, of administering oaths, and of requiring witnesses to give evidence on oath or on solemn affirmation * * * and to produce such books, papers, or other documents or things as the board deems requisite to the full investigation of the matters into which it is inquiring." It has also far-reaching rights with regard to investigation at the scene of the dispute. Noncompliance may be punished by a fine of up to $100. It is important to note that here, as in the arbitration procedure under the Netherlands act, either party is competent to give evidence and may be compelled to do so. In proceedings that so closely concern the public interest this is only logical.

The investigation procedure appears to have rendered good service on many occasions, especially in Canada, and will perhaps play a part in the future development of conciliation and arbitration. It is worthy of note that investigation proceedings also take place in many countries where the law does not specifically provide for them. In Germany, to give one example only, committees of experts have repeatedly been set up in recent years, usually on the basis of an agreement between the parties; they have dealt with such particularly complicated matters as the economic position of the Rhine shipping industry and the transition from the 2-shift to the 3-shift system in lignite mines.

The fourth and last group includes the systems which, because they allow compulsory application of the awards of the adjustment bodies and their enforcement by criminal or civil remedies, are logically bound to provide a corresponding degree of compulsion for the determination of the facts. The responsibility for decisions in such systems is very grave, and there is a correspondingly grave need for the awards to be based on an impartial and expert determination of the facts. When the State intervenes in the regulation of conditions of employment it is in a sense creating law; and these "laws" fixing binding conditions of employment for the parties, cannot be correctly drafted and administered unless the conditions in question have been fully and impartially determined. The provisions of this kind in most of the Australian States, New Zealand, and Italy indubitably arose out of considerations of this sort. The right to take evidence by compulsion and to put witnesses on oath, far-reaching powers with regard to investigation at the scene of the dispute, and the obligation to submit books, accounts, and other documents are found repeatedly, with minor variations in details. The usual penalties for noncompliance with the regulations on the determination of the facts are a fine of up to 20 pounds (or even 50 pounds) and imprisonment up to 1 month.

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THE LEGAL NATURE AND CONSEQUENCES OF DECISIONS

Important as may be the questions already discussed—the capacity to be a party to the proceedings, the suspensive prohibition of strikes and lockouts, and the determination of the facts—it is the legal nature, depending in its turn on the legal consequences, of the decisions issued that is the final test of the character of an adjustment system. The legal consequences are of two sorts; they are, first, quantitative, that is to say, they extend over a certain number of persons concerned in the dispute; and secondly, qualitative, that is, they entail, for these persons, various kinds of more or less binding obligations. There is a close correlation between the two sorts of legal consequences; if the quantitative consequences (that is the scope of the decision) increase or decrease, there is a corresponding change in the qualitative consequences (i.e. the extent of the obligations imposed on the parties).

Adjustment systems may be divided into two main groups according to the qualitative and quantitative consequences of their decisions. The first group contains the systems based primarily on the principle of conciliation. In them the scope of decisions is limited to the actual parties to the dispute. The parties' acceptance of a conciliation proposal, which in these systems is never binding, or their agreement in advance to accept an arbitration award, which only thus becomes binding, entails obligations in fact or in law for them alone. In the systems of the second group, on the other hand, the ruling principle is that of arbitration, or the regulation by the authorities of the relations between the parties. With this qualitative extension, the scope of the decisions is also widened quantitatively; either during the proceedings or by a subsequent special decision it is or may be extended to persons not originally parties to the dispute.

The first group of systems contains the English-speaking countries (except Australia, New Zealand, and South Africa), Austria, Belgium, Denmark, Finland, the Netherlands, Norway, and Sweden. In all of these, the result of the proceedings depends solely on the parties' will to agree. The proposals of the adjustment authority—they can hardly be called decisions in the legal sense—are not binding, and only have consequences after the acceptance by the parties. Even these, in the English speaking countries, are as a rule consequences in fact only, no legal obligation but only the moral obligation of a "gentlemen's agreement" being created. In the other countries mentioned insofar as collective labor agreements are regulation by law, such an agreement, with the legal rights and duties it involves, comes into being; in other cases the result is at least certain obligations under the general law of contracts. According to the legislation of the States in this first group, therefore, the answer to the question what is the legal nature of the "decisions" of the adjustment institutions is that they are administrative acts of a public authority, whose binding effects in fact or in law depend on the free choice of the parties. The obligation incurred by acceptance or acquiescence is in principle an obligation under the civil law only.

The German regulations illustrate the transition stage between the systems of the first group and those of the second. There, the award of an adjustment authority is a proposal not binding on the parties, who can accept or reject it as they find good. If they accept it, a collective agreement comes into existence between them with rights and duties on either side; but these have only civil validity and affect no one but the actual parties.

Rejection entails no obligation whatever. To this extent the German system may be included in the first group, in which the quantitative and qualitative scope of the decisions issued is narrow; but further provisions seem to place it also in the second group, which contains the systems with decisions of wider scope in both respects. This classification is imposed by the provision that the award—that is, the adjustment authority's conciliation proposal—"may be declared binding if the settlement contained therein appears just and reasonable, with due consideration for the interests of both parties, and if its application is necessary for economic and social reasons."

The possibility of declaring awards binding is a break with the principle of voluntary agreement as typified in the regulations of the first group. By such a declaration a collective agreement between the parties is compulsorily created by State intervention—a qualitative legal consequence which in systems of the first group could only be the result of a voluntary decision of the parties. Such a compulsory collective agreement in itself binds only the parties to the proceedings, and thus has the same limited quantitative scope as proposals or awards accepted by the parties. This scope may, however, in certain circumstances be extended by a declaration that an award is generally binding, given by the

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Federal Minister of Labor, on the application of at least one of the parties to the collective agreement, which may also be a "compulsory collective agreement," of the kind just mentioned.

The following appears therefore to be the legal nature of conciliation proposals and arbitration awards in Germany. First of all they are, like those of the first group, administrative acts of a public authority, whose binding effect depends in principle on a voluntary decision of the parties directly concerned. By means of a further act on the part of the authorities, the award may be declared binding and so transformed into a collective agreement, which is within the sphere of private law. Finally, a third administrative act may declare this compulsory collective agreement generally binding and so extend its quantitative scope. It may thus fairly be concluded that the legal consequences of decisions of the German institutions, though influenced by public law, belong in essence to the domain of private law.

In the systems belonging to the second group, the domain of private law is definitely left behind and public law takes its place. The systems of the Australian States, New Zealand, and Italy are the principal members of this group.

This statement may be justified by an analysis of the qualitative consequences of the decisions. According to the Australian and New Zealand acts,the awards of the arbitration courts—the final courts of appeal in conciliation and arbitration—are binding on the parties and are consistently enforced by criminal penalties of very varied kinds. A distinction may be drawn between direct and indirect methods of enforcement.

The principal direct method to be mentioned is the power of some arbitration courts to fix penalties for breach of an award varying between 10 pounds and 500 pounds, as the guilty party is an organization or an employer or worker belonging to an organization. Regulations empowering the competent authority to issue orders or injunctions to compel compliance with awards under pain of fine and imprisonment also come under this head.

An important and frequent indirect method of enforcing awards in the general prohibition of lockouts and strikes in connection with industrial disputes. Not only lockouts and strikes as such but also anything "in the nature of a lockout or strike", such as incitement, instigation, or aid, fall under this prohibition. Contravention is usually punishable by penalties similar to those prescribed for breach of an award; an organization may also incur special sanctions, such as suspension for a certain period of its registration as a union, so that it becomes incapable of being a party to any conciliation or arbitration proceedings and of concluding any collective agreement, and loss by its members, of the rights arising out of any award or collective agreement (e.g., in New Zealand). Other indirect methods of enforcing awards include provisions intended to protect a worker from dismissal by his employer because he is entitled to the benefits of an award, or protecting the employer against the discontinuance of work by any worker for a like reason, either offense being punishable by a fine. Finally, it should be mentioned that under several acts special inspectors may be appointed to enforce awards.

The above examples taken from Australian and New Zealand legislation illustrate the far-reaching qualitative effects of awards—the obligation imposed on the parties by means of penalties for nonobservance. The quantative effects—the actual or potential scope of the award as to persons and area—are correspondingly wide. Under the German regulations the declaration that an award is generally binding can take place only on the conclusion of the proceedings and at the request of the persons concerned; but in Australia and New Zealand the courts may in many cases extend the group of persons party to the proceedings as they think fit.

More important still, by the declaration that it is generally binding (the "common rule"), the award can be extended, at or after the conclusion of the proceedings, to persons other than the actual parties. There are provisions of this sort in the Commonwealth, South Australian, Queensland, and New Zealand acts; the Commonwealth act, is characteristic of the lengths to which such extension may go, for, according to it, the award is binding on "all parties to the industrial dispute who appear * * * before the court; all parties who have been summoned or notified to appear as parties to the dispute, or required to answer the claim * * *; in the case of employers, any successor, or any assignee or transmittee of the business of a party to the dispute or of a party bound by the award * * *; in the case of employers, any successor, or any assignees or transmittee of the business of a party to the dispute or of a party bound by the award * * *; all organizations and persons on whom the

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award is at any time declared by the court to be binding as a common rule; and all members of organizations bound by the award."

All these instances of the qualitative and quantitative effects of awards under the legislation of Austrialia and New Zealand, which can be only briefly sketched here, show plainly the legal nature of awards in this group of systems. The domain of private law has been abandoned, and they have the full force of public law. Further, the Australian Commonwealth act and the New Zealand act, in a very remarkable provision, go so far as to rule that in certain cases an award actually overrides an act.

Finally, some reference is needed to the important question on the practicability of criminal proceedings for the enforcement of awards. Only Australia and New Zealand have a fairly long experience on this subject. So far as reliable data are available, these justify the assumption that criminal proceedings are hardly practicable if large numbers of persons are determined not to respect the law; this has occurred several times in Australia. The efficiency of this, like any other, legislation depends in the last resort on whether it has the approval and active support of public opinion. In countries where the decisions of the conciliation and arbitration institutions involve only a civil liability, the matter is much simpler. In Germany, for instance, in the very large majority of cases, compulsory agreements arising out of a declaration that an award is binding have in fact been executed. But here, too, there are undoubtedly limits to the possibilities of enforcement. If such a declaration were too crassly at variance with the balance of power between the parties or with economic and social arguments, the injured party would probably take the risk of breaking the agreement so imposed on it.

THE RIVAL PRINCIPLES OF CONCILIATION AND ARBITRATION

The above comparative study of the nature and purpose of conciliation and arbitration, the capacity to be a party to the proceedings, the suspensive prohibition of strikes and lockouts, the determination of the facts, and the legal nature and consequences of decisions makes it clear that an essential question is whether in a given system, the principle of conciliation or that of arbitration, free will or compulsion, has the upper hand.

This is the pith of the problem, the point around which argument centers. There is no doubt, as we have seen above, numerous transition stages between systems based solely on the principle of voluntary agreement and those recognizing compulsory arbitration; these are represented by systems in which the State does not impose the final settlement, but which nevertheless provide for various sorts of compulsion during the proceedings—compulsory application to the institution, during the proceedings—suspensive prohibition of strikes and lockouts, obligation to give evidence and information, and so forth. But the question only arises in its most striking form and in the case of systems which provide for the compulsory regulation of actual conditions of employment by way of binding decisions in the conciliation and arbitration authorities. These are no mere details of procedure, but important excursions into positive law; like voluntary agreements, they create new law to regulate the relations between the parties. The question is so important that a further discussion of the principles involved is advisable to show why the conflict of opinion is so strong.

The antithesis between voluntary conciliation and compulsory arbitration is at bottom the application to a limited sphere, the regulation of conditions of employment, of the wider anthithesis between the system of unshackled private enterprise, and a planned economy under State influence. It is easy to understand that employers, guided by the ruling ideas of individualism and free competition, should usually be opposed in principle to compulsory arbitration, and regard the determination of conditions of employment, and in particular of wages, by the State as a dangerous and intolerable interference with the free play of economic forces.

They may perhaps not object to restrictions which are imposed on the freedom of industry by its own action (through agreements between economic or trade organizations, etc.), and which do actually exist to a very wide extent in certain domains (e. g., for prices); but they denounce the intervention of the State in the fixing of working conditions as being guided not by economic but by political motives which have often nothing to do with the point at issue; and declare that in the long run more harm than good will result from it.

The supporters of State intervention reply that the adjustment of disputes by the State is on the whole to be regarded and organized, not as a judicial, but, from the nature of the subject, as an administrative function of the State, which

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cannot be performed without exposure to political influence; that as a matter of course the State acts on political grounds in other spheres of administration—economic policy, fiscal policy for the public services (railways, gas, water, electricity), taxation policy, and in particular social policy; and that to do so in the case of wages is therefore at least not illogical. The supporters of compulsion may deprecate abuses in "political wage fixing," but they hold the view that to distinguish between admissible and inadmissible political influence in individual cases is very difficult, and that unavoidable mistakes are not a decisive argument. In their opinion important industrial disputes in the modern State have become political matters and can be decided only in accordance with the general policy of the Government, which must be a consistent whole if it is to be successful.

Disputes in public utility undertakings (hospitals, railways, gas, water, electricity, etc.), are often separately dealt with. It must be recognized that the public is particularly concerned in such cases, and that the authoritative intervention of the State can be justified for reasons such as the maintenance of public order, the supply of the necessities of life, etc., which are seldom in question in other industrial disputes. Differences of opinion on the admissibility and value of State intervention in such cases are much less common and employers who are otherwise definitely opposed to it admit its necessity here under certain conditions.

It is idle to ask which, in the abstract, is the ideal principle—voluntary or compulsory settlement, conciliation or arbitration. The question is reasonable only in relation to the legal and economic conditions of a given country, and the answer must be that the system which is most in harmony with those conditions will reach the highest degree of efficiency. Earlier in this article the various national systems were classified according to the purpose they attach to conciliation and arbitration—the maintenance of industrial peace, the promotion of collective agreements, or the regulation of conditions of employment by the State; this classification shows that practically all the more important States have systems in keeping with their legal and economic organization.

Great Britain and most of the other English-speaking States (Australia and New Zealand always excepted) have economic and legal systems based on the principles of individualism and economic liberalism; their adjustment systems are in keeping, having the sole duty of maintaining industrial peace by assisting the parties to reach a voluntary settlement. It is significant that these States have no legislation on collective labor agreements.

Most of the States of greater industrial importance on the Continent of Europe, such as Austria, France, the Netherlands, Norway, Sweden, etc., have incorporated in their legal systems originally built upon the individualistic principle, certain elements of collective law, notably, and of most interest in the present connection, on the subject of collective labor agreements; they have thus assumed the second type of function, the promotion of collective agreements, though this is usually implicit, rather than explicit. It is true that there is no direct regulation of conditions of employment by the State, but the agreements reached in the adjustment procedure, when transformed into collective agreements, engender some form of legal obligation.

That in Germany the promotion of collective agreements is a specific duty of the adjustment institutions is quite in accordance with the general development of German law since 1918, of which the highly developed collective labor law is an important manifestation. But the German system has gone a step further. During the troubles which followed the war the State intervened—often merely following up analogous intervention during the war—to regulate and decide matters in various important economic fields (coal, electricity, the cartel system, etc.) and in general, too, in all activity of the public authorities in the domain of private enterprise. Corresponding to this economic activity of the State, and in particular to its influence on prices and on interest, which is once more plainly visible in the emergency order of December 8, 1931, there was naturally also State influence on wage determination. By declaring awards binding, the arbitration institutions assume the third function of adjustment—the regulation of conditions of employment by the State.

But the law confines these declarations to certain specified exceptional cases which affect the public interest; and they entail civil consequences only. The law in fact still holds to the principle of freedom of contract for the parties to collective labor agreements.

It is obvious, lastly, that this third function—the regulation of conditions of employment by the State—which is assigned to the adjustment systems in Italy and Russia, is a logical consequence of the whole legal and economic systems of

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these two States. Moreover, it is perhaps significant that in countries like Australia and New Zealand, where the accepted legal and economic principles have essentially an individualistic basis, the compulsory arbitration systems in force have been severely criticized and are constantly being altered.

Undoubtedly, however, there is often sharp criticism even where the adjustment system is apparently in harmony with the legal and economic organization of the country. Apart from attacks on the working of the system in individual cases, this may probably be explained by the changes that are now in process in industry, and in society, which may entail profound changes in the legal systems of the States. Individualistic and collectivist forms of economic and legal organization are competing for supremacy, and the contest between the two forms of adjustment of disputes is a part of this greater struggle. The outcome is uncertain and the attempt to foresee it will serve no useful purpose here.

But, whatever the ultimate result of that contest, the general object of all conciliation and arbitration is the same; it is to guide employers and workers, in their own interests and in that of society—toward peaceful methods in the struggle for the division of the product of labor, a struggle which is a manifestation of the life instinct in man and therefore inevitable; to show them that they need one another, however, natural the antagonism between them, and that they must meet n some form of productive collaboration unless they are both to perish. The adjustment of industrial disputes has thus, in its smaller sphere, the same object as the institutions and efforts for the creation of a community of nations and the amicable settlement of the inevitable disputes arising out of conflicting interests in the political world.

The CHAIRMAN. The committee will stand adjourned until 2:30 this afternoon.

(Whereupon, at the hour of 12:20 p.m., the further hearing was recessed until 2:30 p.m. of this date, Thursday, Mar. 22, 1934.)

AFTERNOON SESSION

The CHAIRMAN. The meeting will come to order. Mr. Sloan, will you come forward, please?

STATEMENT OF GEORGE A. SLOAN

The CHAIRMAN. What is your full name?

Mr. SLOAN. George A. Sloan.

The CHAIRMAN. Your residence?

Mr. SLOAN. New York City.

The CHAIRMAN. Your occupation in New York City?

Mr. SLOAN. I am president of the Cotton Textile Institute, Senator, and chairman of the Cotton Textile Code Authority.

The CHAIRMAN. And are you now in Washington, D.C.?

Mr. SLOAN. I have been in Washington the greater part of the last 3 weeks, in connection with some work the general is having us do in the Consumers' Industries Group.

The CHAIRMAN. I suppose you are thoroughly familiar with the codes that have been issued in the textile industry and the operations of those codes?

Mr. SLOAN. Well, sir, I think I have some knowledge of the cotton textile code but I would not say all the textile codes. There are quite a few of them.

The CHAIRMAN. The testimony yesterday was that there were a hundred of them.

Mr. SLOAN. I saw that statement. There are approximately four major codes in the industry, Senator.

The CHAIRMAN. What are they?

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Mr. SLOAN. The cotton textile code, the silk code, and the woolen code—I will confine it to three, because the rayon really is in the cotton code.

The CHAIRMAN. I understand you wanted to rebut some testi mony that was introduced in here yesterday by the representative of the Textile Labor Union; is that correct?

Mr. SLOAN. That is correct, Senator, with your permission, sir.

The CHAIRMAN. It was the representative of the United Textile Workers of America?

Mr. SLOAN. That is correct, sir.

The CHAIRMAN. You may proceed in your own way to make any statement you see fit.

Mr. SLOAN. Senator, may I say just a word in explanation? I happened to be in General Johnson's office this morning giving him some late information as to the practical effects of our code, and we went over some of the statements made yesterday, and we were very fearful that they would have a tendency of, not only injuring the industry itself, but of injuring the N.R.A. I have particular reference to the statement made by the witness that "in the absence of classification of wages in other classes above the minimum this has resulted in the lowering of the maximum wages down to the level of the minimum."

The CHAIRMAN. I think the witness probably meant down toward the level of the minimum. I do not think he meant to give the impression that the maximum wages were reduced to the minimum.

Mr. SLOAN. Assuming that you meant that, Senator, the statement is altogether contrary to the facts.

Now, what are the facts? The Cotton Textile Institute has been designated under the code as the agency to collect figures from the cotton mills. That statistical report was approved by the Administrator, and we are now receiving reports from practically 100 percent of the cotton mills, so the figures should give an accurate picture.

May I read just a few figures to lead up to that particular point because they have a bearing, Senator?

The CHAIRMAN. Certainly.

Mr. SLOAN. Early in 1933 the employment in our industry was at the depression level, and the wage situation was highly unsatisfactory.

Now, the solution of that employment situation was approached, first, by a provision in the code for a shorter work week, and, second, by a provision limiting the operation of productive machinery to 80 hours weekly.

The first provision reduced the maximum hours of labor from 48 in your State, where you have a State law, 55 in the Carolinas, and the State law in Georgia, I think, is 60, and perhaps there are one or two States with no State restrictions at all. So, it had the practical effect, the 40-hour provision, of reducing the hours of work anywhere from 48 to 60 and above.

The CHAIRMAN. Were they all reduced to 40?

Mr. SLOAN. They were all reduced to 40. May I make one exception, sir? There is perhaps 5 percent of our workers that are excluded from the 40-hour provision.

The second provision had the effect of spreading the available business and consequently spreading the employment throughout all sections of this industry. The percentage of reduction in hours of

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labor in the cotton industry has unquestionably been greater than in any industry coming under codes.

Mr. CHAIRMAN. May I ask you to repeat that statement?

Mr. SLOAN. The percentage of reduction in the working time, the number of hours worked per week, has been greater in the cotton textile industry than perhaps in any industry in America as the result of the code.

The CHAIRMAN. I suppose that is because of the unusually long hours of labor that some of the Southern States permit?

Mr. SLOAN. That is correct. That is not confined to the Southern States, Senator. It would be true, as compared to your State, but they operated as long as 54 hours in several of the New England States.

The CHAIRMAN. Are they New England States?

Mr. SLOAN. Correct, sir. In March 1933 the industry was providing work, not regular work, intermittent work, for 320,000 employees, and that was a number considerably below the predepression level. The anticipation of, and finally the adoption of, the 40-hour week under the code brought about a 44 percent increase in employment. Within 1 month of the adoption of the code—that is, in August 1933—we were employing 460,000 people, an increase of 140,000 employees over the March low.

The CHAIRMAN. For what months were the other figures?

Mr. SLOAN. August. I am going to bring it up to date if you wish.

The CHAIRMAN. Was there, independent of the N.R.A., an acceleration of business during that period?

Mr. SLOAN. There is a diversity of opinion, Senator, in the industry on that point. In my humble opinion I would give all the credit to N.R.A.

The CHAIRMAN. I have heard the two opinions expressed and that is why I asked.

Mr. SLOAN. The two opinions are expressed, but the fact of the matter is that in anticipation of the shorter hours that were coming—it was on the front pages of the papers for weeks before we had our code, everyone knew the hours would be materially shortened, and in anticipation of that the buyers, the wholesalers and retailers, and the cutters-up very naturally came in and anticipated their needs, so that it goes back, after all, to the code, that it was necessary to increase our employment.

Now, to bring this up to date, the March figures were 320,000.

The CHAIRMAN. I want you to speak of—you probably will come to it—you said there were two factors, one was the reduction in hours, and the other was the machine hour limitations. I want to discuss that in a moment, after you finish. You probably are going to do it anyway.

Mr. SLOAN. I had not intended to, but I will do it now if you wish.

The CHAIRMAN. After you have finished with the other.

Mr. SLOAN. In March 1933 we had 320,000 people on our pay rolls; in August, 460,000; in September, 461,000; in January, 430,000, and February, about 445,000.

Now, we have heard much about the 1926 level of employment. Secretary Perkins, in her speech the other day, before all of the code authorities, referred a number of times to what some industries had done, and what some had not accomplished as compared with 1926.

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If one of the objectives of N.R.A. is to get back to 1926, the cotton textile industry under its code has attained that end. Secretary Perkins' figures will show for the month of February—I saw them yesterday—that our employment in the month of February was 101 percent plus of the 1926.

The CHAIRMAN. 1926 was not a maximum production year in the cotton textile business, was it?

Mr. SLOAN. We have not had a maximum production year for about 10 years, Senator.

The CHAIRMAN. That is what I thought. My recollection is that there was quite a marked depression in the cotton textile business in 1924, 1925, and 1926.

Mr. SLOAN. That is correct.

The CHAIRMAN. I remember very distinctly of it being a matter of political discussion in the campaigns of 1924 and 1926, and that the then minority party was accusing the dominant party in the Federal Government of being responsible for a depression in the cotton textile business. So, my recollection is that that year was not a normal production year.

Mr. SLOAN. I could show you the figures for that year, the monthly average for 1926, as compared with some of the other years. It was fairly close, Senator, to the top; 1927 was our best year in that period.

The CHAIRMAN. Production, probably, has gone to the South.

Mr. SLOAN. This is the whole industry.

The CHAIRMAN. I understand, but I mean what I observed in my own State.

Mr. SLOAN. That shift was taking place in those years. I think in the last 2 or 3 years the shift has almost completely stopped. About two thirds of the industry is now located in the South, and that has been true, I think, for the last 2 or 3 years, and the shifting has practically ceased.

The CHAIRMAN. Did it cease before 1929?

Mr. SLOAN. There are figures on that in the Department of Labor. I do not have them, sir. My general impression is that it was coming to an end at the time.

The CHAIRMAN. The depression would cease the movement anyway, because there was less demand for cotton textiles anywhere?

Mr. SLOAN. The depression affected both sections alike. The shifting had about stopped.

The CHAIRMAN. There was no inducement for them to move their plants after 1929, or start new plants?

Mr. SLOAN. Just to give you quickly this picture, in 1925 we had a low point in those years. In 1924 it was 416,000; 1925, 445,000; and 1926, 444,000.

The CHAIRMAN. What is it?

Mr. SLOAN. The number of people employed. This was the monthly average for those years. Nineteen hundred and twenty-seven was our best year in the 10-year period. In 1927 we had 467,000.

The CHAIRMAN. So, you are practicly back in employment to the number of employees in 1924?

Mr. SLOAN. We are considerably ahead of 1924. We are ahead of 1926.

Senator DAVIS. How much are you ahead of 1926?

Mr. SLOAN. One hundred and one per cent, sir.

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Senator THOMAS. One per cent.

Senator DAVIS. Nineteen hundred and twenty-six is the basis of 100 percent?

Mr. SLOAN. That is correct, sir.

Senator DAVIS. And you are 1 percent above that?

Mr. SLOAN. According to the figures which Secretary Perkins had, I do not have them, they are just out, it was 101 percent of 1926.

A comparison of the figures shows that employment in each of the 4 months, July to October 1933, exceeded the 1926 employment level, and almost equaled the employment level of 1923. We have discussed that and I will not trouble you with that further.

Now, as to the minimum wage, that was discussed at some length yesterday. In addition to increasing and spreading work, the code, by its provisions of minimum rates of pay substantially increased the wages of operators.

The new minimum rates provided by the code in many cases represented considerable increases in the lower brackets. I am not so proud to tell you this, Senator, but it is a fact that the code frequently entailed an increase of 100 percent in weekly wages, and increase in the hourly rate of 200 percent. That means that in many of our plants we were paying very low wages, wages that leaders in the industry, north and south, deplored, wages that we tried to correct as we were working on the question of hours, at the same time, but always without the assistance of a law behind us.

Now, the code also provided that the shorter work week should not yield any employee a less wage than such employee was receiving for the same class of work for the longer week of 48, 55 or 60 hours, prior to the code. I would like to emphasize that, sir, with your permission. There are three wage provisions in the cotton textile code, not one. Word has gone out all over this Nation, time after time, that the minimum wage in the cotton textile code is a low wage but it stopped there.

There are three fundamental wage provisions; there is the minimum wage, $12 in the South and $13 in the East; second, there is the provision that we have to pay at least as much for the 40 hours as you pay for 48, 55, or 60; and the third vitally important provision that the differentials existing in the higher occupational groups prior to the code must be preserved.

Now, I want to show you what is happening to those differentials. Before I come to that, though——

The CHAIRMAN. If the industry has been working its employees 48 and 54 hours and decided to go on 3 or 4 days a week, which would be less than 40 hours, would those employees get a 40-hour wage?

Mr. SLOAN. Prior to the code, sir?

The CHAIRMAN. No, since the code.

Mr. SLOAN. No, the code provides an hourly rate.

The CHAIRMAN. If the employee who had been working 48 or 52 hours, actually worked 40 hours, if his employer kept him at work 40 hours, he would be entitled to get the wage he got for the 48 or 54 hours previous to the code?

Mr. SLOAN. That is correct, sir.

The CHAIRMAN. But if the employer saw fit, or because of conditions could not provide, 40 hours, the employee would receive the pay for the actual number of hours which he worked?

Mr. SLOAN. That is correct, sir.

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Senator DAVIS. Did you maintain the same production when you reduced the hours from 48 to 40 or from 54 to 40?

Mr. SLOAN. The production has been maintained, Senator. The production is greater today than it was prior to the code.

Mr. DAVIS. It is greater on 40 hours than it was on 48 or 54?

Mr. SLOAN. That is correct, sir. There is a very definite reason for that, Senator.

Senator DAVIS. What is the reason?

The CHAIRMAN. Because of the increase in employees idle machines have been put to work?

Mr. DAVIS. That is what I was trying to lead up to.

Mr. SLOAN. The reason being that prior to the code the operating hours of the machinery, we will say, was very irregular in our industry as between sections and as between different classes of manufacture. We had something like 8,000,000 spindles in the industry that regularly ran a single shift, that never ran a second shift. That was about a third of the industry. There are about 26,000,000 active spindles in the industry.

Now, when we came along with the code with its 80-hour machine limitation, that just stopped this midnight running, this all night running, and spread that business all over this country, north and south. That is why you are still getting the same production and even greater production, because you have made it possible for mills to live that could not live under the old regime. Do I make that clear? Many of those single shift mills are now in a position to put on a second shift of labor. There are a good many that have not as yet, but, I say, many have done so.

The CHAIRMAN. It has been a matter of agitation for several years in my State that the industries were handicapped by the laws forbidding them to use a second shift.

Mr. SLOAN. Your State had a law prohibiting the employment of women and minors at night. I think New York had that law but I think those two States were the only two in the textile industry that I recall at the moment.

Senator DAVIS. Could you give the number of additional workers that have been put on since the code?

Mr. SLOAN. One hundred and forty thousand. That is not since the code. I go back to March, Senator, because it is a better comparison for this reason. We started picking up our employment in anticipation of the code. The buyers came in and bought in such volume, knowing the code was coming, that it made it necessary to step up the employment month by month before we came to the code.

The CHAIRMAN. When was the code signed?

Mr. SLOAN. July 17, sir. It was effective July 17. It was signed about 2 weeks before, as I recall.

Senator DAVIS. Would you say, then, that since the adoption of the code there has been a wholesale improvement in the textile industry so far as the workers are concerned?

Mr. SLOAN. Correct, sir. I will go beyond that and say that so far as the mill communities are concerned, and so far as the industry is concerned.

Senator DAVIS. And so far as the investors in the industry are concerned?

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Mr. SLOAN. Correct, sir. The industry has, by and large, come out of the red ink into a break-even position. I wish I could say more than that. There are some notable exceptions but they are relatively few. By and large, the industry has reached a break-even position under the code.

Senator DAVIS. What part of the machinery now in the cotton textile industry is obsolete? I mean by that, who are working old machines that are not modern?

Mr. SLOAN. I cannot give you that figure, Senator. I can say this to you, that it is most encouraging—this has a very direct bearing on your question but it does not answer it—the improvement in the installation of machinery for replacement and the balancing purposes, and for modernizing equipment was very pronounced in the last 6 months of the year. I have no figure but I have talked with a number of the textile machinery manufacturers, and their business has improved materially. Indeed, one or two have said it has improved tremendously for textile machines, and that their commitments ahead for this year are very large because the mills have suffered for so many years that there has not been an opportunity to replace old machinery that is gradually coming to them now under this code.

Senator DAVIS. Do you find a better spirit now among the workers, than you did prior to the adoption of the code or the reduction of hours?

Mr. SLOAN. We do, sir. I think there is no question about that. The workers are happier with the 40-hour week as against the 54 average. The industry averaged about 54.

Now, as to wages, the full-time weekly wages increased from $11.61, which was the low in April 1933 to $15.29 in November 1933 which was an increase of 31 percent. The average weekly earnings increased the same percentage in that period. The average hourly wage per capita increased from 21.5 cents in April 1933 to 36½ in November, which is an increase of 69 percent in the average hourly wage rate.

Let us see what that has done. The employees working 10 hours less per week—it is more than 10 hours less per week—were earning over $3 more on the average. A man working 40 hours on the average in this industry, the figures can be substantiated in the Department of Labor, and will show that they are getting on the average $3 more per week for 40 hours than they received for 54.

Now, this is the principal fact, Senator, which I wish to get before you, because it is vitally important. I can well understand that a code with a minimum provision and nothing beyond that might result in the lowering of the wages in the higher brackets. That is conceivable unless there is some other protection thrown about those workers. I think in most of the codes you will find some protection, some protective measure. In our code we have those two other provisions that I mentioned, the same pay for the 40 hours as they received for the longer week, and that the differentials must be preserved.

Now, then, the code has done more than to prevent minimum wages from becoming maximum wages. It has increased the maximum rates themselves, too.

Let us look at the figures. Slasher tenders in 1932 earned 1½ cents per hour more than weavers. Our reports for practically the

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entire industry, I should say 1,100 out of 1,200 mills, show that slasher tenders in August 1933 earned on the average 2.2 cents per hour more than weavers. They got 1½ cents more before, and that was the difference. Card grinders in 1932 earned 2½ cents more than weavers, and in August 1933, 3 cents more. Warp tying machine tenders in August 1932 earned 2½ cents more than weavers, in August 1933, 4½ cents more.

The CHAIRMAN. Are those pieceworkers?

Mr. SLOAN. Senator, I cannot answer that question. I could easily get that for you.

The CHAIRMAN. Is it not common knowledge that weavers throughout the industry work by the piece?

Mr. SLOAN. In certain branches of the industry that is true; that is not true in all branches, Senator.

The CHAIRMAN. It is certain that no manufacturer is letting me run a loom and the next man to me running a loom, and paying us both the same wages if I turn out twice as much cloth as he does.

Mr. SLOAN. Are you not speaking primarily of the fine-goods fabric in New England?

The CHAIRMAN. Yes.

Mr. SLOAN. The bulk of that fabric is coarse fabric, like narrow sheetings, and so forth.

The CHAIRMAN. I have in mind also the woolen-carpet industry where the weavers are paid by the piece, and the woven-wire industry.

Senator DAVIS. That was my impression.

The CHAIRMAN. I have always had the impression that weaving was a piecework job, but I can conceive that perhaps on the cheapest grade of cloth in the South the rate might not be fixed in a piece basis, but I should think even there it would be. However you have more knowledge of it than I.

Mr. SLOAN. I will not qualify as an expert either.

The CHAIRMAN. The point I am trying to make is, if these people work by the piece, and they formerly worked 48 hours and they now only work 40 hours, and there has been a slight increase in their yardage for piecework, is not the net result that they may be getting a lower wage at 40 hours than at 48?

Mr. SLOAN. Well, Senator, I think I am going to answer your question as to the net results of what is happening.

The CHAIRMAN. It was called to our attention yesterday that the lowering of the hours of labor did not reduce the wages where there was a weekly wage or a definite fixed wage rather than the piecework wage, because of the proviso that they will not get less than 40 hours. That is correct, is it not?

Mr. SLOAN. There is no proviso that they will not receive less than 40 hours work. The proviso is that they shall not work in excess of 40 hours.

The CHAIRMAN. Now, is not the proviso that they get the same pay for 40 hours as they did for 48 or 54?

Mr. SLOAN. If they work 40 hours.

The CHAIRMAN. So, it is quite likely that this man who testified yesterday may be correct in his assertion that because the number of hours have been reduced on piecework from 48 to 40, the net result is that at the end of the week an employee does not have as much money in his envelop as he did before. I am trying to reconcile the two

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different views. You have made it very clear that where the wages were paid by the hour he was mistaken in such general statement, and I would like to have your views about his statement of where the wages were paid for piecework.

Mr. SLOAN. I think in the figures I am going to show you of what has actually happened to the pay rolls will bear out my statement that these minimums have not become the maximums.

The CHAIRMAN. Can you give us any figures as to the percentage of workers who worked on a per hour basis, a per week basis, and how many worked on a piece basis?

Mr. SLOAN. I happened to meet a prominent mill executive in the hotel as I came down, who is now in the room, and if you would not mind asking that question of Mr. W. S. Nicholson, of Union, S.C., I believe he can answer it.

The CHAIRMAN. I would like to do so.

Mr. SLOAN. Mr. Nicholson, will you answer the question of the Senator? What is the percentage of weavers that are working on a weekly basis as against those that work on a piecework basis?

Mr. NICHOLSON. I do not know of any cases where weavers work on a regular weekly basis.

The CHAIRMAN. Per hour basis, most of them?

Mr. NICHOLSON. It is those rates.

The CHAIRMAN. That is my impression, that the great bulk of the textile employees work on a piecework basis.

Mr. NICHOLSON. Right. I should say about 80 percent of the entire industry.

Mr. SLOAN. I think we are together on this, but I would like to ask him a question, Senator. As a matter of fact, have not the weavers worked pretty much all of their 40 hours in all of the plants under the code?

Mr. NICHOLSON. Pretty much all of it?

Mr. SLOAN. Yes; generally speaking.

Mr. NICHOLSON. Yes; I would think so.

The CHAIRMAN. I did not hear the question, and ansswer.

Mr. NICHOLSON. I asked if the weavers had worked pretty much up to the 40-hour maximum since the code went into effect.

Mr. NICHOLSON. And I said I should think they had. In some case cases there has been some curtailment.

The CHAIRMAN. But there was no provision in the code—see if we agree upon this, and I am only doing this for the purpose of reconciling the difference between you and the witness yesterday—there is no provision in the code that guarantees the same rate for 40 hours' work that he got for 48 hours. Is that right, Mr. Sloan?

Mr. SLOAN. The hourly rate is guaranteed, Senator.

The CHAIRMAN. I understand that.

Mr. SLOAN. I see. There is nothing that guarantees him an average week's work?

The CHAIRMAN. Now, according to his testimony we are dealing with 80 percent of the employees, and so far as the 20 percent are concerned, you are probably right.

Mr. SLOAN. Not 80 percent of the employees. He made the statement that it was 80 percent of the weavers. That is not 80 percent of the number of employees.

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Mr. NICHOLSON. I mean 80 percent of all employees.

Mr. SLOAN. Now on a piecework basis?

Mr. NICHOLSON. Yes.

Mr. SLOAN. I thought you said the weavers?

Mr. NICHOLSON. No; all the weavers, as far as I know, are on the piecework basis.

Mr. SLOAN. I stand corrected on that.

The CHAIRMAN. In my own community I have been in contact with the situation and have some knowledge of the extent of the employees being engaged on piecework.

Mr. SLOAN. I stand corrected on that, sir, because looking at the figures here and giving my answer to you in the light of the statistics I see coming over my desk, week after week, they did not show very much piecework. In other words, they show they are working up around 40 hours. We have been running pretty full as an industry for the past 7 or 8 months except during the month of December.

The CHAIRMAN. It is possible under the code, and this is not criticism of the code at all, that a man might well as a weaver, get less wages per week than he used to get, because he is only working 40 hours a week.

Mr. SLOAN. I do not know. I wish you would ask that question of Mr. Nicholson.

Mr. NICHOLSON. What was the question?

The CHAIRMAN. A weaver that worked in your plant for 54 hours—was that the number of hours you worked in your plant?

Mr. NICHOLSON. We worked 55.

The CHAIRMAN. Does he get for 40 hours of piecework the same wages he formerly got for 55?

Mr. NICHOLSON. Yes, sir; and not only in my plant, but all the industry as a whole, because the piecework rates were adjusted to enable the pieceworker to earn the earnings that prevailed prior to the code going into effect.

The CHAIRMAN. That would require a substantial increase in the piece rate.

Mr. NICHOLSON. I believe that is true in our plant, and I think that is true in most of the plants.

Mr. SLOAN. Senator, there are some other figures that may help us in this discussion. The average rate in 1932 was seven higher occupational groups, where earnings, according to Government reports, were more than the minimum wage prescribed by the code, was 35 cents an hour. In August 1933 the average for these same groups was 44 cents, an increase of about 25 percent in the hourly rate. These averages include all kinds of cotton mills, the case such as you have in Massachusetts of the fine goods, and the cheapest and coarsest type of fabrics.

Now, with respect to pay rolls, a striking reflection of the increase of employment and wage improvement is afforded by the industry's pay rolls.

For the week ending nearest to the 15th of the month the pay roll for March was $2,957,000. In June it was $4,498,000; in July, $5,000,000; in August, $6,000,000, and it has stuck very close to that.

The CHAIRMAN. That was the total for the industry?

Mr. SLOAN. That is the total weekly pay roll for the week nearest to the 15th of the month.

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The CHAIRMAN. How many plants, approximately?

Mr. SLOAN. Well, approximately 1,200 plants, ranging from 50 employees to several thousand.

Weekly pay rolls have risen from $3,000,000 in March, to $6,000,000 in October, an increase of 100 percent. The pay roll in November was actually 92 percent over March 1933.

The important thing is what has happened to real wages. That is what we want to know. What has happened to real wages? These increased pay rolls have meant an increase in real wages, that is, an increase in purchasing power.

If we take the figures of the National Industrial Conference Board, in January 1934, they show about a 28 percent increase over March 1933 and are 10 percent higher than in 1926.

Senator, that was the information that I was anxious to get before you.

The CHAIRMAN. That has been very helpful. May I ask you another question? What increase has there been in the cost of cotton cloth as a result of these increased wages?

Mr. SLOAN. That varies according to the type of cloth.

The CHAIRMAN. Yes; but is there any information that you can give us?

Mr. SLOAN. I think I can send your committee a pretty full record of that.

The CHAIRMAN. Of course, in view of your statement as to the percentage increase in wages, and the fact that these industries have come out of the red into the black, in all probability that has been in some part due to increased price.

Mr. SLOAN. Bear in mind, Senator, too, that the price of cotton has gone up 100 percent, and on top of that we have the processing tax.

The CHAIRMAN. There has been very substantial increase in the cost of production.

Mr. SLOAN. In the selling price, did you say?

The CHAIRMAN. Yes; the consumer's price.

Mr. SLOAN. May I ask Mr. Nicholson how the prices compare?

The CHAIRMAN. Yes.

Mr. NICHOLSON. Not quite twice as much.

The CHAIRMAN. I am very glad you appeared, Mr. Sloan, because I really got the impression myself, and I think the committee did, that there were many cases of pieceworkers—and this is not critical at all—who really had their pay envelops reduced by the 40-hour requirements.

Mr. SLOAN. Senator, with your permission, I would like to make a hurried check in all of my records and I may be able to submit some data on that point. I am sorry I was not better informed.

The CHAIRMAN. You certainly have enlightened the committee.

Mr. SLOAN. We did not want the impression to go out as it has gone out before, that the minimum wage has become the maximum wage. That hurts our industry and hurts the N.R.A.

The CHAIRMAN. Does anyone else wish to be heard?

(No response.)

The CHAIRMAN. Senator Davis would like to have inserted in the record a letter addressed to John L. Lewis, president United Mine Workers of America, from B. C. Miller, president Local No. 6290, United

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Mine Workers of America, Nemacolin, Pa. Is this letter in favor of this legislation?

Senator DAVIS. It is.

(The letter referred to by the chairman is as follows:)

NEMACOLIN, PA., *March 19, 1934.*

JOHN L. LEWIS,
President United Mine Workers of America,
Washington, D.C.

DEAR SIR: At a recent meeting of local no. 6290, United Mine Workers of America, located at Nemacolin, Greene County, Pa., I was directed to write you concerning the activities of the Buckeye Coal Co. in violation of section 7 (a) of the National Recovery Act, relative to collective bargaining.

In order to thoroughly acquaint you with the situation at this mine, it is necessary that I give you detailed information concerning the same.

Prior to the passage of the National Recovery Act, this mine was unorganized, having neither organized labor or a company union. Immediately after the passage of the act, the mine was organized 100 percent United Mine Workers of America, and continued working without any objection on the part of the company. After the dispute with the H. C. Frick Coke Co. and the United Mine Workers, the Buckeye Coal Co. endeavored to organize a company-controlled union, called the "brotherhood." This mine was shut down on account of the strike last fall and did not open again until some time in January of this year. After repeated efforts, an election was held to choose representatives, under supervision of the Labor Board, and the United Mine Workers were victorious—489 to 247. So far a contract has not been entered into with the company by the chosen representatives.

Prior to this election, the company hired several deputy sheriffs, who, after complaint, were discharged by the sheriff of this county; then the company petitioned the courts of this county and designated several individuals to be night watchmen; since that time they have had 3 shifts of 8 men each, patroling the property of this company, and intimidating and coercing members of the United Mine Workers to become members of the organized company brotherhood.

The Buckeye Coal Co., at the present time, will not hire any person who does not agree to become a member of its brotherhood; most of its foremen and pit bosses are members of the brotherhood and constantly making working conditions for union men unbearable. They also refuse to permit the union men to hand out check-off cards to the members of the United Mine Workers.

In addition to these matters, the company only hire men for 10, 20, or 30 days, constantly holding this as a threat over their heads to keep them becoming members of the United Mine Workers, and if they don't join the brotherhood at the end of this time, they are immediately discharged.

Several members of the United Mine Workers have been discharged for very trivial matters, and we allege the principal reason is that they were members of the union. Also the company is importing men from other localities and employing them in preference to men who have worked for them and live in the company town, presumably on account of the men living there being members of the union.

The men are very anxious that this letter be read before the Senate committee at the hearings on the Senator Wagner bill, and, if necessary, several of the men will attend in person to substantiate the charges set forth in this letter.

There is no question but what the company is determined to defeat the rights of its members to collective bargaining, and unless the Wagner bill is approved in its present form and some authority vested in a national labor board to combat the activities of the company, sooner or later the company will win out, so you can readily see the necessity of labor having some protection.

With kindest personal regards, I am,

Yours very truly,

B. C. MILLER,
President, Local No. 6290, United Mine Workers of America.

The CHAIRMAN. The committee will stand adjourned until Monday morning at 10 o'clock.

(Whereupon at 3:15 p.m. the committee was recessed until Monday, Mar. 26, 1934, at 10 a.m.)

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TO CREATE A NATIONAL LABOR BOARD

HEARINGS

BEFORE THE

COMMITTEE ON EDUCATION AND LABOR
UNITED STATES SENATE

SEVENTY-THIRD CONGRESS

SECOND SESSION

ON

S. 2926

A BILL TO EQUALIZE THE BARGAINING POWER OF EMPLOYERS AND EMPLOYEES, TO ENCOURAGE THE AMICABLE SETTLEMENT OF DISPUTES BETWEEN EMPLOYERS AND EMPLOYEES, TO CREATE A NATIONAL LABOR BOARD, AND FOR OTHER PURPOSES

PART 2

MARCH 26 TO APRIL 3, 1934

Printed for the use of the Committee on Education and Labor

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CONTENTS

Statement of:	Page
Bell, William B	512, 519
Buchanan, W. C	599
Carroll, Walter	611
Collins, John J	468
Comer, Donald	622
Cornelius, Sidney E	641
Craigmile, Charles S	566
Crockett, A. E	422
Cush, E. P	489
Dennison, Henry S	400
Devlin, Daniel	615
Donham, Wallace B	605
Edmunds, Franklin S	404
Elton, R. W	601
Emery, James A	340, 379
Fauntleroy, I. R	576
Fay, W. E	588
Fiske, Jr., Edward R	415
Fisher, Leon	597
Foster, Ralph	529
Fowler, Willam H	631
Gadsden, Phillip H	404
Galvin, Jack	603
Gifford, Albert J	474
Goodman, Howard	644
Haake, A. P	593
Hall, Roy F	553
Harriman Henry I	495
Harrington, Guy L	459
Heller, Preston B	571
Higgins, John W	412
Hodgson, G. C	583
Johnson, Arthur L	575
Kimball, D. W	573
LeBlonde, Richard	533
Lincoln, James F	637
Morgan, Philip M	616
Mowitz, A. P	427
Oliff, Charles	577
Peck, L. A	591
Pickering, N. W	509
Powers, George H	485
Ryan, James J	540
Seyler, George A	537
Settle, W. Booth	580
Torrey, Arthur Morris	478
Van Duyne, Philip R	502
Walker, J. L	577
Walsh, Senator David I	337
Ward, Louis B	444
Wilson, Arnold	585
Wuerdeman, Walter H	534

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TO CREATE A NATIONAL LABOR BOARD

MONDAY, MARCH 26, 1934

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The committee met, pursuant to adjournment, at 10 a.m., in the caucus room, Washington, D.C., Senator David I. Walsh (chairman) presiding.

Present: Senators Walsh (chairman), Murphy, Thomas, Erickson, Borah, Walcott, and Davis.

The CHAIRMAN. The committee will come to order. Mr. Emery, are you ready to proceed?

Mr. EMERY. I am, sir.

STATEMENT OF SENATOR DAVID I. WALSH

The CHAIRMAN. The Committee on Education and Labor of the United States Senate is in session this morning, conducting a hearing on Senate bill 2926, introduced by Senator Wagner. In view of the fact that the proceedings are to be on the radio, I will make a brief statement to inform those listening in of earlier proceedings. The Democratic members of this committee are as follows: David I. Walsh, Massachusetts, chairman; Royal S. Copeland, New York; Park Trammell, Florida; Hugo L. Black, Alabama; Louis Murphy, Iowa; Elbert D. Thomas, Utah; John E. Erickson, Montana. The Republican members are: William E. Borah, Idaho; Jesse H. Metcalf, Rhode Island; Frederic C. Walcott, Connecticut; Robert M. La Follette, Jr., Wisconsin; James J. Davis, Pennsylvania.

The title of Senate bill 2926 is:

> To equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes.

Since Wednesday, March 14, the committee has been holding daily sessions. A vast amount of evidence has been submitted by representatives of organized labor, students of industrial relations, delegations from employees, and various citizens who have been serving on the National Recovery Labor Board, which has been dealing with the labor disputes arising out of the codes adopted by the National Recovery Act.

This morning, the committee will hear James A. Emery, who is General Counsel for the National Manufacturers' Association, and who has, for years, represented the employers' side of industrial questions affecting the public interest, before committees of the Congress.

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The bill which we are considering, has as its objective the creation of a National Labor Board, which shall have the power to interpret and administer section 7–A of the National Recovery Act.

Section 7–A of the National Recovery Act is a provision, incorporated into that law, for the employment of certain rights by employees in industry.

The National Recovery Act, briefly stated, is a law passed by the Congress, for the purpose of helping to bring about the recovery of industry, by repealing some of the laws that industry believed were retarding recovery. It was referred to, at the time it was passed, as a partnership between the Government and employers, for the purpose of removing ruthless competition in industry, and for helping industry to get back on a profit-making basis, and to maintain the former high standard of wages and labor conditions that prevailed during the era of prosperity. One of its objectives also was to lessen the hours of labor, so as to spread out employment, and also to maintain a reasonably high wage, in order to maintain the purchasing power of the country, notwithstanding the reduction of hours of labor.

In the National Recovery Act there was incorporated a section known as section 7–A, which, for the first time in a legislative act, declared certain rights in behalf of employees.

The bill now before us is the outcome of this declaration of labor rights in section 7–A. Section 7–A conceded to labor the following rights (abbreviated):

> Every code agreed to under the National Recovery Act, shall contain the following abbreviated provisions:
>
> 1. That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from interference or coercion of employers of labor or their agents in the designation of such representatives.
>
> 2. That no employee shall be required, as a condition of employment, to join any company union or be restricted from joining organizations or assisting any labor organization of his own choosing—

Quoting from the law. The Labor Board set up by President Roosevelt to give force and effect to this section, namely, section 7–A of the National Recovery Act, has been operating since the passage of this law. It is composed of 11 members, 5 representing labor, 5 representing employers, and Senator Wagner, of New York, is the chairman of this Board.

Many of the members of this Board, particularly the labor members and Senator Wagner, claim to have discovered many alleged defects in the administration of section 7–A. These defects, they claim, are numerous, and it is a result of the defects which they allege were discovered in the administration of section 7–A that this bill was presented to the Congress.

The chief claim made, and perhaps the chief defect asserted, is that there can be no real collective bargaining under section 7–A, unless the law is strengthened. The reason, they urge, is that real collective bargaining is not possible where unions of employees are organized under the direction, through the influence, and with the approval of employers. These unions, called "company unions", have grown up rapidly since the passage of N.R.A. The Labor Board asserts that practically all the labor disputes that have arisen since N.R.A. have been as a result of clashes between employees and

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the employers, growing out of the insistence upon the part of employers, in organizing company unions, and thereby denying the employer freedom of organization.

Now, as to the enforcement sections of the bill, the present Labor Board asserts that is has sought to apply section 7–A, by relying upon the prestige of its members, and by appealing to public sentiment. During the summer months, they say these methods met with great success, but in recent months the Board has been confronted by some large employers—of course, presented by members of the Labor Board—"who ignore public sentiment, who flaunt the clear intent of Congress, and who are a law unto themselves." These words are Senator Wagner's own words. This, they say, "is extremely unfair to the vast majority of employers, who want to obey the law, and disheartening to the millions of working people who see that which was held up to them as a new charter, being treated as a "scrap of paper."

The bill, presented to the Congress for approval, provides for a permanent board, with adequate enforcement provisions. It defines as unfair labor practice any attempt by employers to dominate labor unions or to fail to recognize the duly chosen representatives of their employees. It also defines several other practices of employees as unfair.

When complaint is made of an unfair labor practice, the Board is authorized to hold meetings, subpena witnesses and records, and if the law is violated, issue a restraining order enforceable in the court. The Labor Board is empowered to act also as conciliator and mediator.

Very briefly, this outlines the objective of the bill which is now under consideration by this committee, and I will now ask Mr. Emery, who is the representative and attorney of the National Manufacturers' Association, to address the committee.

Mr. Emery, your full name.

Mr. EMERY. James A. Emery.

The CHAIRMAN. Your residence?

Mr. EMERY. Washington, or Chevy Chase, Md.

The CHAIRMAN. Attorney at law?

Mr. EMERY. Yes, sir.

The CHAIRMAN. Whom do you represent, in appearing this morning before this committee?

Mr. EMERY. I speak for the National Association of Manufacturers, and for some 38 State associations of manufacturers, a list of which I file with the committee.

The CHAIRMAN. How many manufacturers do these associations represent?

Mr. EMERY. Between forty-five and fifty thousand, roughly speaking.

The CHAIRMAN. What class of manufacturers?

Mr. EMERY. If you will permit me, Mr. Chairman, I will cover that in the statement, if I may go ahead.

The CHAIRMAN. Very well.

Mr. EMERY. Thank you.

The CHAIRMAN. You may proceed, Mr. Emery.

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STATEMENT OF JAMES A. EMERY

Mr. EMERY. I am general counsel, National Association of Manufacturers, representing that organization and the below listed State Associations of Manufacturers in opposition to the Wagner bill (S. 2926) before the Senate Committee on Education and Labor, Monday, March 26, 1934, opening the testimony for opponents: Associated Industries of Alabama, California Manufacturers Association, Manufacturers' Association of Connecticut, Associated Industries of Florida, Georgia Manufacturers' Association, Illinois Manufacturers' Association, Indiana Manufacturers' Association, Iowa Manufacturers' Association, Associated Industries of Kansas, Associated Industries of Kentucky, Associated Industries of Maine, Associated Industries of Massachusetts, Michigan Manufacturers' Association, Minnesota Employers' Association, Associated Industries of Missouri, Associated Industries of Montana, Ohio Manufacturers' Association, Associated Industries of Oklahoma, Utah Associated Industries, Associated Industries of Vermont, Virginia Manufacturers Association, Federated Industries of Washington, Wisconsin Manufacturers' Association, Colorado Manufacturers and Merchants' Association, Manufacturers' Association of Wilmington, Louisiana Manufacturers' Association, Nebraska Manufacturers' Association, New Hampshire Manufacturers' Association, Associated Industries of New York State, Inc., Manufacturers & Merchants' Association of Oregon, Pennsylvania Manufacturers Association, Associated Industries of Rhode Island, Manufacturers and Employers' Association of South Dakota, Tennessee Manufacturers Association, Texas State Manufacturers Association, West Virginia Manufacturers' Association, Manufacturers' Association of New Jersey.

The CHAIRMAN. You may proceed, Mr. Emery.

Mr. EMERY. May I say, Mr. Chairman, that the organization for which I speak represents many thousands of manufacturers engaged in every form of industrial production, throughout the various States of the Union. They include every shade of industrial employment, large and small. They represent every form of individual and collective agreement. Some deal exclusively with organized labor. More do not. They number plants regarded by personnel specialists as world models in social equipment and organization.

Let me say, Mr. Chairman, that I trust, in what the chair has said in opening the discussion, he has not indicated, before hearing the case for those who disagree with many features of this measure, a conclusion which I know the committee will build only upon the evidence and arguments submitted.

The CHAIRMAN. May I interrupt you a moment? I would not have made any statement at all, but I thought it was unfair to the public, who have not been following the course of these hearings, to have one introduced who appeared in opposition to the bill, without having any presentation made of what the claim was by those who are defending the bill. I tried to make a fair statement of what I understand to be the proponents' position. I had only about 2 minutes in which to prepare it, because I expected somebody else to go forward and make a statement in favor of the bill. By a brief statement of the claims made for the bill, I thought I was helping to in-

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form those who were listening on the radio, what the objectives of this bill were.

Mr. EMERY. We are very confident of the Senator's fairness. We only wanted to indicate our confidence in it.

Senator WAGNER. I am sorry that the broadcasting company was not as interested in broadcasting this hearing when those in favor of the bill appeared before the committee.

Mr. EMERY. May I proceed, Mr. Chairman?

The CHAIRMAN. You may proceed.

Mr. EMERY. Referring now to those whom I have the honor to represent, may I continue, that many have builded systems of collective relationships over many years. Others are more recent. Often they were initiated by the management and perfected by the men. Some have brought both groups through these trying years with new faith in each other; their mutual good will tested by reciprocal sacrifice. Yet all that they have done would be abrogated by this bill. We are not here to defend all employers or to condone their misconduct. There are doubtless bad company organizations, just as there are bad unions.

We resent the suggestion that the normal conduct of the employers shall be outlawed, and the abnormal conduct of other groups shall be encouraged by law. We therefore oppose the measure before you, because we believe it invalid in law and unsound in policy. We will demonstrate it is not an exercise of the commerce power of Congress, but a deliberate and indefensible invasion of the right to regulate and even compel local employment relations, which the Supreme Court, without exception, has declared are exclusively a subject for State and not Federal control; but, assuming the bill were within the commerce power, the administrative body established, the authority proposed, the manner of its exercise, are arbitrary, destructive of the fundamental rights of the parties, and vest in an administrative body the determination of questions of fact and law, without judicial review, that may be adjudicated only by a court. Without itself being bound by the rules of evidence, the bill undertakes to compel the reviewing court to be bound by the Board's findings of fact. The Board is neither required to give reasonable notice of the character of the complaint nor the time of its hearing. It sets up as offenses a series of acts so vaguely described as to violate the essential requirements of a penal statute. Many of such acts represent the normal and necessary intercourse between employer and employee.

The CHAIRMAN. Mr. Emery, do you mind being interrupted as you proceed, with questions from the committee, or would you like to finish your statement before being interrrogated?

Mr. EMERY. Well, I would like to make a main statement, Mr. Chairman, if I may. Then I will be glad to submit to inquiries.

The CHAIRMAN. Very well. Senator Wagner and members of the committee may want to interrogate you later.

Mr. EMERY. Certainly. The prohibition of such acts would destroy the natural and valid relationship between them. In form and substance, the measure violates elementary principles of justice and fair play.

The policy of the measure would not equalize the bargaining power of the employer and employee, as the title suggests, nor do we believe

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it would encourage the amicable settlement of disputes between them. On the contrary, analysis shows it to be so designed as to prevent the employer from exercising the natural circumstance of bargaining, impair its nature and extent, gratuitously presumes that he only exercises coercion in the employment relation, or indulges in unfair practices. This assertion, I may say with marked emphasis, is illuminated by a statement in settlement of a dispute in labor relations, that has attracted the attention of the United States. The President there declared:

> The Government makes clear that it favors no particular union or particular form of employee organization or representation. The Government's only duty is to secure absolute and uninfluenced freedom of choice, without coercion, restraint, or intimidation from any source.

To continue, we say, therefore, we do not believe the policy of this measure, as we analyze it, would equalize the bargaining power of employers and employees, as its title suggests, nor encourage the amicable settlement of disputes between them. On the contrary, analysis shows it to be designed to prevent the employer from exercising the natural circumstances of bargaining, impairs its nature and extent, gratuitously presumes that he only exercises coercion in the employment relation, or indulges in unfair practices; makes no effort to define, regulate, or prohibit the equally reprehensible and long-recognized practices and abuses of labor organizations, destructive of the rights of their fellow workers, of employers, and of the public. And I beg to call the committee's attention to the very pertinent remarks of that distinguished Associate Justice of the Supreme Court, Mr. Brandeis, in the latest addition of his work on Business as a Profession, where he says:

> The practical immunity of the union from legal liability is deemed by many labor leaders a great advantage. To me, it appears to be just the reverse. It tends to make officers and members reckless and lawless, and thereby to alienate public sympathy and bring failure upon their effort. It creates, on the part of the employers, also, a bitter antagonism, not so much on account of lawless acts as from a deep-rooted sense of injustice, arising from the feeling that while the employer is subject to law, the union holds a position of legal irresponsibility. It has been objected to by some of the labor leaders—

He continues—

> that incorporation of the unions would expose to loss the funds which have been collected as insurance against sickness, accident, and enforced idleness; that these funds might be reached to satisfy claims made for wrongs alleged to have been committed by the union. I can conceive of no expenditure of money by a union which could bring so large a return as the payment of compensation for some wrong actually committed by it. Any such payment would go far in curbing the officers and members of the union from future transgression of the law, and it would, above all, establish the position of the union as a responsible agent in the community, ready to abide by the law. This would be of immense advantage to the union in all its operations. Again, it has been urged that the incorporation of the union would lead to a multiplication of lawsuits, which would involve the union in great expense; but the expense of conducting such litigation would be insignificant as compared with the benefits which would result to the union from holding a recognized and responsible position in the community. * * * The unions should take the position squarely that they are amenable to law, prepared to take the consequences if they transgress, and thus show that they are in full sympathy with the spirit of our people, whose political system rests upon the proposition that this is a government of law, and not of men.

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The CHAIRMAN. Is that the end of the quotation?

Mr. EMERY. Yes, sir. In that connection, I beg to all the attention of the committee to the fact, to illustrate exactly what the Justice says, that when the Lockwood committee, appointed by the Legislature of New York, was investigating housing conditions in its chief city, on April 21 and 22, and May 4, 1922, many witnesses, representing the labor and employers' organizations of the city of New York were examined by the counsel of the committee, Mr. Samuel Untermeyer. As the result—to which I shall refer later—of that investigation, 416 officers of labor organizations and employers whom, by collusive agreements or by special individual actions, had been guilty of serious offenses against the law, criminal in nature, were indicted and convicted, and more than $550,000 in fines were assessed against both. And, sir, there is no more reprehensible injurious, or socially dangerous form of agreement to the injury of the public, than collusive agreement between employers and employees, by which each, in return for concessions, rob the public and we denounce and condemn them both.

Senator WAGNER. So do I.

The CHAIRMAN. I think we will all agree to that statement.

Senator WAGNER. Yes.

Mr. EMERY. Yes, sir. I want to point out later that these things may all occur under the terms of this bill. I want to point out, to apply the bill. The fact that at the present time in the city of New York has been thrown into civil disorder by a strike between taxicab drivers and their employers, in which the streets of the city have been the scene of public disorder. Men have been assaulted, women have been insulted, passengers have been injured, property has been destroyed; and the mayor has, for a time at least, been unable to keep the peace of the city. I shall show you presently, if this bill were in effect, those very strikers, guilty of those very acts, would still be, within the contemplation of the law, "employees" of their employers; and their employers, under penalty of the law, would be required to recognize them and their representatives and would either deal with them, or be guilty of an "unfair labor practice", under the terms of this act. A bill that undertakes to accomplish such a result is not worthy of the support and approval of the Congress of the United States.

Referring to the Lockwood Investigating Committee, that I may not overlook the purpose for which I called it to your attention, I want to point out the deplorable fact tnat representative leaders of the great organizations of labor have continuously insisted that they must not be required to accept corrections by law for the evils which arise in their ranks, that those evils must be corrected by the moral evolution, if you please, of the organization itself, rather than by any correction in law.

So, Mr. Untermeyer, in his examination of Mr. Gompers, the distinguished president of the American Federation of Labor, called his attention at page 6798 of the record, to the evidence before them that men had been expelled from the carpenters' local union because they had assumed to criticize the activities of one Brindell, then serving a term in the State prison for extortion.

He was asked if he remembered that and knew it, and he said, "Yes."

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"And you know that they have no redress today, as the law stands, do you not?" said Mr. Untermeyer.

"Redress in the courts?" said Mr. Gompers.

"Redress anywhere?" said Mr. Untermeyer.

"Not at this moment", replied Mr. Gompers.

"And until the labor movement", said Mr. Untermeyer, "is so far advanced in its evolution toward perfection, that that redress is available to men situated as these men are, you would not countenance, or you would not approve of the courts of justice giving them any redress, or giving the power to the courts of justice to do so?

Mr. Gompers replied: "I should be opposed to it."

Mr. Untermeyer called attention to the fact that in the erection of the Ambassador Hotel, a well-known edifice in the city of New York, the owner had mantels made of a kind which enabled the affixing of the mantel to the building at less cost than their other methods. The plasterers compelled the builder to destroy these mantels and substitute others to be attached by a more costly method. The testimony is at page 6858 of the record, and Mr. Untermeyer asked:

"Don't you think that if such a practice is indulged in under resolution of the union, that the employer who suffered that loss should have a remedy in damages against the union for the one-hundred-and-odd mantels that he lost in that way?"

"No", said Mr. Gompers.

Question. "You think he should have no remedy whatever?"

Answer. "Not by a recourse to any new law."

Question. "Where should the remedy be, what remedy should he have?" asked Mr. Untermeyer.

And the answer of Mr. Gompers was, "He has none. That is the risk of the industry."

It would be a still greater risk of the industry when the provisions of this act, as we construe them, are put into effect.

Then Mr. Untermeyer asked, "Isn't it true in every department of the building industry?" referring to the conditions to which he has been inquiring. "Can you name one in which there are not such abuses and acts of oppression inaugurated in the last 5 years, and on the increase? Can you name any industry in the building trades in which that is not true? If you can't, I will confront you with one."

Mr. Gompers replied, "I understand that through your instrumentality, some of them have been abated."

The testimony continues at great length, and I call your attention only to one quotation, not because I want to direct your attention to the specific condition in a particular city, but because I want to call your attention to a condition that has been disclosed in many cities of the United States. The records of the courts are full of them. They all go to one point that I want to emphasize, and that is the serious lack of responsibility on the part of those who will be given the tremendous social power which this bill would create by Government aid.

So, Mr. Untermeyer asked, at page 7182:

In the last 5 years, is there a single reform in all constitutions and bylaws of these different unions, in some of which there are as many as 50 abuses in a single union?

Mr. Gompers answers, "Probably."

Mr. Untermeyer says, "Has one been reformed"?

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The answer is, "Not those to which you refer."

Question: "Any others, can you refer to one that has been reformed in 5 years in any union in greater New York?"

Answer: "I cannot say that I can."

Having presented that testimony, the purpose of which the committee will see in its relationship to the subsequent analysis of the measure, I proceeded to say that that bill by its terms and procedure as we think can be made evident, will excite irritation, resentment, and bitterness in employment relations, requiring the steady development of sympathy, good will, and understanding. It will stimulate complaints, promote the interruption of employment, and deliberately undertake by its definitions and oepration to force employees into one form of labor organization—the union. It will secure through the union, monopolistic control; assuring the unrestricted use of the strike, and thus confer the power to assess the public with the cost of sustaining a labor monopoly, maintained with Federal aid, relieved of appropriate legal control, and without corresponding responsibility for the cats of its agents.

The CHAIRMAN. What do you mean by the word "union"?

Mr. EMERY. I mean a labor union of the type—an external union.

The CHAIRMAN. What is called a trade union?

Mr. EMERY. A trade union; yes, sir.

The CHAIRMAN. We have had discussion before the committee of two classes of unions.

Mr. EMERY. Yes, sir.

The CHAIRMAN. The trade union and the company union. You have used the particular word "union."

Mr. EMERY. Yes.

The CHAIRMAN. You mean the trade union?

Mr. EMERY. I mean the trade union.

The CHAIRMAN. Independent from the company union?

Mr. EMERY. Let me say in that connection, Mr. Chairman, so that there may be no misunderstanding of our position, that we have no criticism whatever of labor unions as such. We recognize, as do all men, the right of men to associate themselves for any legal purpose, and to attain it by any legal means.

We speak here constantly of "company unions." I do not precisely know what a "company union" is, but I will make myself clear if I can by injecting a guess at it. I assume that by a company union is meant an organization of employees within the company dominated by it, controlled by it, to such an extent that when the company deals with it, it is dealing with itself.

The CHAIRMAN. I don't think that is quite the claim here. There is a claim that there are dominated company unions.

Mr. EMERY. Certainly.

The CHAIRMAN. But there is also a claim made here by some of the witnesses that there are company unions that are not dominated, and I understand that nobody at any time makes objection to such, but there is strenuous objection to what you have defined as a company union, namely, the dominated one.

Mr. EMERY. Certainly, and I should say it is as objectionable to us as it is to you.

I want to make it clear, Mr. Chairman, that when we are discussing this bill, as I shall presently show you, and I may be wrong, I want

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to show you that the form of operation of this bill is such that an employee representation plan formed 30 years ago, or 40 years ago, with the complete cooperation, and, indeed, perfected, by the men, will be abrogated by this law, and destroyed, that this bill requires that it be done. As I proceed with the argument, I will make that clear.

The CHAIRMAN. May I ask just two questions, to see if we have a common basis?

Mr. EMERY. Certainly.

The CHAIRMAN. I understand you to say, representing the Manufacturers' Association, that you recognize the right of employees to join labor unions.

Mr. EMERY. I said I recognized the right of men to form themselves into any legal organization for the protection of their hours, wages, and working conditions.

The CHAIRMAN. Very well.

Mr. EMERY. I recognize the right of the employer to deal with them or refrain from dealing with them as they may merit for the purpose of bargaining, because I want to make it clear here—I think it is one of the things overlooked in controversies—that the right to organize any association does not carry with it by that fact a duty on the part of everyone else to deal with it on its terms. Men may organize a corporation, but it does not carry any obligation on the part of the public to deal with them when it is organized, if it happens to be a merchandising or manufacturing corporation.

A union, or any other organization of working men must attract those who wish to deal with it by the character of its membership, by the performance of its contracts, by its other evidence which it gives of good conduct and responsibility through which relations between men are established and sustained.

The CHAIRMAN. Senator Wagner wants to ask you a few questions.

Senator WAGNER. This might be an appropriate time to do it; otherwise, I would not want to interrupt you. From what you say, Mr. Emery, there is no difference of opinion between you and me as to the right of men to organize and to bargain collectively, that they may either organize and join an outside trade organization, or they may have an independent organization within the particular industry or even within the particular plant. I am trying to further that right in this legislation. The thing I oppose is the very thing which you say is reprehensible, namely, that there should be a union dominated by the employer, so that he controls both sides of the bargain.

Now, if we agree on that, then there is no difference of opinion between us so far as the objective is concerned, and if this bill does not provide that objective, I think the most constructive kind of criticism would be to suggest language which would bring about that objective rather than a general denunciation which does not get us anywere.

Mr. EMERY. Of course, now, Senator——

Senator WAGNER. May I say this?

Mr. EMERY. May I answer? Did you not ask me a question?

Senator WAGNER. Very well.

Mr. EMERY. May I answer it?

Senator WAGNER. Surely.

Mr. EMERY. I know if you ask me a question, you will give me the privilege of answering it.

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The CHAIRMAN. You may proceed, Mr. Emery.

Mr. EMERY. I think if the Senator would go 1 step or 2 steps further, we might find ourselves in complete agreement, instead of partial agreement which he suggests.

Senator WAGNER. I thought I suggested a complete agreement.

Mr. EMERY. We object to coercion from any source, whether by employer or labor organization.

Senator WAGNER. I was coming to that next point. May I, then?

Mr. EMERY. I will cover that next. May I go just one step further now? The Senator says one must make a constructive suggestion. You cannot criticize anything without offering a constructive substitute. Now, of course, if a man were going to walk through a window and fall 10 stories, the most constructive thing to do would be to stop him, and not suggest a different method of falling, either by the stairs, or through another window.

As Frank Kent has said in a recent article commenting on those who criticize and merely offer resistance to an utterly unsound proposition, if someone suggests that 2 and 2 make 5, it is not a constructive suggestion to say that it obviously makes 4 and nothing else. A really constructive criticism would be to say, "Well, it may make 6 or 7."

So, it seems to me there are two very clear issues involved here that the Senator with his distinguished career on the bench, as well as in the Senate, will recognize. One is a serious question of law, and the other is quite as serious, a question of policy. If it is not within the power of Congress to establish the kind of a tribunal to exercise the kind of power which the Senator undertakes to create, it is the part of good citizenship to resist that kind of a proposal.

Senator WAGNER. Well, as to the particular instrumentality set up, there can be a difference of opinion about that, there is no doubt about that; but, I am very anxious to hear your views about that, but the point I made is that we do not apparently—I think there have been so many misrepresentations in the papers about company unions, not distinguishing between company unions and company dominated unions—the point I wanted to bring out was that apparently you and I do not disagree at all upon the proposition that, in the first place they ought to have the right to organize if they wish to, and that when they do organize that they ought to organize free from any coercion, or intimidation by any employer, so that the employer does not control both sides of the bargaining power.

Mr. EMERY. Yes.

Senator WAGNER. So, we are in absolute agreement on that point, practically.

Mr. EMERY. Only, Senator; if you will permit me, we will be in agreement if you stop at the word "coercion" and add "from any source", as the President says——

Senator WAGNER. Wait a minute. I am coming to that next. The only reason that was not put in there, and I think this is a very fair criticism, and it ought to be put in the act, you know as an attorney that employers—having been for a long time a vigorous counsel for employers—that the courts whenever you have applied, have invariably restrained any acts of coercion or intimidation on the part of workers, so that that right already exists and has been definitely recognized by the courts.

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Mr. EMERY. I beg your pardon, Senator; will you permit me there?

Senator WAGNER. Yes.

Mr. EMERY. As a Member of Congress, you have seen fit to undertake to practically destroy the power of the courts to do that in the Norris-LaGuardia injunction bill.

Senator WAGNER. Well, I did not so understand that power. That was passed by almost unanimous vote.

Mr. EMERY. I thought from your vigorous speech when you supported the bill, that you did so understand it.

Senator WAGNER. My vigorous speech indicated that when questions of intimidation, violation, and coercion are concerned, that the courts still have the power to restrain, and I made that very clear in my speech. You do not do me the honor of reading it carefully.

Mr. EMERY. I thought I did, Senator. I agree with you.

Senator WAGNER. So far as your proposition is concerned, I think the bill ought to be amended so as to include intimidation or coercion from any source, if there is any question as to whether the courts have not already ruled time and time again that they will restrain any such acts when the worker exercises them. I want to have that there.

Now, I think the act ought to be amended just as you suggested, that is, intimidation, when it comes from any source, either a trade organization, or a company union, or an employer, or to be made an unfair labor practice, so that we are in agreement on that.

The CHAIRMAN. You may proceed, Mr. Emery.

Mr. EMERY. I made a number of assertions about this bill, Mr. Chairman, and before analyzing the bill now, and applying these terms, I want to undertake, if I may, to remove certain impressions created by the testimony of proponents, which seems to me a necessary preliminary.

It has been steadily asserted that during the months which have elapsed since the adoption of the Recovery Act, the condition of labor has not been improved; its protection under the codes has been denied and defied; hours have been little reduced, and minimum wages have tended to become maximums.

Taking last December as a standard in formation, from the Department of Labor will show that in 15 great categories of American industry, the average work week has declined 4 hours, to an average of about between 36 and 37 per week, although the volume of business has in the meantime risen 13 percent, and in 21 representative manufacturing industries the average hourly earnings—earnings, now, and not wages—have increased to a point, roughly, but 7 percent below the 1929 rate. In four major industries, they are higher than in 1929. In bituminous coal they are within 4 cents an hour of the 1929 rate, and in the automobile industry they were already at the 1929 peak, and have within a few days been increased beyond that.

The CHAIRMAN. You are speaking of earnings?

Mr. EMERY. Yes, sir, I am speaking of earnings. I will in a moment refer you to my authority.

Such have been the gains in hours and in wages, for workers against the depths of the depression through which we have passed.

You are asked for new legislation now on the ground that labor has not been fairly treated. But within 9 months, more than 20,000,000 employees have received shorter hours, higher pay, better work-

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ing conditions, at the increased expense of every industry, through codes which, under the circumstances of their formation, have amounted in fact to national legislation through collective agreements between employers, employees, and the Government.

In a period, sir, of 9 months, the industries of the United States have gone through the most remarkable period of adjustment in all their history, not only in the face of the abandonment or the reorganization of established practices and customs of long standing, but in all their relations with one another.

Now, I quote:

> For the first time in the history of American industry, working conditions of labor employed in nearly all private industry has become subject to collective bargaining between representatives of industry, labor, and the Federal Government. * * * In this procedure the affiliated unions of the American Federation of Labor, independent labor organizations of all types, and even communist unions have participated. I can think of no important code which has been adopted without going through this process during which the representatives of labor sat with those of industry and made efforts to improve the labor terms of that code. * * * If again these figures are worthy of acceptance, they are the best proof we have that there is little to the charge that the codes of fair competition have failed to raise the prevailing rate of wages in the United States; that the provisions of the codes are being universally defied and violated—

As has been repeatedly said here.

The CHAIRMAN. I do not know that that has been asserted very strongly.

Mr. EMERY. I think I heard some of it. I will suggest it, sir.

> If again these figures are worthy of acceptance, they are the best proof we have that there is little to the charge that the codes of fair competition have failed to raise the prevailing rate of wages in the United States; that the provisions of the codes are being universally defied and violated; that the minimum wage has, in great areas of industry, tended to become the maximum.

Senator DAVIS. Is that your own statement?

Mr. EMERY. No, sir; I will now give the authority to you.

These conclusions, respecting the facts and conditions of the present situation are not mine, but represent the impartial and mature judgment of Dr. Leo Wolman, the distinguished chairman of the Labor Advisory Board, expressed within 3 weeks before the National Convention of Code Authorities, and if the Chair wishes, I will file his statement as a part of this record.

The CHAIRMAN. We will be pleased to have you do so.

Mr. EMERY. All right, sir.

(The statement of Dr. Leo Wolman, referred to by the witness, is attached hereto.)

The CHAIRMAN. Senator Davis, is your question answered?

Senator DAVIS. Yes.

Mr. EMERY. Meeting the misrepresentation or misunderstanding of the facts of the existing situation by the testimony of an impartial witness, let me return to you the form and substance of this pending bill. Unfortunately, its distinguished author has neither analyzed its provisions, explained its peculiar definitions, its extraordinary design, nor offered a single argument to support the permanent control by Congress of the local relations of employer and employee on farm, or in mine, or factory. What does this measure propose to do, and how does it propose to do it?

The bill creates a national labor board, ostensibly "to equalize the bargaining power of employers and employees, and to encourage the

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amicable settlement of disputes" between them. To this end it would establish by Presidential appointment a labor board of seven members; three representing the public for 5-year terms; two, each representing employers and employees for 1-year terms. The board would exercise two kinds of authority. First, to mediate, conciliate, or arbitrate labor disputes by voluntary agreement of the parties, who agree to be bound thereby. Voluntary arbitration may now be had by agreement in any group. An increasing number of codes established under the N.R.A. are providing machinery for the adjustment of disputes within the industry through boards upon which the disputants are appropriately represented. This tendency to provide adequate methods of adjustment within each industry confined to those most familiar with the circumstances of operation, will steadily develop if encouraged and already has performed with marked success. It requires no additional legislation.

The second kind of authority, and the board's procedure in the exercise thereof——

The CHAIRMAN. You refer, of course, to the authority now vested in the Department of Labor?

Mr. EMERY. Pardon me?

The CHAIRMAN. You refer, of course, to the authority now vested in the Department of Labor?

Mr. EMERY. No; I do not, Senator.

The CHAIRMAN. To what do you refer?

Mr. EMERY. I refer to the methods of adjustment which have been established in many codes by which disputes arising between any employer and employees in the industry may be adjusted, initially, in the plant, and if it fails it may go to either local or regional boards, provided in the industry, and finally to the National Board. Only when the industry had exhausted its own capacity for settlement does it escape the industry and go elsewhere.

The CHAIRMAN. Are we to assume that the codes will continue indefinitely?

Mr. EMERY. That, of course, is in the hands of yourself and others. The methods which have been set up under the codes will have a profound and continuing influence upon the lfe of industry. No such tremendous and radical adjustment in the life of industry could take place without leaving its permanent marks upon it.

The CHAIRMAN. Of course, there is a termination to the National Recovery Act?

Mr. EMERY. Yes; there is a termination.

The CHAIRMAN. A year from July? I thought you referred, perhaps, to some general law or power of conciliation in the Department of Labor.

Mr. EMERY. Of course, conciliation is quite another thing from arbitration, and both are quite a different thing from the coercive determination by any national body of the relations between employer and employee with a court behind it to enforce that determination and to compel the parties to live in a certain employment relation, whether they like it or not.

The second kind of authority, and the Board's procedure in the exercise thereof, together with the practices it is to prohibit, presents the vital issue of this measure. The bill (sec. 4) proceeds to declare that employees shall have the right to organize, join labor organiza-

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tions, and bargain collectively through representatives of their own choosing. That is already provided by section 7 (a) of the Recovery Act in far clearer language and with a criminal penalty for its violation. Its present form would invite conflicts with the already interpreted provisions of the Recovery Act, to which employer and employee have adjusted themselves under interpretations of the act's administrator. The bill then proceeds to create——

The CHAIRMAN. Will you state for the record the criminal provision in the National Recovery Act in connection with section 7 (a)?

Mr. EMERY. The criminal provision applys to every section of the act. I will have to get a copy of the act myself, Mr. Chairman.

The CHAIRMAN. You mean that the general provisions apply to that section the same as to the other sections?

Mr. EMERY. Certainly.

The CHAIRMAN. So that the employers who do not obey or respect the rights defined therein are subject to the same criminal act that they are subjected to for violation of other provisions of the National Recovery Act?

Mr. EMERY. Yes, sir; no distinction is made.

The CHAIRMAN. You may proceed without referring to that; we have that.

Mr. EMERY. Not only that, sir, but there are not only criminal but I should say penal provisions, because the Government is armed with the most tremendous power that has ever been given to any central authority, to enforce that act, every section of it. It possesses the power to proceed through the Trade Commission, by administrative orders, for the enforcement of the provisions of the act, which are within its jurisdiction. It is authorized to proceed through any district attorney of the United States, in the enforcement of any violation of the code. There are criminal provisions, again, in which there is a fine and imprisonment for violation of any provision of the code, and finally the President is authorized to make rules and regulations, the violation of which is in itself a misdemeanor and punishable by fine and imprisonment; so you could not very well have an act more powerfully sanctioned. There remains still the much-discussed licensing provisions, never yet availed of, which of course authorizes the President, that is gives him the alleged authority to license any industry, to determine the conditions under which it shall operate, and if the provision of the license is violated, to take away the license and drive the industry, itself, into commercial exile, or any particular employer who violates the license provision.

The CHAIRMAN. That power has never been exercised?

Mr. EMERY. It has never been exercised.

The CHAIRMAN. And expires on July 1?

Mr. EMERY. Unless you see fit to renew it.

Senator DAVIS. Are you of the opinion that the time of the National Recovery Act should be extended?

Mr. EMERY. Sir?

Senator DAVIS. Are you of the opinion that the time of the National Recovery Act should be extended?

Mr. EMERY. Well, representing as I am, many others, I would rather not give you a personal opinion, sir, at this time, because I think the time is not yet come when we can determine that fact,

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because that is a consideration that properly belongs to the condition with which we are confronted as the time of its termination approaches. I think there are many provisions of it, if you will permit me to say so, personally, that ought not to be renewed.

The CHAIRMAN. It is still experimental?

Mr. EMERY. Yes, sir. It is declared by the President to be experimental legislation, and we are still in the midst of the experiment.

Senator WAGNER. Do you think that the provision suspending the antitrust laws should be continued or repealed?

Mr. EMERY. I do not think any provision should be repealed by itself, except in the relationship to other parts of the legislation. I have been for a long time, Senator, a believer in a modification of the antitrust acts; and let me say in that regard, because perhaps this is as good a time as any to call it to the attention of the committee, before I proceed to these more serious features of the bill, that I see the statement is often made, in a comparison between the labor organization's right to organize, the protection that has been given to it, and what is conceived to be the like authority that has been given to employers to organize under the codes.

Now, let me call the committee's attention to the fact that "employer's" organizations do not exist under the codes. What is provided under the code is the organization of a trade or an industry. It is brought together for the purpose of determining its competitive practices. It is in that field, as a trade organization, and not as an employer-organization, that it comes under the code. It is true that employers contact by virtue of the fact that they are thus brought together, under the executive and legislative pressure which the bill presents, but they are not there for the purpose of determining hours and wages, in agreement with their employees, even by themselves, under code provisions, because the Government is an essential part of the code, and each code contains a provision that wherever parties have failed to make an agreement with their employees, they agree, by the terms of the code, that the President may prescribe the hours and wages.

That is an agreement which they make with the President, and I believe those voluntary agreements that have been made by the employers as a part of their code, are governing provisions that assure to the working people of the United States, as long as the agreement is kept—and I believe it has been—the protection of the Government with respect to their hours and wages. These are there determined in the codes, with the Government's representative at all times participating, and no act of the code authority becomes effective until it has been approved, or is in the first instance supervised by a Government administrator. Every code that has been brought into existence has been brught into existence under 1, 2, or 3, or 5, or a half a dozen administrators, who have supervision of every feature of it, at all times, in every instance. During the hearings the representatives of labor organizations have been present to suggest or criticize or amend or to modify or oppose any provision in the codes which they think are injurious to their interests.

Never before, at any time in our history, has the organization of labor had a more complete opportunity to present its points of view and be represented by its own chosen leaders, in every department

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of the administration of the Government, to see that their views and wishes receive that consideration which is always given to those who occupy places of political importance in the administration of the Government of the United States.

The CHAIRMAN. That is only, though, in relationship to hours of labor and minimum wages, isn't it?

Mr. EMERY. No, sir; it applies to conditions of employment.

The CHAIRMAN. Well, the evidence before us here is that these codes do not deal with the rate of wages in industry, other than the minimum wage rate.

Mr. EMERY. No, the code——

The CHAIRMAN. So that that is understood.

Mr. EMERY. Yes, sir; the code has endeavored to place a base line, below which they may not fall.

The CHAIRMAN. Yes; so these representatives of the employees, who appeared before the committee, state that the power of collective bargaining cannot be freely exercised with their employers, which is permitted under the codes, if the local unit, the local labor union, is dominated by the employers. You are familiar, of course, with that contention?

Mr. EMERY. Yes, sir.

The CHAIRMAN. I am afraid we are diverting you from your general criticism of the bill. You may proceed, Mr. Emery.

Mr. EMERY. Yes, sir; I will. The bill proceeds to create a new offense (sec. 5) described as an "unfair labor practice." The bill comprehends a series of acts, upon which the author of the measure undertakes to rest congressional authority, by indicating that they may lead, or tend to lead to a labor dispute, and I quote, "that might burden or affect commerce or obstruct the free flow of commerce." (Sec. 205 (a).) It will thus be observed that the power of Congress is hung upon a hypothetical conjecture, resting in the unrestrained imagination of the administrative authority, surmising the relationship between a local complaint and its probable influence upon national intercourse.

Now, what is an "unfair labor practice"? It is defined in six paragraphs, each of which is an act by an employer, but, under no circumstances, by an employee, which is declared unlawful. At this point, Mr. Chairman, with the permission of the committee, I should like to insert section 5, which defines the unfair labor practices, for the information of the committee, in connection with the statement which I may make. It will save me from repeating them here, and will enable you to determine whether or not any statement I make with reference to them is accurate.

The CHAIRMAN. Your request is granted. Section 5 will be inserted in the record, in connection with your remarks.

SEC. 5. It shall be an unfair labor practice for an employer, or anyone acting in his interest, directly or indirectly—

(1) To attempt, by interference, influence, restraint, favor, coercion, or lockout, or by any other means, to impair the right of employees guaranteed in section 4.

(2) To refuse to recognize and/or deal with representatives of his employees, or to fail to exert every reasonable effort to make and maintain agreements with such representatives concerning wages, hours, and other conditions of employment.

(3) To initiate, participate in, supervise, or influence the formation, constitution, bylaws, other governing rules, operations, policies, or elections of any labor organization.

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(4) To contribute financial or other material support to any labor organization, by compensating anyone for services performed in behalf of any labor organization, or by any other means whatsoever.

(5) To fail to notify employees in accordance with the provisions of section 304 (b).

(6) To engage in any discriminatory practice as to wage or hour differentials, advancement, demotion, hire, tenure of employment, reinstatement, or any other condition of employment, which encourages membership or nonmembership in any labor organization: *Provided*, That where a contract or agreement of any kind is or shall be in force between an employer and a group of employees, the provisions of such contract or agreement regarding conditions of employment shall not, because of anything contained in this paragraph, compel an employer to observe similar conditions of employment in his relations with all his employees: *Provided further*, That nothing in this act shall preclude an employer and a labor organization from agreeing that a person seeking employment shall be required, as a condition of employment, to join such labor organization, if no attempt is made to influence such labor organization by any unfair labor practice, if such labor organization is composed of at least a majority of such employers' employees, and if the said agreement does not cover a period in excess of one year.

The CHAIRMAN. Now, you are going to discuss, I understand, the 6 unfair labor practices?

Mr. EMERY. Yes, sir.

The CHAIRMAN. That are defined in section 5?

Mr. EMERY. Yes, sir.

The CHAIRMAN. And which employers are forbidden, under penalty, to perform or practice?

Mr. EMERY. Yes, sir. And let me remark, in passing, for the information of the committee, that the Senator's bill has been introduced, with slight modification, in the House, by the distinguished chairman of the House Labor Committee, with this essential difference that what the Senator has made "unlawful" in his bill, the House bill makes criminal.

Senator WAGNER. Well, I am mild, then.

Mr. EMERY. Yes, sir; your nature is. In substance, an "unfair labor practice" is any act of the employer which not merely impairs the employees' right of organization or collective bargaining, by interference, restraint, or coercion, but by refusing to recognize or deal with a representative of the employee; the Labor Board possessing the power to determine at all times who that representative is. It is unlawful for the employer to refuse to recognize or deal with such representative for any reason. There is no exception made in subparagraph 2 of section 5. The offense is "to refuse to recognize and/or deal with representatives of his employees", or to "fail to exert every reasonable effort to make and maintain agreements with such representatives concerning wages, hours, and other conditions of employment."

It is equally an offense, I have said, for an employer to fail to exert every reasonable effort to secure working agreements through such representative; and of the reasonableness of his effort, this Board, or someone designated for that purpose—for the Board operates through any individual it selects, anywhere; there is no assurance that he will ever be heard by the Board, or a member of it; he may be heard by its examiner, or by anyone whom it designates, in any part of the United States or its possessions—and I say, of the reasonableness of his acts, this Board is the sole judge. It is equally unlawful for the employer to either "initiate, participate in, supervise, or influence" the form or policy of any labor organization. The labor organization

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may not keep its contract. It may demonstrate bad leadership. It may commit violence. It may be communistic in philosophy and action. Any attempt by an employer to influence a change in its form or policy, or initiate reform, or suggest or offer to assist in forming a different organization, or submit a plan for their joint relationship, is a plain offense under this act.

Senator WAGNER. You think that ought to be permitted, Mr. Emery?

Mr. EMERY. Sir?

Senator WAGNER. You think that ought to be permitted?

Mr. EMERY. Why, certainly.

Senator WAGNER. You think an employer ought to submit plans of organization to the workers?

Mr. EMERY. Why, certainly. Why not initiate one?

Senator WAGNER. Well, I just wanted your views about it.

Mr. EMERY. I want to suggest to the chairman and to the gentlemen of the committee as a plain matter of common sense, for the consideration of men of affairs, how can there be bargaining between two individuals or two groups, large or small, if either party is to be forbidden to initiate a suggestion, suggest a plan, or offer a method of intercourse, in one of the most delicate and important of the relations of life? Think of applying that to the other major relations of life, between landlord and tenant, or between borrower and lender.

Senator WAGNER. This has to do with organizing the particular union.

Mr. EMERY. Yes.

Senator WAGNER. I am not speaking——

Mr. EMERY. It has to do with organizing the employment relation between the parties.

Senator WAGNER. You think the employer ought to be permitted to organize the labor union?

Mr. EMERY. I did not say he ought to be permitted to organize the labor union. I said he ought to be permitted at all times to initiate a proposal, and I say to this committee—and I invite their examination—that there are in existence in the United States today, not one but many plans of relationship between employer and employee, that have been in existence, some since the beginning of the century, initiated by the employer and perfected by the employee.

Senator BORAH. How do you draw the line between initiation and coercion?

Mr. EMERY. Sir?

Senator BORAH. How do you draw the line? Where would you stop? You say you ought to be permitted to initiate; and how far should the company be permitted to go, to impose its plans?

Mr. EMERY. Well, Senator, it seems to me that whenever the employer undertakes to corrupt the will or override the will or dominate the free opinion of the employee, except by argument or reasoning, then he may be justly charged with undertaking to improperly or unduly influence him. That, I think, is the view which the Supreme Court has taken in the case of *Railway Clerks Union* v. *The Texas & New Orleans Railroad*, in the two hundred and eighty one United States.

The CHAIRMAN. Senator Borah, have you finished?

Senator BORAH. I wanted to ask one further question.

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Mr. EMERY. Yes, Senator?

Senator BORAH. That is a general statement, but what expression would you put in the law, to restrain an employer from imposing the will of the employer upon the organization? How would you draw that line? If you permit them to initiate it, to start it, then where will you have them cease?

Mr. EMERY. Well, I cannot see, Senator, I confess, practically, how a man can make a suggestion to another—an offer, if you please—unless he is permitted to formulate the character of the offer.

Now, employment relations of a right kind are just as important to the employer as they are to the employee. Good relations are the lubricant upon which their joint work moves forward. A plant with bad employment relations is a bad plant. It will never succeed. That is as well recognized among employers, as far as I know them, in these United States, as any other factor or circumstance of their operation.

Senator BORAH. But what I am interested in is against the company imposing their will in the way of organization, upon the employee.

Mr. EMERY. I think that is a plain matter of evidence. I don't know the point at which you can shade it off. One might as well say, on the other hand, what about the coercion by other groups upon the employer? Is it necessary to shade that, equally?

Senator BORAH. Well, go ahead.

The CHAIRMAN. You may proceed, Mr. Emery.

Mr. EMERY. But what I want to make clear right at this point—and that is only one phase of it—we are now splitting the metaphysic hair "twixt north and northwest" side, over the delicate meaning of words that often confuse both the minds of men and those of courts; I am willing to discuss the real substance of this thing, I do not conceive, Senator, and I am sure in your wide experience that you would find it difficult to conceive, a relationship between employer and employee, in which one party cannot initiate a suggestion or proposal to the other; because, mind you, you are not dealing here—and I think this is a very important consideration—merely with the employer who deals with thousands of men; and, let me say, when we are talking about employers of thousands, those for whom I have the honor to speak include small employers, intermediate employers, large employers, representing every gradation from small shops to very large ones; but particularly the rather middle class manufacturers of the United States; for this bill applies its terms to every employer of one or more persons.

Literally construed, it creates a Federal jurisdiction over a dispute between a woman and her two domestic servants. It has been said again and again, here, that of course one employee is helpless, as one of ten thousand, to deal with a gigantic corporation which employs him. That is true. He accepts the conditions of employment which he there finds, and it is in the interest of the corporation to make those as fair and equitable as possible, in order to retain the most important asset it has—the good will of its men. On the other hand, what is the position of a single employer, employing 25 or 30 men, in the presence of a powerful union, with thousands of members? He is just as helpless in dealing with them as is the other. So that when one begins to consider the weakness of bargaining power, as

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an economic fact, he will see it in both sides, in both camps. It is a very interesting circumstance, that deserves your careful consideration.

The CHAIRMAN. Well, isn't this influence that you spoke of restricted and limited? That influence can only be exercised in regard to formation, constitution, bylaws, and other governing rules, operations, policies, or elections of any labor organization? It seems to me it is easy to define and to distinguish between fair and legitimate influence and improper influence.

Mr. EMERY. Yes. There are two things, Senator, to begin with—to initiate or to participate. Now, I cannot conceive anything more important in employment than an employer's participating in the kind of organization with which he deals. I am not undertaking to say that he participates in an endeavor to form the organization, to fashion it. In other words, to create such an organization that he sits on opposite sides of the table, as the Senator from New York says, with himself.

Senator BORAH. Well, you will agree that the corporation should not be permitted to impose its theory of a union on the men?

Mr. EMERY. As against his desire to organize himself in a different way?

Senator BORAH. Yes.

Mr. EMERY. Yes, sir.

Senator WAGNER. Well, that is all I am seeking.

Mr. EMERY. Yes.

Senator WAGNER. And if other words will reach that objective better, there is no pride of words in this suggestion.

Mr. EMERY. I know. I am discussing the bill.

Senator WAGNER. If we have a common objective, we ought to be able to find words with which to agree.

Mr. EMERY. Of course, we may have a common objective, Senator, without being able to agree upon the instrumentality that can carry it out.

Senator WAGNER. What prompted the adoption of these words is because of the experience with the Railway Labor Act.

Mr. EMERY. Oh, I shall come to the Railway Act, in a moment.

Senator WAGNER. Will you?

Mr. EMERY. And I shall proceed, in a most particular way, to discuss it.

Senator WALCOTT. Before we leave this, Mr. Emery, you would say, then, on the whole, that some of these provisions tended to irritate and defeat the purposes at which we are aiming?

Mr. EMERY. I say that they would outlaw and prohibit the natural and normal intercourse between employer and employee, essential to the practical and successful operation of their mutual agreements in the establishment of their employment relations.

Senator WALCOTT. Well, then, if that is true, then it injures labor as much as it does the employers?

Mr. EMERY. I think so, as we say, here—I am making to you today a general statement. You will have much particular testimony given to you, out of the experience of men who can speak with authority, both employers and employees, in dealing with the various forms of labor organizations. I know this committee would be the last to seek to injure the free establishment of relations that are mutually satisfactory to employer and employee. I know you will recognize that it is a most fundamental right, to determine the charac-

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ter of their mutual relationship between themselves, and not to have somebody else do it for them, whether it is an employer on the one hand, or a powerful organization of labor that undertakes to dominate either the men or the management in the determination of the kind of relations that they want.

Senator WAGNER. Mr. Emery, just one more question, and then I won't interrupt again unless you are willing to be interrupted. Do you believe that when an organization of this kind is formed, that the employers' consent ought to be required before the constitution and bylaws are changed?

Mr. EMERY. Pardon me, what did you say about "constitution" of what kind, Senator?

The CHAIRMAN. Union constitution.

Senator WAGNER. You say it is for the benefit of the workers to have the employer participate, initiate, and participate in the organization of the labor union; to participate in the making of its rules and its constitution, and all that sort of thing; that that idea rather promotes friendly relationships, rather than to irritate them. After that has been done, it is equally——

Mr. EMERY. If you will permit me, before you depart from that assumption, Senator?

Senator WAGNER. Yes.

Mr. EMERY. May I be permitted slightly to correct it?

Senator WAGNER. Certainly.

Mr. EMERY. I said that I thought the participation of an employer in the determination of the character of his agreement with his employee, ought not to be outlawed.

Senator WAGNER. Well, we are not outlawing it.

Mr. EMERY. No.

Senator WAGNER. We are encouraging that.

Mr. EMERY. Oh, on the contrary, you are saying that if he undertakes to participate with a group of his employees, in determining the character of their relations, he immediately commits an offense.

Senator WAGNER. No; no. We are talking about the organization of a labor union, or a labor organization.

Mr. EMERY. Oh, I see.

Senator WAGNER. It is that sort of organization that you say the employer ought to be permitted to participate in?

Mr. EMERY. Oh, I did not say that. I said, as far as any labor organization is concerned, they can form it as they please, by themselves, entirely absent and apart from their employer; but, if their employer offers to deal with them, in any particular form of relationship, or offers to make a suggestion to them with respect to their organization, whatever kind of an organization it is, is that an offense of such a nature that it ought to be made unlawful?

Senator WAGNER. Well, all right, supposing that is permitted; then, will you go so far as to say that after that is once formed, the constitution and the bylaws, that the employer's consent ought to be required before that organization can be modified in any way?

Mr. EMERY. It depends on the character of their agreement.

Senator WAGNER. Well——

Mr. EMERY. If the two have entered into an agreement that establishes a form of relationship between them, then it seems to me that either one party or the other would certainly counsel, before

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undertaking to change the agreement, if we assume it to be an agreement.

Senator WAGNER. We are not talking about the same thing, Mr. Emery.

Mr. EMERY. Well, I am afraid I am not, then, Senator.

Senator WAGNER. I am not talking about an agreement entered into between the employers and the employees. I am talking now about employee's organization.

Mr. EMERY. Yes, all right.

Senator WAGNER. Which is their own thing, isn't it?

Mr. EMERY. Yes, sir.

Senator WAGNER. Now, you say that there ought not to be any prohibition against the employer either initiating such an organization or participating in its formation. Now, let us talk an agreement; we are talking about the organization.

Mr. EMERY. With the consent of the employees?

Senator WAGNER. Now, that having been formed and organized——

Mr. EMERY. Yes, sir.

Senator WAGNER. This labor organization; you then think, too, that it is a proper provision to adopt, which prohibits the change of that constitution or bylaw of this labor organization, unless the employer consents to it?

Mr. EMERY. Of course, if you are talking about a labor organization that has formed itself, and desires to make any changes in its organization or constitution or bylaws, why, that is its own business, of course; it is free to do that without any interference by anybody.

The CHAIRMAN. It seems to me you are both fundamentally in agreement. I think it is only a different language necessary to take care of that.

Mr. EMERY. I think unfortunately, we are talking about two different forms of organization, Mr. Chairman.

The CHAIRMAN. I think you are fundamentally in agreement, though. What you are criticizing is that this language is so broad that it may lead to the punishment of the employer for things that we all agree are legitimate and proper for an employer to engage in.

Mr. EMERY. Yes; precisely.

The CHAIRMAN. So it is a question of restriction in the language.

Senator WAGNER. Exactly.

The CHAIRMAN. So, let us proceed, Mr. Emery.

Mr. EMERY. I say that, as this is written, any attempt by an employer to influence a change in its form or philosophy, or initiate reform or suggest or offer to assist in forming a different organization, or to submit a plan for their joint relationship, is a plain offense.

Any favors to an employee, that may construed by this board into an attempt to influence the form, activity, or policy of the employee's organization, is equally illegal; and so, too, is any contribution to the support of any labor organization, although a labor organization, by definition, here, may assume any form, for mutual aid or protection.

Now, I want the committee to remember, and I know they will, with the distinguished lawyers on it——

The CHAIRMAN. I do not think any employee will object to a contribution for a mutual aid and protection.

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Mr. EMERY. Oh, but the labor board will. My! The employer who did that would commit a plain offense, here, if it can be construed to influence—and I do not know, of course, what may be in the administrative mind, after this measure is formed. Because, how power may be used is something no man can prophesy. All the legislative body can do is determine the kind of power it will delegate, and the form in which it will give it.

The CHAIRMAN. You are very properly, Mr. Emery, pointing out the need of exact and clear language in setting up this relationship, that is attempted under this bill.

Mr. EMERY. More than that, Mr. Chairman, I want, in all I am saying, to ask the committee to remember that while I am speaking of particular features of the bill, it is the bill as a whole that must always be considered, because, as an act of legislation, all its parts dovetail together, and the one influences and powerfully affects the operation of another part.

The CHAIRMAN. Proceed, Mr. Emery.

Mr. EMERY. Moreover, any practice that may be construed as being discriminatory as a circumstance or condition of employment which encourages membership or nonmembership in any labor organization, and that means any kind of an association for the purpose of dealing with the employer, is likewise prohibitive. There are many forms of employment relationship developed since the beginning of the factory operating today not only without complaint, but to the demonstrated satisfaction of employer and employee, but no matter how old they may be, or agreeable to the parties they are, if the employer initiated or participated in setting them up, they are not only abrogated by this bill, but the employer must immediately so notify his employees, and they are destroyed.

The CHAIRMAN. Any doubt about that?

Senator BORAH. State that again, please.

Mr. EMERY. I say that no matter how old a form of employee relationship now existing in any particular plant between the employer and employee or in any industry may be, no matter how old it may be, no matter how agreeable to the parties, if the employer initiated that plan, or participated in setting it up, the plan is not only abrogated, but the employer must immediately so notify his employees, and the plan is destroyed. Not to do so is an unlawful act. That is provided by section 304 of the bill, section (b):

> Any term of a contract or agreement of any kind which conflicts with the provisions of this act, is hereby abrogated, and every employer who is a party to such contract or agreement shall immediately so notify his employees by appropriate act.

Now, under section 5, paragraph 3, to initiate or participate in any labor organization or in its formation is an unfair labor practice, so that any old plans, any systems of employment relationship, which are in existence in which the employer participated or which he influenced are all outlawed by that provision right now.

Senator WAGNER. I think there is raised there a more serious question of constitutional law.

Mr. EMERY. Yes; certainly. I will discuss those legal questions and constututional questions, Senator, separately, with your kind indulgence.

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The CHAIRMAN. It has been suggested by some witnesses, witnesses who are friendly to the bill, who have appeared before the committee that that section be eliminated from the bill.

Senator WAGNER. Including the author.

The CHAIRMAN. I am referring to section 304 (b). I did not know you had agreed to the elimination, Senator, but I think others have.

Senator DAVIS. I think the committee is unanimous.

The CHAIRMAN. Proceed, Mr. Emery.

Mr. EMERY. The more closely these provisions are scrutinized, the more clear the operating effect becomes. They are so designed as to make it impossible for an employer and an employee to establish, administer, or maintain a plant organization, although it is the right and desire of each group to do so. Not only may they not form genuine employee representation plans in plant terms for the future, but it is the plain purpose of this measure to destroy every one, however old, however successful, however satisfactory, now in existence. The inevitable result, with the aid of the law, is to make only one form of employee relationship legal—that conducted with an outside labor organization into which the employee, by the force of administrative decision, is to be gradually compelled, until finally the employer is forced into making it a condition of employment by agreement with the external organization operating with the aid of the Labor Board, to deal with none but its members.

This condition becomes clearer as one examines the definitions of the bill. An "employer" is not someone employing many, as proponents intimate by constantly referring to "one man among a thousand" dealing with a corporation; the bill defines as an employer anyone "employing one or more persons", except National, State, or local government, those subject to the Railway Act or a labor organization. An "employee" is not only one who works for another, but may be one who does not work for another. For the term does not include anyone who replaces a striking employee but does include every former employee who has quit because of a current labor dispute or an unfair labor practice.

You will observe, therefore, that construed as written, the bill covers every farmer, every housewife with a servant, every storekeeper, merchant, contractor, mine operator or manufacturer, and many others who are employers here. Let us examine the powers of the Labor Board and then we will perceive the full effect of these definitions.

How does it operate? Whenever any of the board's members, any local body it may create, or anybody whom it may designate, anywhere, within American territory, has reason to believe from information obtained "from any source whatever" that an employer has committed an "unfair labor practice", a complaint, general in its nature, may be mailed or telegraphed to him, or if the employer is a corporation, service may be obtained by handing a copy to one of its directors, anywhere. Upon such a summons, as the bill reads, a farmer in Iowa, a merchant in New Orleans, or a manufacturer in New York, may be required to appear anywhere in the United States for a hearing on 24 hours' notice, and produce books, records, and documents not before the board but before anyone it designates to examine him.

The general complaint he has received may be amended by the Board or anybody it designates, not only during the hearing, but up

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to the time the Board issues an order, and after the subject of the complaint has been heard, for the original complaint in no way limits the scope of the Board's inquiry. He can be charged with an offense general in its nature, but he can be examined on anything else that interests the Board when he appears before it. He may have the Board's aid in securing testimony and although other persons may be allowed to appear and present testimony, they are not bound by the proceedings. If they are labor organizations or their agents, they cannot, of course, be examined with respect to "unfair practices" which they are incapable of committing, for under this measure no one can be "unfair" but an employer. The Board may not only issue an order in the light of the complaint, it may do many more things, it may assess and require the employer to pay damages for which no rule is established; require the reinstatement of employees, or require any act which in its opinion achieves substantial justice, whatever that may be. The Board determines that. If that be due process of law, God save us.

The Board is not bound by the rules of evidence as are courts of law or equity, and that is so stated, but the court which reviews the Board's order is bound by the findings of fact of the Board which itself has no rule of evidence and may therefore admit what pleases its discretion.

Senator WAGNER. Mr. Emery, may I ask a question there?

Mr. EMERY. Yes, sir.

Senator WAGNER. What would you provide in a case—and these are the majority of cases that have come under our jurisdiction in the Labor Board—where employers after the employees organize, select representatives to bargain collectively with the employer upon wages, hours, and other conditions of employment, the employer takes the deliberate stand, "I will not deal with you; I will not deal with any labor organization of any kind; the only way I will deal is with each individual, and I will prescribe the terms"?

Now, we have given under the National Recovery Act the rights of labor to organize and collectively bargain on the theory that that is equality of bargaining power. Now, what would you do when the employer deliberately, therefore inviting turmoil and strife, and all these things, and which represents 70 percent of our cases, I would say, says, "No, I will not deal with you; I will not deal with any organization of workers"? What would you do? Should the Government sit by and not at least see that the workers' rights are recognized?

Mr. EMERY. Just precisely what has that to do, Senator, with the statement I have just made with respect to the fact that the Board is entirely free from rules of evidence?

Senator WAGNER. You say that they are given the authority to hear a complaint and summon witnesses and go into this question as to whether the law has been violated, whether the worker has been deprived of his rights, and you say that is an extraordinary power; that is the power we give to other administrative bodies like the Federal Trade Commission, and all these other bodies.

Mr. EMERY. We will see in a moment whether you do or not.

Senator WAGNER. Should the Government stand prostrate before a situation of that kind, or should they intervene and see that justice is done?

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Mr. EMERY. Assuming, Senator, from your question that you are presented with a deliberate violation of the law by one who appears before you, and whom you have the right to examine, I should say that your duty is very plain, and it is to proceed to a criminal prosecution of the person who has done the act.

Senator WAGNER. Now, there, we get right to the point.

Mr. EMERY. Under the National Recovery Act, you mean?

Senator WAGNER. Yes. Now, we get right to the point. That has been the difficulty with section 7 (a). The employer has contended, and I am sorry he has, because it has caused a great deal of the irritations—you may not agree with me——

Mr. EMERY. I think a great many things have caused the irritations, Senator.

Senator WAGNER. He has contended that section 7 (2) says: "Yes, you may bargain collectively, but I, the employer, do not have to bargain with you unless I feel like it."

So, there is a one-sided right given, and that has been the actual contention before us, that there is nothing in that section 7 (a) which says that I must collectively bargain with you; it simply says the laborers may organize for the purpose of collectively bargaining.

Therefore, they have said, "Come in, gentlemen; sit down; what have you got to say?"

They present their grievances, and then they say, "Good-bye", and that is all there is to it, and nothing further happens, and that has caused the difficulties.

Do you think this bill is going to irritate, because we are trying to eliminate these irritations? Now, I am going to ask you in a case like that, and the attorneys for the employers have made that contention before us, time and time again, that there is no obligation in this act to collectively bargain, and that is the suggestion that has been made—we have decided, our Board has decided, that they are required to use every reasonable means to bargain, and the employer says, "You haven't any right to render any such decision; there is nothing in 7 (a) which gives such right."

Now, what we are trying to do is to make that a reality, and I should think that the enlightened employer would help in bringing about some legislation that will make that a reality, rather than to continue this confused situation, unless the employer wants that advantage, having gotten everything else. You will remember that I fought for the Recovery Act, and helped to draft it, and there were extraordinary rights given to the employer under that act, which I fought for and defended. Now, we ought to balance the thing up by giving the worker equal rights, and that is all there is to this thing, and if you will suggest some way that that situation can be brought out and with other language, I think you ought to suggest it.

The CHAIRMAN. Mr. Emery, we will be pleased to have your reply.

Mr. EMERY. Of course, the Senator has presented me with such a variety of questions that I am somewhat embarrassed in endeavoring to answer each one first.

Senator WAGNER. As a matter of fact, you know of the situation; you are the attorney for the employers, and you know the situation.

Mr. EMERY. I know the situation that has arisen in your Labor Board, Senator, and I want to say, with the utmost respect for you personally, that I think it is an easily demonstrable fact that your

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Board has lost the confidence of the employers of the country because it has displayed time and again marked bias. Not only that, but because it has usurped authority which it did not get, and has undertaken continuously to exercise a power given to it for one very definite purpose, for a great many others which were not found in the Executive order under which it operated.

Now, let me say just in that connection—I refer now to the Board, and you know I say this with the utmost respect for you, because I think this is one of the causes of the serious irritation that has developed in relations—the President under the Recovery Act was authorized to establish such agencies and appoint such persons and officers as were in his discretion necessary to the effective operation of the act. The president appointed the Labor Board on the 5th day of August 1933. He appointed it for a very definite purpose. The order which was issued on that date said:

> The Board will consider, adjust, and settle differences and controversies that may arise through differing interpretations of the President's reemployment agreement, and will act with all possible dispatch in making known their findings" (Release No. 195, National Recovery Administration).

And so forth.

Now, the President's reemployment agreement——

Senator WAGNER. There was another order issued, you know that?

Mr. EMERY. I beg your pardon, but I am talking about the only order that was in existence between the 5th of August and the 16th of December; and between the 5th of August and the 16th of December your Board issued dozens of requests, summonses, and complaints, and required people to come from all parts of the country at great expense and loss of time on all sorts of complaints, many of which were justified and some were not. I am not undertaking to pass on that. That was your function, sir.

But your major difficulties arose from the fact that as codes were established, and industries were organized under the codes, the President, by the reemployment agreement in very express language, and I have it before me, declared that the reemployment agreement should never under any circumstances attach to any industry as its code was approved.

Now, the Labor Board's chief conflicts, those with whom it has asserted continuously have been most contumacious violators, are those who are operating under codes not subject to the reemployment agreement and whom the board undertook to exercise authority over, when it possessed none except the authority under the Executive order of August 5, between that date and December 16, which applied only to the interpretation or to disputes arising under the President's reemployment agreement.

I can take six or seven labor cases, over which you have declared your jurisdiction, employers and employees operating under codes, where you have asserted your right to determine their respective rights, to summon them into your presence, to issue orders, and to denounce them publicly as violators of the law, when they obeyed the law and you disobeyed it because you did not have the authority that you asserted to exercise.

Senator WAGNER. Well, of course, you are saying something which has no basis of fact, because I speak from experience, and you are speaking only from hearsay.

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Mr. EMERY. I am talking from the President's order, and I ask to put it in the record at this time.

Senator WAGNER. Then you ought to put in the later order.

Mr. EMERY. I will put in all the orders, if you will pardon me.

The CHAIRMAN. They may be put in.

Mr. EMERY. I will put in the order of August 5, the order of December 16, and the order of February 1, and the later order; those four orders constitute all the authority your Board has, do they not, Senator?

Senator WAGNER. That is true.

The CHAIRMAN. They may go in the record.

(The four orders just referred to by Mr. Emery are to be included in the record. They are not attached to the transcript.)

Mr. EMERY. Do you have any other Executive order between August 5 and December 16?

Senator WAGNER. No.

Mr. EMERY. That is all the authority you had?

Senator WAGNER. Let me tell you, I do not want to have go unchallenged the statement you are making, because it is very unfair to everybody who spent his time in order to avert the serious strikes which were imminent. Every member of that Labor Board worked without compensation, and he devoted his nights to the bringing about of peace in industry and averting these strikes, and we invited both employer and employee before us, and though you might have advised them otherwise, none of them, with the exception of one or two, ever challenged the jurisdiction of the Board. The exceptional case which you referred to received public attention, but in a great majority of cases, I will say for the employers they accepted our offers of mediation, and we adjusted their differences as the result of an agreement with the parties.

There are 2 or 3 cases, perhaps 4, of large employers who defied what we asked to be done, and we have always stated what we ordered to be done was, we thought, in the public interest, because they refused to bargain collectively with the representatives chosen by the employees. Of course, in those particular cases where there was a defiance of section 7 (a), naturally, objection was made to the decision.

The CHAIRMAN. I don't think the committee desires to go into the field of dispute, as to whether the Labor Board overstepped its prerogatives and powers or not. That is not in criticism of your statement, Mr. Emery, because perhaps the statement made by you was invited. I suggest that you proceed with the discussion of this bill.

Mr. EMERY. Let me only say, Mr. Chairman, and I will not renew the discussion, I have not the slightest desire of reflecting on the personnel of the Board, and I have only in response to the inquiry necessarily discussed the nature of the public authority exercised by the body.

The CHAIRMAN. I understand your point to be simply this, that after the codes were signed, in which was defined the method of settling disputes, the Labor Board lost its authority to settle these disputes, because the codes themselves arranged for the method of settling. Senator Wagner disputes that, but we do not want to try to settle that now.

Senator WAGNER. I must answer that. Mr. Emery is entirely mistaken. In any case where the code set up an authority to deal

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with labor disputes, the moment a complaint came to our board it was transmitted to that particular authority in every instance; not only that, but in some cases the workers complained because they preferred to have us deal with it. In the case of the bituminous coal situation, just recently, we received a complaint which we referred to the code authority where there is a Board set up with a representative of labor and industry for the purpose of settling labor disputes. But, of course, as you know, in many of these industries, there isn't any representative of labor on it at all, and they have no authority in the code to deal with labor disputes as such.

The CHAIRMAN. Mr. Emery, let us get back to this bill, now. Give us some more evidence against its provisions.

Mr. EMERY. I don't want the committee to misunderstand in the least what that statement of mine was. It is simply that between August 5 and the Executive order of December 16, there was no authority for the Board to exercise anything but authority over the interpretations of the President's Reemployment Agreement.

The CHAIRMAN. We have that in the record.

Mr. EMERY. I have said that the Board proposed in this bill is not bound by the rules of evidence as are the courts of law or equity, but the court which reviews the Board's order is bound by the findings of fact of the Board which itself has no rule of evidence, and may, therefore, admit what pleases its discretion. I am not disposed to dispute the liberal granting of the power to take evidence by an administrative body, but I think we will find in a moment by examining other bodies, like the Federal Trade Commission, the limitations which they have carefully placed upon themselves or which have been placed there by law.

The district courts of the United States, and the Supreme Court of the District of Columbia, are given jurisdiction to enforce by injunction the Board's orders and restrain any unfair labor practice. I want you to note that that authority is given to the district courts of the United States and also to the Supreme Court of the District of Columbia, so this Board may resort to either; that is, either the district in which the person complained of happens to reside, or it may force him to come into the District of Columbia, no matter where he may live.

Observing that the Board intends to govern by injunction, the author of the bill has assured organized labor it need not have any anxiety since injunctions will be issued only against employers, and in no instance against any unfair practice by themselves. I know I do not misstate the Senator there. That is from his radio address.

While limited court review is provided on appeal from an order of the Board with respect to complaints described, the appeal itself does not operate to stay the Board's order. It is only after the order has been granted by the court on an appeal for review that there is any stay in the proceeding of the Board itself.

Senator WAGNER. Mr. Emery, if we amend the act as I suggested, it should be amended so that any intimidation, coercion, or anything of that kind, is an improper labor practice——

Mr. EMERY. "Unfair labor practice."

Senator WAGNER. "Unfair labor practice," from whatever source it may come, then this power would go to labor organizations, too,

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would it not, the power to restrain coercion, intimidation, or these other unfair practices? With that amendment, of course, your criticism——

Mr. EMERY. It would be quite necessary, if you were going to use the equity power to restrain, improper practices to amend the act of 1932, which recently passed.

Senator WAGNER. Which I recently passed? Oh, you mean the Norris-LaGuardia Act?

Mr. EMERY. I meant the Senate—the Congress, rather.

Senator WAGNER. I beg your pardon.

Mr. EMERY. While limited court review is provided on appeal from an order of the Board with respect to complaints described, the appeal itself does not operate to stay the Board's order. Moreover, and this is very important, it is given additional powers to determine in any dispute (sec. 207) who are the representatives of employees. To this end it may conduct any investigation to determine who they are, including the taking of a secret ballot of employees. It may even go so far as to determine the unit in any plant upon which participation in elections may take place. It is given—observe this—clear authority to define who are agents, a question of law, and to do it finally without judicial review, a plainly forbidden practice by many decisions.

Section 207 is not made the subject of judicial review, and section 207 is the section which authorizes the Labor Board to determine who are the representatives of employees, that is, who are agents. That, of course, is not only a question of fact, but is also a question of law, the determination of an agent, and that is not subject to review.

Senator WAGNER. Of course, Mr. Emery, any question of fact found by the Federal Trade Commission is also conclusive upon the courts, is it not?

Mr. EMERY. Yes; only one supported by what the court declares to be evidence, and the court has said in the case of *Gratz* v. *Federal Trade Commission* (253 U.S.), that the court reserves the right to review both the facts and the law as found by the Federal Trade Commission. That that is a matter for judicial decision.

Senator WAGNER. To ascertain whether the facts found have any evidence to support them.

Mr. EMERY. You find out, first of all, whether there are questions of fact and law, not only whether they have facts to support them, but whether they are real evidence.

Senator WAGNER. Very well.

Mr. EMERY. Suppose an administrative body accepts as evidence a copy of a letter alleged to be an original, suppose it accepts secondary tertiary, or quarternary evidence, which it may do, without any control by the rules of evidence, will not the court examine that to determine whether a man has been the victim of a finding of fact?

Senator WAGNER. Of course, you have given the argument that has always been made against any of these laws being enacted. For instance, our public-service commissions throughout the country have provisions in the law that the court reviews the law, but the findings of the public-service commissions are final. Of course, it is always a question of law, as to whether there is any evidence to sustain findings of fact.

Mr. EMERY. Sure, sure.

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Senator WAGNER. So that you have got that review, always, as to whether facts are there to support the conclusion; and the argument which you made has been made whenever this proposal has been offered, and it has been enacted in spite of the position of your philosophy, in all the States of the Union.

Mr. EMERY. Yes, and if you will permit me, Senator——

Senator WAGNER. And if there is any apprehension about it, I am quite willing to have that changed, so the court may review the facts and the law, because it does not matter at all. It was, in my opinion, of proper administration, which has been accepted now after years of experience, in all of our legislative acts. I am willing to go back to the old days, on this particular question, because I have absolute confidence in the courts of our country, in order to meet this position which I know would exist, no matter what I said in the act; but I am willing now to change the law so that you may be relieved of any apprehension, and review the facts and the law.

Mr. EMERY. Well, I hope the Senator will be equally willing to find a legal basis for it.

Senator WAGNER. Well, you thought that my employment exchange bill was unconstitutional. Constitutionality has been your great weapon. It has been a great weapon for you, in all these cases, but unfortunately Congress has not always accepted your views. You remember your intense and fervent argument against the constitutionality of the employment exchange bill?

Mr. EMERY. Employment exchange?

Senator WAGNER. Yes. Is your memory faulty?

Mr. EMERY. Oh, I beg your pardon, I did not identify the thing you spoke of by the name you gave it.

Senator WAGNER. Well, what would you call it?

Mr. EMERY. Yes, sir.

Senator WAGNER. Employment exchange bill?

Mr. EMERY. Yes, sir; yes, sir; very well.

Senator WAGNER. And yet the C.W.A. could not have been done, and I have Mr. Hopkinson's word for it, it could not have been done without the Employment Exchange Act.

Mr. EMERY. Yes.

Senator WAGNER. Which the President signed in spite of that.

The CHAIRMAN. I am sure you have not forgotten the argument. You may have forgotten the fervor with which you presented your argument.

Mr. EMERY. Oh, yes, indeed. I might have even forgotten the Senator's argument.

Senator WAGNER. I notice Senator Walsh was chairman of the committee.

Mr. EMERY. So, of course, Mr. Chairman, we are placed in the position of discussing what the Senator proposes, not what he now reforms. We are faced with his proposal, and we take it as he wrote it.

Senator WAGNER. Certainly.

Mr. EMERY. Assuming he meant what he said.

Senator WAGNER. Certainly, but I want to recognize the effectiveness of your criticism.

Mr. EMERY. Yes?

Senator WAGNER. That I am accepting some of the suggestions you make.

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The CHAIRMAN. I think we will get to the constitutional defense later, Mr. Emery, won't we?

Mr. EMERY. Yes, and I trust the Senator will show as much friendship for the Constitution as I do.

The CHAIRMAN. Proceed, Mr. Emery.

Mr. EMERY. I make it plain that section 207 provided for these very tremendous powers, without any review of the law, which the Senator says he is perfectly willing to give, and I am sure, if the Senator keeps on reforming his bill, we will probably get to the point where he will be willing to strike out the title.

Senator WAGNER. That is what you would like to see.

Mr. EMERY. Such, in bare outline, are the proposals contained in this legislation. Its author, without undertaking to vindicate its authority, asserts, as have several witnesses before you, that it parallels the Railway Labor Disputes Act and the statute establishing the Federal Trade Commission.

A brief comparison with the former—that is, the Railway Labor Disputes Act—shows that it has no likeness whatever in either terms or philosophy. The Railway Labor Disputes Act of May 20, 1926, was agreed legislation between the railroads and their employees. It makes it the duty of both management and men to avoid by agreement any interruption of commerce and to settle their disputes by voluntary negotiation. It is a duty placed equally upon both, just as the Interstate Commerce Act places upon employer and employee the equal duty of performing their functions under it. It prohibits both employer or employees from interfering, influencing, or coercing the other in self-organization or designation of representatives. This bill recognizes only one form of coercion, and provides for only one form of coercion. The Railway Labor Disputes Act declares that nothing in the act shall be construed—and I quote—

> To prohibit an individual carrier and its employees from agreeing upon the settlement of disputes through such machinery of contract and adjustment as they may mutually establish.

That is, it recognizes the established employee relation plans existing among the carriers over long periods of years, on a great scale, by which thousands of employees, union and nonunion, through their selected representatives, discuss and settle and adjust all the various matters at issue between them. The employer participates and did participate; in many cases originated the organization of the plans that there exist. They were perfected in conference. So the Railway Labor Act not only recognizes but encourages and places on a firm foundation the very kind of organization which the bill before you would destroy.

Senator WAGNER. Have you got the practices in the act, as they are enumerated—the unfair practices?

Mr. EMERY. In what act, Senator?

Senator WAGNER. Railway Labor Act.

Mr. EMERY. I am speaking of the Railway Labor Dispute Act of 1926, May 20.

Senator WAGNER. Well, I will get it later.

Mr. EMERY. Is not that the one you referred to.

Senator WAGNER. Yes.

Mr. EMERY. The one that the witnesses referred to.

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Senator WAGNER. Are there some practices referred to there?

Mr. EMERY. There are none, sir. The Railway Labor Dispute Act of May 20, partly, in section 3, subparagraph K, is the one from which I have just quoted.

Senator WAGNER. Is there anything in the act which created the coordinator last year?

Mr. EMERY. Your Railway Coordination Act?

Senator WAGNER. Yes.

Mr. EMERY. Well, I am discussing the disputes act, just now; if you will let me finish it, I will go to that.

Senator WAGNER. Do you remember whether there is or not?

Mr. EMERY. Yes, sir. There is—I think I have in mind what you refer to, and I will refer to that.

Senator WAGNER. Yes.

Mr. EMERY. The bill before you recognizes——

Senator DAVIS. Mr. Emery, would you support a plan similar to the Railway Labor Act, for industry?

Mr. EMERY. I would support it to the full extent that it represented a valid exercise of the commerce power of Congress. We could not support it to an extent that it undertook to replace the local government of the States, and turned them into provinces governed from Washington by an administrator under the commerce clause.

Senator WAGNER. Are you in sympathy with Mr. Eastman's statement, recently, to the effect of company-dominated unions?

Mr. EMERY. I have not seen the statement, Senator. I cannot respond to it.

Senator WAGNER. It was widely published.

Mr. EMERY. I did not happen to see it. If you have a copy of it, I would be very glad to see it.

Senator WAGNER. Well, it is in the record.

Mr. EMERY. All right.

Senator DAVIS. I think the unfair labor practices, under Mr. Eastman's latest report, are probably stronger than the unfair labor practices here.

Mr. EMERY. I think the railway labor practices are substantially similar to those in section 7–A of the National Recovery Act, except that I believe that there is a prohibition against the use of funds which may be loaned to a railroad from the Reconstruction Finance Corporation, to support a company-dominated union, as it is there defined, coming within the inhibitions of the act.

The CHAIRMAN. How much more time do you desire, Mr. Emery?

Mr. EMERY. It depends upon the interruptions, Senator.

The CHAIRMAN. I am afraid we have been delaying you a good deal by our interruption.

Mr. EMERY. I beg your pardon. I am sorry to have delayed the committee, sir.

The CHAIRMAN. That is all right. You may proceed. You are not to blame; we are.

Mr. EMERY. The bill before you recognizes coercion only by the employer, and the Railway Dispute Act forbids it likewise by the employee or his organization. The Railway Act lays duties upon each. This bill recognizes no duty except by the employer.

The Railway Act encourages and protects agreements between individual carriers and their employees. The effect of the bill before

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you is to outlaw such arrangements and deny to the industrial and commercial employers and employees the liberty and opportunity to make them as they choose, between themselves.

Although the Railway Labor Act deals only with an instrumentality of interstate commerce over which Congress has plenary and exclusive control, it contains only one provision that is coercive, that is the preservation of the status quo, in the case of a dispute, until the President may investigate any controversy that threatens the interruption of commerce. It even provides that a refusal to arbitrate is not to be construed as the violation of any legal obligation. That is section 7 of the act—

> That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this act.

Senator WAGNER. Do you favor compulsory arbitration?

Mr. EMERY. I do not. I do favor compulsory investigation.

Senator WAGNER. Yes.

Mr. EMERY. The bill before you, proceeding in a field which Congress may not regulate, undertakes to compel, without authority, where the Railway Labor Dispute Act leaves the parties to persuade each other, although possessing full authority to compel a decision. Since, in the famous case which arose out of the Adamson law, the Supreme Court held that where a combination threatened an interruption of commerce, with failure to reach an agreement with respect to wages, the Congress of the United States could temporarily impose an agreement upon the parties to prevent the interruption of the movement of an instrumentality of interstate commerce. Let there be no misunderstanding, Mr. Chairman, that you are dealing now with an undisputed field of Congressional authority, when you deal with an instrumentality of interstate commerce. Because not only are the physical instrumentalities which move over the tracks, but the managers and the men are in contemplation of law, instrumentalities of interstate commerce and subject to its exclusive and plenary control. That is not the case here, but quite the reverse.

Indded, the Senate of the United States went so far, in the Transportation Act of 1920, in its endeavor to protect the paramount public interest in uninterrupted transportation, as to make it a crime for managers or men to combine or agree to acts affecting the interruption of interstate commerce, without submitting their disputes to a board created for that purpose.

The Congress refused to go so far, in a field of undisputed authority. Until this bill proposed it, no one ever dared to suggest that the Federal Government possesses, under the commerce power, the authority to mix the realtion between a farmer and his field hands, or a laundry operator and his operatives and penalize either for undertaking to initiate a plan of employment relationship.

This bill would undertake to compel employment relationships in every locality, although Congress would not go so far in its unquestioned authority over the instrumentalities of interstate commerce. As for the Federal Trade Commission Act, it is sufficient to say that it deals wholly with unfair methods of competition in interstate commerce, and the Supreme Court has said that even in this field, the judiciary may reexamine its findings of fact and its conclusions of law. It dare not write a complaint of a general nature, as this bill

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provides, but specifically describes the kind of unfair competition with which it charges any person, and gives him 30 days in which to answer, although this bill could require him to so do within 24 hours. It must, itself, initiate a judicial proceeding to enforce its order, although this board would carry the proceeding and enforcement of its own order. The exercise of power, in the case of the Federal Trade Commission, is surrounded with safeguards, entirely absent from the pending bill.

Now, having thus compared the measure with its alleged exemplars, observe its manifest unfairness. It prohibits lockouts. It encourages strikes; for the former is an "unfair labor practice," and the latter is, by the language of this bill, to be neither interferred with nor impeded. It proceeds upon the theory that every strike is justifiable and apparently of public benefit. A lockout, which is almost unknown, is declared wrong, although the right to discharge is the correlative of the right to quit.

The proponents of this measure obviously do not agree with the unanimous decision of the Supreme Court, written by Mr. Justice Brandeis in *Dorchey* v. *Kansas* (272 U.S.), in which he said:

> Neither the common law nor the fourteenth amendment confers the absolute right to strike.

I do not make the comparison to defend lockouts, but to point out that at a time when the restoration of employment is vital to recovery, one bad practice by organized labor is, by statutory language, encouraged. The other, by employers, is outlawed. We condemn unrestricted strikes just as we condemn lockout. They deserve to join in limbo the blacklist and the boycott.

It cannot be forgotten, gentlemen of the committee, that three Presidents of the United States, two Democrats and one Republican, have each been compelled to seek the courts of the United States to protect the public against actual or threatened strikes, so vast in their proportions as to menace their transportation or deprive them of their fuel supply.

Apply this measure to practical and existing conditions, and observe how it operates. It would make every striker remain an employee, irrespective of the policy of his organization or his conduct. Can that be denied? Every employer, under penalty of law, must deal with him. A worker who dared to believe that any strike could be wrong or unjustifiable and took the striker's place, is not even an employee. A human being is thus made a legal cipher by those who express profound interest in human right. The employer who does not deal with representatives of a striking group who are declared by law his employees, however disgraceful their conduct, however extreme their demands, however criminal the character of their leaders or the conduct of their strike, may be summoned from any part of the United States, charged with the unfair practice of not recognizing or dealing or undertaking to deal with them, and charged with undertaking to influence their policy or initiate a change in it, and be assessed damages or asked to reinstate those who have acted without justification.

Every single statement that I have made is an operating effect of this bill. If any member of the committee cares to deny it, I will be glad to point out the section to which it applies. The sponsors of

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this bill do not recognize the evils of jurisdictional disputes which punish innocent employers and employees alike. This city has endured many of them. Public building has been interrupted in this city for months at a time, because two unions could not determine whether a carpenter or a steamfitter should put an appliance on a radiator and hundreds of thousands of dollars of wages have been lost. Organized labor has been unable to settle their own difficulties within its own ranks; and yet, you would not impede the right to strike. You would not lessen these things that affect the public interest.

Senator WAGNER. You know, as Chairman of the Board, after a great deal of difficulty, I straightened out one of those.

Mr. EMERY. You did, Mr. Chairman, but I observed——

Senator WAGNER. Of course, I agree with you.

Mr. EMERY. That you kept away from most of the jurisdictional disputes that occur, with the care that a good housewife displays in the presence of a bad egg.

Senator WAGNER. I think you are very much mistaken. You are making some statements that I would not make.

Mr. EMERY. Oh.

Senator WAGNER. Now, whenever we were asked to consider a jurisdictional dispute we have done it, but the employers themselves, in some instances, asked that the American Federation of Labor, with their own machinery, adjust these disputes. At the request of the employers, that was done; but in the case of the Labor Building down here, it was one in which I intruded myself without invitation, and we finally adjusted the differences. There was considerable difficulty, and I agree with you that that type of strike is entirely unjustified. It ought not to exist.

Mr. EMERY. And it is one of the most serious causes of loss to both workmen and employers that we have in the whole labor field.

Senator WAGNER. No question about it. No question about it.

Mr. EMERY. And that is one of the reasons, Mr. Chairman, perhaps one of the very strongest reasons——

Senator WAGNER. I was distressed at the time.

Mr. EMERY. For the growth of the employee representation plan; I mean, by direct plant contact between manager and men.

Senator WAGNER. Well, you have let something out of the bag, there, that you shouldn't have.

Mr. EMERY. What? What is it? I will be very glad to know.

Senator WAGNER. You say these jurisdictional disputes were what prompted employers to organize their own labor unions.

Mr. EMERY. No. I said it was one of them.

Senator WAGNER. You should not have said that.

Mr. EMERY. I might have named a number of others—strikes, direct and sympathetic, boycotts; coercion in many forms; experience with broken contracts.

Senator WAGNER. I fear it will weaken your theory.

Mr. EMERY. All sorts of experience, my dear Senator, have been the cause of new methods, because they do not come into existence, and they do not grow, and they do not meet with that approval of employees in great numbers, unless they have a very solid foundation. The difficulty, of course, is that our good friends in organized labor do not like the competition of other forms of organization. They

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would prefer to have a monopoly, which is a very natural, human desire.

Senator WAGNER. We are not concerned with that.

Mr. EMERY. But I am afraid the Senator's bill is going to get it for them.

Senator WAGNER. You do not know, Mr. Emery, or I am sure you would not talk this way, that since the enactment of section 7 (a) of the Recovery Act, there has been a tremendous drive, all through the country, among large employers, and those are really the only ones that we are dealing with. The argument about your employer that employs one man is good as an argument, but you know it has no application to the administration of an act like this, but all of the large employers through the country, suddenly adopted a company-union method. You are quite familiar with that provision, aren't you? And in some of them, the uncontradicted testimony has been offered as to how they were organized, and I am sure that you cannot agree, because, being a fair-minded man, you cannot agree with that method of organization. Do you, or do you not?

Mr. EMERY. I do not, and as the Senator will find, in any legal opinion or legal advice that we have ever given to manufacturers, out of the law department of this association—and they are all public matters; we are very glad to submit them to the examination of yourself or the committee—you will never find that we have suggested that anyone was free to establish an organization of any kind, in which employees were the victims of coercion, intimidation, or restraint.

Senator WAGNER. Of course, I do not want to keep repeating, but I have said over and over again the large majority of employers want to be fair with their employees.

Mr. EMERY. Yes.

Senator WAGNER. And I am fair with them.

Mr. EMERY. Yes.

Senator WAGNER. But sometimes they are unable to be as fair as they would like to be, because of the keen competition with employees who are unfair to other workers, and these laws are always passed for the minority recalcitrants, not for the majority.

Mr. EMERY. Well, I suppose the Senator noticed the vast number of employers who flocked into this committee room last week, to support this bill.

Senator WAGNER. Well, that is the history of all acts.

Mr. EMERY. Yes.

Senator WAGNER. The Workmen's Compensation Law. I do not know whether you were an active opponent of that in 1913, in New York State. That was a bill I introduced.

Mr. EMERY. On the contrary, I was a strong proponent of it.

Senator WAGNER. Then you were not articulate, because there were no employers that came before the committee, favoring it.

Mr. EMERY. I was very articulate.

Senator WAGNER. Well, I did not see you there.

Mr. EMERY. Only, I did not happen to be of sufficient importance to catch the Senator's ear.

Senator WAGNER. In 1913, in New York State?

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Mr. EMERY. I remember we began the agitation in the National Association of Manufacturers, for the substitution of workmen's compensation for employers' liability, in 1909.

Senator WAGNER. Well, if you will look at the record of 1913, every employer that was represented at a hearing opposed the act. There was only one, the enlightened Chamber of Commerce of Rochester, that, with some modifications, which modifications were made, favored the act. All of the employers opposed it upon the ground it was an added burden.

Mr. EMERY. And the first act was declared unconstitutional, was it not?

Senator WAGNER. No.

Mr. EMERY. Was it not, by your court?

Senator WAGNER. I am not speaking of that act.

Mr. EMERY. But I am, Senator.

Senator WAGNER. Yes. Well——

Mr. EMERY. Yes.

Senator WAGNER. Well, nobody thought very much of that act, anyway.

Mr. EMERY. No, of course not, but the employers opposed it.

Senator WAGNER. But I am talking about the act of 1913, which was passed after we amended the constitution.

Mr. EMERY. Yes.

Senator WAGNER. The first act was the third unconstitutional, and there was such a feeling of resentment in the State of New York, that the legislature passed the amendment to the State constitution, which, by an overwhelming vote, was adopted by the people, something like 30 to 1. However, that change empowered us to enact a workmen's compensation act, and then, in 1913, I introduced the law into the State. Now, I know something about the history of that. All of the employers, mistakenly, because they admit their mistake now—were opposed to that act, and yet, within a year or two they discovered that it was a great blessing, a great boon for industry as well as for labor, and yet, it was regarded as a one-sided act, then.

The CHAIRMAN. Will you proceed with your analysis?

Mr. EMERY. The sponsors of this bill do not recognize the evils of jurisdictional disputes, which punish innocent employers and employees alike, or sympathetic strikers who seek to compel third persons to become parties to their battles. It makes employers criminals. It denounces them as coercive. It utterly ignores the overwhelming evidence supplied again and again of the continuous, determined, and aggressive coercion constantly directed against those employers, and employees, by organized labor.

Senator WAGNER. What do you mean, it makes them criminals? What do you mean by that?

Mr. EMERY. I am referring to the fact that the bill here by its unfair practices declares the employers commit an unlawful act. It does not declare him to be a criminal in the sense it puts him in jail, but it makes him a violator, and, of course, with the Senator's suggestion, the gentleman on the House side has been willing to make him a criminal by introducing the bill with that amendment. I hope the Senator did not suggest that it be made stricter.

Senator WAGNER. I made no suggestion to the Congressman. As a matter of fact, I did not know that change had been made.

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Mr. EMERY. I invite the Senator's attention to it, and I hope he will use his good offices.

Senator WAGNER. We are dealing with the bill before us.

Mr. EMERY. Yes, sir, although the Senator has influence in both Houses.

Senator WAGNER. I have not—well, I have when I am right. You have not had so much influence down here in all of your advocacy, because you have not been right. When you are right, I have been with you, on the Recovery Act, for instance. You were against section 7 (a), just as you are today.

Mr. EMERY. I was against other things.

Senator WAGNER. But you were for the advantages of the employers, just as I was, or the trade associations, and for the repeal of the antitrust law. You were for that all right, were you not?

Mr. EMERY. I never suggested the repeal of the antitrust law.

Senator WAGNER. What did you suggest, its modification?

Mr. EMERY. I suggested its modification.

Senator WAGNER. I meant that——

Mr. EMERY. A different method of administering it.

Senator WAGNER. Yes.

Mr. EMERY. I want to make it clear, Senator, that the advantages to which you refer under the codes, do not go to employers, as such; they go to manufacturers or producers, or merchants, as such. This controls methods of competition. It is hardly an advantage to increase their operating costs by other means. That is something that they have not got but which they have accepted as a necessary means of cooperating and getting ourselves out of the situation in which we now are.

But, the comparison between the right to organize on the part of labor, if you please, and the right to organize on the part of the employer is without foundation, because it is not as an employer that he is permitted to organize. To the extent to which he is an employer it is the Government which has determined what his hours and wages shall be in supervising conditions under which code changes may be made. They are ultimately determined by the President of the United States at the present time, under the agreement the employer has made with him.

Senator WAGNER. Am I right, Mr. Emery, that you are opposed to section 7 (a) of the National Recovery Act?

Mr. EMERY. We were opposed to the very thing which was stated in there, which we undertook to change, and which is the very subject of discussion now, and that was the continuous misrepresentation of employment relations that lies in the words "company union". An epithet is worth an army at times, and that is an epithet that has been used with the utmost freedom by those who want to misrepresent the most modern method of employment relationship that has been developed between employer and employee.

Senator WAGNER. I thought you and I had agreed.

Mr. EMERY. The Senator separates from it every time he is right, and says I am wrong.

Senator WAGNER. Don't you distinguish between a company-dominated union and just a company union?

Mr. EMERY. Yes; but I distinguish all other kinds of organizations that are dominated, too.

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Senator WAGNER. Well—excuse me.

Mr. EMERY. Certainly.

Great Britain undertook to give exemption from liability to trade unions in 1906. It repented in 1927 and in the trade disputes act of that year, it, by law distinguished legal from illegal strikes; prohibited participation in the latter or the use of trade-union funds to support them, and armed its attorney general with the power to enforce the law and enjoin illegal acts. Through 3 years of labor government, the law remained unchanged, supported by an overwhelming public opinion which required that neither employer or employee should be permitted to combine to the injury of the public. That is the law today. The impartial arm of the English law lays its heavy hand upon each and invalidates public contracts providing discrimination in employment between members and nonmembers of trade unions.

That is a remarkable statement for an English-speaking country, which is our mother-in-law, and yet it is borne out by the experience of 25 years.

The CHAIRMAN. Mr. Emery, we must leave. There is a vote being recorded in the Senate now, and we must adjourn the meeting until tomorrow morning at 10 o'clock.

Mr. EMERY. May I finish then?

The CHAIRMAN. Yes.

Mr. EMERY. I thank the Committee greatly for their indulgence.

(Whereupon, at 12:30 p.m., a recess was taken until 10 a.m., March 27, 1934.)

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TO CREATE A NATIONAL LABOR BOARD

TUESDAY, MARCH 27, 1934

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The committee met, pursuant to adjournment, at 10 a.m., in room 318, Senate Office Building, Washington, D.C., Senator David I. Walsh presiding.

Present: Senators Walsh (chairman), Murphy, Thomas, Borah, and Davis; also Senator Wagner.

The CHAIRMAN. The committee will come to order, please. Are you ready to proceed, Mr. Emery?

STATEMENT OF JAMES A. EMERY—Resumed

Mr. EMERY. Yes, sir.

The CHAIRMAN. Mr. Emery, how much more time do you think you will take?

Mr. EMERY. I can get through very rapidly, Mr. Chairman, according to the inquiries of the committee.

The CHAIRMAN. Proceed, please, Mr. Emery.

Mr. EMERY. I believe this hearing, Mr. Chairman, is entirely between the committee and ourselves this morning.

The CHAIRMAN. Yes; the others will be here shortly. They have not got the obligations that the Chair has to be on time or nearly on time.

Mr. EMERY. Mr. Chairman and gentlemen of the committee, when you recessed yesterday I had been comparing the Trade Disputes Act of Great Britain of 1927, which is now the law of the land, with the proposals contained in this measure, in an endeavor to show that after 20 years of experience Great Britain had found it necessary in the public interest to place upon combinations of labor the restrictions which it likewise placed upon other combinations in the protection of the public interest and to distinguish between legal and illegal strikes and otherwise provide for the protection of the public, while this measure ignored all but one factor in the employment equation.

Unfortunately, in the absence of the distinguished Senator from New York, I am not aware of what changes he proposes in the bill referred to in the public press or I would, of course, confine myself to what is immediately before the committee, and I must, therefore, assume that, with such slight changes as were discussed yesterday, the measure is before you.

So, if I may proceed, sir, I want to recall to you that I quoted from Mr. Justice Brandeis yesterday morning, but I did not at that

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time give the page, and I think it should be placed in the record. I was reading from page 94 of the 1933 edition of his volume, Business—a Profession. It is published, with a foreword by Prof. James Bonbright, by Hale, Cushman & Flint.

In that connection, if I may quote the distinguished Justice once again, I want to explain in answer to the criticisms that have been made that employers hastened to resist some of the proposals of this measure which we believe are unsound, that there are some things they have been unwilling at times to arbitrate, which would seem to indicate a stubborn, unfair attitude on their part which ignored the public interest. The distinguished Justice, in referring to these questions, makes this interesting observation which fairly states exactly the position which I think we occupy today. After referring to the necessity, which is fundamental for the continuing intercourse of employers and employees as the only possible means by which their delicate and vitally important relation as partners in production and distribution and transportation can be successfully carried forward, because, sir, good relations are not a manufacture, they are a growth; they are not a mechanism, they are an organism; they come slowly but surely by the conduct of both parties in the determination and development of their relations. Their importance cannot be overemphasized in our social structure nor can I overemphasize the importance which the employers of the United States attach to them, so far as I know their point of view.

Said Mr. Brandeis, after referring to the vital importance of continuing conferences in all their employment relations to develop good understanding—I quote:

> But conferences, though wisely conducted and with the best of intentions on either side, do not always result in agreement. Men fail at times to see the right; and, indeed, what is right is often in doubt. For such cases arbitration affords frequently an appropriate remedy. This remedy deserves to take its place among the honorable means of settling those questions to which it properly applies. Questions arise, however, which may not be arbitrated. Differences are sometimes fundamental. Demands may be made which the employer, after the fullest consideration, believes would if yielded to, destroy the business. Such differences cannot be submitted to the decision of others. Again, the action of the union may appear to have been lawless or arbitrary, a substitution of force for law or for reason.
>
> What, then, should be the attitude of the employer?

And this is the answer of a great student of employment relations, in the maturity of his years, and in the dignity of his present great position:

> Lawless or arbitrary claims of organized labor should be resisted at whatever cost. I have said that it is essential in dealing with these problems that the employer should strive only for the right. It is equally as important that he should suffer no wrong to be done unto him. The history of Anglo-Saxon and of American liberty rests upon that struggle to resist wrong—to resist it at any cost when first offered rather than to pay the penalty of ignominious surrender. It is the old story of "ship money", of "the writs of assistance", and of "taxation without representation." The struggle for industrial liberty must follow the same lines.
>
> If labor unions are arbitrary or lawless, it is largely because employers have ignominiously submitted to arbitrariness or lawlessness as a temporizing policy or under a mistaken belief as to their own immediate interests.

Later he continues, and this goes to the very crux of the vital issues before this committee, these issues of fundamental principle upon

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which men must differ at times if they accept the principles and the unchanged course of American tradition over the century:

You may compromise—

He says—

a matter of wages, you may compromise a matter of hours—if the margin of profit will so permit. No man can say with certainty that his opinion is the right one on such a question. But you may not compromise on a question of morals, or where there is lawlessness or even arbitrariness. Industrial liberty, like civil liberty, must rest upon the solid foundation of law. Disregard the law in either, however good your motives, and you have anarchy. The plea of trades unions for immunity, be it from injunction or from liability for damages, is as fallacious as the plea of the lynchers. If lawless methods are pursued by trades unions, whether it be by violence, by intimidation, or by the more peaceful infringement of legal rights, that lawlessness must be put down at once and at any cost.

I am quoting from pages 24, 25, and 26 of Business—a Profession, by Louis D. Brandeis.

Now, Mr. Chairman, I have said that by the design of this measure it gradually forces in operating effect but one form of labor organization, and slowly but surely undertakes to drive all workers into it. It ignores successful and practical experiments in new forms of collective relationship. It would cast all labor relations in one mold, granting a labor monopoly to those who employ it. It will develop bitterness, discord, and conflict by outlawing the natural development of intercourse through conference and cooperation in other forms of collective bargaining. It would destroy in one class of workers and employers the dearest rights which it undertakes to secure for another organization of workers. It outlaws that natural and necessary intercourse of employer and employee while ignoring or deliberately encouraging coercion and unfair practices by organized labor. It fashions an administrative board that is partisan and political by composition.

Now, Mr. Chairman, let me call your attention to the nature of the board that is here proposed, and compare it with the boards which have been erected by the Congress in other fields of employment relationship.

The distinguished Senator from New York has said, and I pointed out to you yesterday, how little of the parallel was true, that this measure is modeled upon the Railroad Labor Disputes Act of May 20, 1926. I pointed out the various differences to you yesterday, the chief of which were that that placed upon both parties the duty of undertaking to avoid disputes by providing machinery of adjustment; in that act it is very carefully declared that nothing in the act must be construed to prevent individual carriers and their employees from erecting their own machinery for the adjustment of their disputes. Under that very system methods of employment relationships that have extended over 12 or 15 years and even longer, for instance, on the Pennsylvania Railroad, and if this committee would summon into its presence those who have been charged the workers on that road, union or nonunion, with the operation of that plan, you might learn much to guide you in the practical consideration of the great matters before you.

Although Congress possesses the plenary and exclusive authority to deal with an instrumentality of interstate commerce over which it has the control of a sovereign almost without limitation, except by

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the other prohibitions of our Constitution, it did not choose to exert that authority, although your own body, the Senate, passed a drastic proposal in 1919 to lay the foundation of the Transportation Act of 1920 which would have made it a criminal offense for eiher management or men to undertake to interrupt by any agreement or combination the movement of commerce between States without first submitting their dispute to a board created for that purpose. You preferred to believe, and I think you did rightly, that relations between employer and employee must not rest upon compulsion and coercion but must be built up by good understanding and reciprocal consideration and good will. That is what the Railroad Labor Disputes Act does.

Now, the Railroad Labor Disputes Act placed upon both parties the duty of avoiding disputes. Every single term applies equally to employers and employees. Like the President's notable statement of yesterday in the settling of the automobile strike, this act, upon which it could be said he had modeled his utterance, declares that neither party shall coerce the other in the selection of its representatives in any dealing between the two.

The act did not set up a board to arbitrate or settle the disputes, however serious they might be. It left the parties to determine the nature of their adjustment mechanism. What it did do, sir, was to establish a board of mediation and conciliation because they relied upon the intervention of impartial and fair-minded parties in a serious dispute to mollify the bitterness that might exist between them in the height of discussion and difference of opinion.

I am sure the distinguished Senator from Pennsylvania, out of his long years in the Department of Labor, will bear me out in the belief that the conciliation efforts of the Department of Labor when handled with impartiality, tact, and good will and patience have produced far more satisfactory results than any efforts at coercion on either side.

That is precisely what the Labor Disputes Act does. It created a board of mediation; but observe how carefully it was done. It provided, first, that this board of mediation should not have appointed on it "any person in the employment or who is pecuniarily or otherwise interested in any organization of employees or any carrier."

Whenever there devolves upon this board the duty, not of arbitrating, because they cannot arbitrate, but where the two parties agree to arbitration and they fail within a reasonable length of time to select a third arbitrator, this board may appoint him, and in appointing him they must appoint an arbitrator who is wholly disinterested. If after he is appointed it should develop on the charge of either party and upon investigation by the board that he was not disinterested, he must be promptly removed and a disinterested and impartial person appointed in his place.

Now, Mr. Chairman, the distinguished gentleman from NewYork thought I reflected upon the Labor Board yesterday in its personnel because of a comment I made. I did not criticize it because its members acted without pay. I criticized it because they acted without authority. I could establish that very clearly and very fully that in all their acts between August 5, 1933, and December 16, 1933, they acted under an Executive order which authorized them only to interpret differing opinions with respect to the President's reemployment

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agreement, yet they undertook to exercise repeatedly jurisdiction over disputes arising under codes of industries which had been codified, over which they had no authority whatever.

But, for the purpose of comparing the operation of this bill. Look at the composition of that board. I do not say this to reflect upon any person in it. I say it because it rests upon fundamental facts of human nature that no wise legislative body would ever ignore.

You cannot make a man an impartial judge in his own case. He cannot both be policeman, grand juror, prosecuting attorney, and, finally, the eminently impartial judge. No one demonstrated it more clearly than that distinguished, active, and energetic leader of organized labor, Mr. William Green, when he descended from the bench where the Labor Board was sitting in the automobile case, appeared as a witness before this committee, decided the case in your presence, and returned to the hearing. Mr. Green was sitting on the Board as the president of the American Federation of Labor and he could not possibly sit there in an impartial manner. It would be quite as impossible to expect that from him as it would be to expect that Mr. Hitler would be entirely impartial in the presence of a Jewish rabbi.

Senator DAVIS. But there were other representatives on the Board that were representing employers?

Mr. EMERY. Yes, sir.

Senator DAVIS. You had Mr. Du Pont and other representatives of business on the Labor Board?

Mr. EMERY. Yes, sir; but what I am trying to point out is that if you wanted to create an impartial tribunal, it will not be composed of employers and employees. If you were going to undertake to exercise the judicial power of the United States by attaching within the jurisdiction of the courts at any time——

The CHAIRMAN. Your argument would apply to employers as much as to employees?

Mr. EMERY. Certainly; always to employers.

The CHAIRMAN. In other words, your contention is that you cannot have any satisfactory result from a commission or board or court that represents the two conflicting interests?

Mr. EMERY. Yes, sir; my argument simply is that when you have a board of arbitration on which you have the two parties represented they are advocates, and the only disinterested person is the arbitrator who is chosen by the two, and upon whom both undertake to exert their influence. That is what this bill proposes to do.

Senator DAVIS. In other words, you believe in a nonpartisan board?

Mr. EMERY. In a nonpartisan board if it can be selected, and I believe you have accomplished more as Secretary of Labor in your time where you had a conciliator not a party to a dispute who walked in and offered his services to the parties in dispute and both accepted them; he had great success in bringing them together so far as the issues did not involve principles which could not be surrendered by either party.

Senator DAVIS. I want to repeat my question that I asked yesterday. I did not get an answer to it. Would you and those you represent be in favor of an act for industry such as the Transportation Act is for the railroads?

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Mr. EMERY. To the extent that it would be within the power of Congress to enact, but I want to point out what the differences are between the two. I want to insist, Mr. Chairman, that you have ample machinery in the Department of Labor in the character of the conciliators and mediators whom you chose to do a very effective service in disputes in the United States, not by coercion, not by compulsion, but by persuasion and good will.

The fundamental defect of all these proposals of this character is that they speak in terms of conflict, and not of conference and cooperation. They are written in terms of bitterness, in which some party is to be forced to do something against his will, whereas the best results are accomplished, not when parties are in that state of mind or when the arbitrator is supposed to be in that state of mind.

It is this evidence, Mr. Chairman, of failure through partisan operation that makes one exceedingly skeptical of the efforts of a body of this kind. When you carry the idea into other administrative bodies you may expect the same result.

Let me call your attention to the C.W.A. as it undertakes to operate, say, in the city of New York today. The C.W.A. provides that if persons are seeking employment among the thousands of employed in the city of New York—do you think a skilled workman in any one of the trades can get work from the C.W.A. unless he belongs to a private organization? He cannot. On February 5, 1934, the city Civil Works Administration publicity department declared——

The CHAIRMAN. Just a moment. What would you say about the unsatisfactory results from commissions that are composed of partisans? I have been very much troubled during my public career with the other alternative. The regulatory bodies which States and the Federal Government have set up, have too often been appointed on the basis of prejudice for or against a particular group. Let us take the regulation of public utilities; one Governor's appointments always will be more or less hostile to public utilities and their interests, known to be, and another Governor will name to the commission citizens who are known to be in favor of and more or less under obligations to the public utilities, men whose philosophy is in sympathy with their extreme demands. This condition often runs through all our regulatory bodies so that our citizens at times get distrustful of regulatory bodies.

Mr. EMERY. Certainly.

The CHAIRMAN. Take the Federal Trade Commission; it is supposed to be a judicial body; if you put in all one kind of men who have a particular kind of political philosophy, you are going to bring about a condition where the public will soon lose confidence in their opinion and their judgment. It is a very serious problem.

You know, what I am describing led one of the most prominent Senators in the Senate a few years ago, who had long favored regulation of railroads and trade and utilities, to threaten the abolition of all regulatory bodies because he said that the officials had named to these boards persons who were out of sympathy with the law providing for regulation.

It is a difficult problem to know where to go and how to get a judicial body.

Mr. EMERY. Your own great State has pursued a course of marked soundness in that it appoints judges for life so thay may be relieved,

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so far as possible, of being in the position of those who must frequently return for elevation to office and satisfy public criticism of judicial decisions on which the public is probably not a very good judge. The argument that I am making particularly in this matter is to point out that with these difficulties facing you, how little support there is for the creation of a body with the enormous power that is here proposed, because this proposes not merely somebody to arbitrate a single dispute, which one might criticize because of its very nature it was going to favor one party rather than another in a pending dispute. Here is a permanent body that is to hold office for years.

The CHAIRMAN. From your view, there have appeared before the committee, as you probably know, persons favoring this bill who have suggested that the commission be comprised of three persons representing the public, and if any representatives of the employers or employees were to participate that they be associate members and have no voting power. You recall testimony to that effect?

Mr. EMERY. I did not happen to hear that. It is quite possible.

The CHAIRMAN. Yes; by persons favoring the bill.

Mr. EMERY. I am pointing out here just how an administrative body in the responsible position of administering Federal relief, with enormous funds at its disposal, operates in the great city of New York by providing in the following way:

Col. Walter A. DeLamater, acting administrator, Civil Works Administration for New York State, announced today (February 5) that in the future requisitions for skilled labor for C.W.A. projects would be made upon the recognized labor unions of the city, and that only in the event these unions are unable to supply the required number of qualified workers within 48 hours, would requisitions go to the State employment service.

I have before me, and I read from the circular of the city Civil Works Administration, February 10, 1934, and from a further statement made by them entitled "Federal Civil Works Administration of the city of New York, 111 Eighth Avenue, New York City, Instructions and Information for Union Locals in Connecting With Supplying Workers for the Federal Civil Works Administration." I will read this paragraph, which is the significant one——

The CHAIRMAN. I had supposed that the Civil Works Administration was a relief measure.

Mr. EMERY. I thought so also.

The CHAIRMAN. And I supposed that preference was to be given to the hungry and destitute who were unemployed.

Mr. EMERY. I want to read this significant sentence. I would like to put the circular in the record because it is a rather significant one, and may I have your permission to do so?

The CHAIRMAN. Yes.

Mr. EMERY. You can read the rest, but this is the statement to which I refer:

The Federal Civil Works Administration of New York City hereby notifies all unions who are supplying men that if the privilege of supplying men is in any way abused in the opinion of the administrator, this privilege may be and will be immediately withdrawn from the local union which abuses this privilege, and the men thereafter will be obtained from the Federal and State employment services.

The Federal and State employment services are the places where unemployed register, where thousands of people walking the streets of the great city seeking work undertake to relate themselves to their

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Government seeking work, and they are met with the declaration that a private organization in the city of New York will supply the skilled labor that may be required. I just wanted to point this out.

The CHAIRMAN. It is possible that applies only to public works.

Mr. EMERY. This is the C.W.A., and on the reading of this statement you can form your own conclusion.

(The circular referred to by Mr. Emery is as follows:)

FEDERAL CIVIL WORKS ADMINISTRATION OF THE CITY OF NEW YORK—INSTRUCTIONS AND INFORMATION FOR UNION LOCALS IN CONNECTION WITH SUPPLYING WORKERS FOR THE FEDERAL CIVIL WORKS ADMINISTRATION

Each local will appoint an "authorized representative" who will transact all business for the local with the Federal Civil Works Administration. This representative will obtain from the C.W.A. a supply of "referral cards" and will give the C.W.A. specimen of his signature. When the C.W.A. has need of workers it will mail to the authorized representative of the union local of that trade a requisition which will state the number of men and all other information necessary. The representative of the local will choose the men to fill this requisition and will give to each man a referral card properly made out. The worker will present the referral card to the C.W.A. office indicated on the referral card. Detailed instructions on how to make out the referral card are attached hereto.

In connection with the method of choosing which worker among the unemployed in the local shall be sent out in response to the C.W.A. requisition, there are several points that must be observed by the representatives of the union responsible for making this choice. There is attached hereto an extract of the C.W.A. rules and regulations entitled "Conditions of Employment." The provisions shown in this extract are part of the Federal law and must be followed by the labor unions in choosing their men. There is also attached hereto an explanation of exactly what the term "ex-service men" means, where it is referred to in the section entitled "Labor Preferences."

In addition to following the above mentioned regulations, it must be definitely understood by the union locals that the privilege of supplying men to the Civil Works Administration shall in no case be used to force the payment of dues by men who are delinquent in their dues, and that there shall be no discrimination of any kind with respect to the status of any one regarding dues. The Federal Civil Works Administration of New York City hereby notifies all unions who are supplying men that if the privilege of supplying men is in any way abused in the opinion of the Administrator, this privilege may be and will be immediately withdrawn from the local union which abuses this privilege, and the men thereafter will be obtained from the Federal and State employment services.

Care must be taken in assigning men to jobs upon receipt of requisitions that the men possess all the qualifications called for by the requisitions. The C.W.A. cannot place men to work on any job unless the men are fully qualified to do the work that will be expected of them.

In case any members of a union local believe that some individual is occupying a position for which he is not qualified, the following procedure has been set up to take care of this situation: Such complaint will be reported by the union member to the authorized representative of his local, who will in turn report it to the office of the organization with which his local is affiliated; the complaint will then be presented in writing to the C.W.A. A rerating board has been established by the local C.W.A. which will investigate every complaint of this character and will establish the fitness of any particular man or men for the positions which they hold. It must be clearly understood that no man or men on the jobs will be recognized by those in charge of the job as authorized to bring up this question of qualifications of individuals. Such questions must be handled through the authorized union representatives by written communication to the central office of the C.W.A. at 111 Eighth Avenue.

Mr. EMERY. I wanted to point this out because it illustrates the abuses likely to arise when commissions and bureaus are created and given arbitrary powers.

Under the P.W.A., a private contractor dealing with the union very probably continues to deal with the union. If he has an agreement to employ their members he continues to do so and he gets them

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from the usual sources. But, he is a private employer. In this instance it is the Government which is the employer, and the Government of the United States can no more arbitrarily discriminate between a man who is a member of a private organization and a man who is not, in giving public funds for the administration of relief, than it can deny that one is a citizen and declare that the other one is. It is a form of privilege, so indefensible, so inexcusable, so merciless in its operation that it seem impossible to believe that the administration of a public law could be conducted in such a manner.

I refer to this because it further illustrates the serious dangers involved in giving the great and permanent and continuous and arbitrary power to such bodies as are proposed to be created in this bill.

Now, Mr. Chairman, having concluded that aspect of the bill, let me hurry forward.

I have analyzed the bill, I have called your attention to its particular provisions, I have tried to take it apart, piece by piece, and point out, not only the effect of its particular provisions, but the effect of the whole when put together, what they produce.

I have called your attention, of course, to the chief argument that I have heard here by proponents, that there has been undue activity on the part of employers since the operation of the Recovery act in the formation of what are called company unions or what may be called work councils or employment representation plans or any method by which the employees of a plant enter into voluntary agreements with the employer.

It is charged these have been carried forward with undue haste. Well, of course, one who reads the public press observes that our labor-union friends have acted with considerable ingenuity and activity. They have every now and then created the impression that the Government of the United States was anxious to have organization effected and that they were the medium selected. I call your attention to a circular, Mr. Chairman, and this is only one of thousands. That is offered for the purpose of pointing out that the Government needs organization, as the Federation of Labor would have it. No one could object to their having every assistance of a private nature that they desire in the attempt to carry forward their organization, but surely they must not object to others who wish to have organizations somewhat different in character and equally voluntary.

That circular, let me say, reads: "The United States Government has said labor must organize", and then proceeds to point out just how it must organize. This is the Kentucky State Federation of Labor that points out they are the chosen agents.

(The circular referred to by the witness is attached as an exhibit.)

Mr. EMERY. There is one thing you will observe, that all these employee representation plans never have. It has never been called to your attention that they have undertaken to collect the dues of all the workers and transmit them to any private purse. Now, I want to call your attention to the bill again, because I want to summarize very briefly legal objections that go to the very heart of the question, Congressional power.

Senator DAVIS. Mr. Emery, it is not compulsory upon the part of any employer to collect dues of the union members, is it?

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Mr. EMERY. Sir?

Senator DAVIS. It is not compulsory upon the part of any employer to collect the dues of members and turn them over to the union?

Mr. EMERY. No; I am talking about the well-recognized practice called the check-off.

The CHAIRMAN. I thought that was true at one time in the coal industry.

Senator DAVIS. This was understood at one time—that is mostly in the coal industry, between the coal operator and coal miner.

Mr. EMERY. There was much evidence submitted, sir, that in previous time in previous disputes to show that the check-off was not only collected from those who agreed to it, but it was required as a condition that it be collected from all in the employ of the company.

Senator DAVIS. That was an agreement entered into between the operators and the workers themselves; the Government did not interfere in any way or insist upon it?

Mr. EMERY. Yes; the Government has been a party to a very recent agreement in which the check-off was established in the captive mines in your State.

Senator DAVIS. Yes; but that was an agreement reached first between the employer and the worker.

Mr. EMERY. Yes; and that was an agreement in which the parties themselves agreed that it could be deducted from their wages, and to that no one can have any objection, but the important thing about it, I want to call your attention to, Senator——

Senator DAVIS. Just a minute. The check-off has been in many places for the rent of the house, and even has gone as far as church dues, but that is an understanding between the worker and employer.

Mr. EMERY. I am speaking of the check-off as I technically understand it, that is the collection by the employer of the dues of the organization. I do not know what they use it for.

Senator DAVIS. As I understand it, it is mutually entered into between the worker and employer and the employer is not compelled to do it.

Mr. EMERY. Let me call your attention, Senator, to this fact, put it any way you like and let it be absolutely legal, let it be an agreement between employer and employee that a certain sum shall be deducted from his wages for a certain purpose, now, any attempt on the part of the employer to influence the employee and discuss with him a change of policy with respect to that is an "unfair practice" under this bill.

I call it to your attention because I want to illustrate the fact that an unfair labor practice, which is a criminal offense in the House bill and an illegal thing here, is any attempt on the part of the employer to discuss, to change or influence the policy of a labor organization. For instance, here is an employer who is agreeing with the union that there shall be no apprentices or that there shall be only one apprentice to 50 men. Well, he thinks that is pretty restrictive and he undertakes to "influence" the union into changing its policy. Ah, along comes the Federal Labor Board and says, "You cannot do that, sir; that is an unfair labor practice to undertake to influence or change the policy of the union in that way."

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Senator DAVIS. By the best stretch of my imagination I could not conceive it.

Mr. EMERY. You cannot conceive it?

Senator DAVIS. No.

Mr. EMERY. Then read the bill and your imagination will be aided.

Senator DAVIS. I have read it a dozen times and I could not see that in it.

Mr. EMERY. I will just read it to you again if I may, section 5:

It shall be an unfair labor practice for an employer, or anyone acting in his interest, directly or indirectly * * *

(3) To initiate, participate in, supervise, or influence the formation, constitution, bylaws, other governing rules, operations, policies, or elections of any labor organization.

Here is a labor organization like the one I called your attention to in the testimony from the Lockwood committee yesterday that closed its books to new members. Suppose the employers say, "I don't want to make that agreement with you; I think you ought to change that restriction." If the employer undertakes to do that, what is he undertaking to do by section 5, subdivision (3)? He is undertaking to influence the bylaws or other governing rules of a labor organization; is he not? And if he does undertake to influence it he has become at once an offender against the law exactly as that section is written. There is no other construction possible.

Here is another interesting case, suggested by Mr. Untermeyer, I am talking about practical cases that have occurred, and not imaginary cases. On page 6843 of that record Mr. Untermeyer said:

Did you ever hear of labor unions ordering employers, summoning them before their executive boards and committees?

Answer. Yes, sir.

Question. And imposing fines upon them and making the payment of those fines a condition upon which the men would continue to work?

Answer. Yes, sir.

Question. You have heard of that?

And Mr. Gompers says, "Yes, sir."

Question. We are talking now—

He says again in another question—

not about discussing with them; I am talking about summoning them before executive boards of the union and compelling them to pay fines as big as $1,000?"

Mr. Gompers answered—

For violation of the terms of a contract?

Question. No; not for violating a contract, but for alleged infringement of union regulations.

Then he said again, referring to the Jewish Bakers Union in New York, page 7122 of the testimony:

Question. Well, what do you think of a regulation that allows the following form of arbitration under the agreement, and none other, that if a business agent of the union is unable to settle a dispute, the employer binds himself to appear before the executive council of the local union and submit to its decision?

Supposing that to be as Mr. Untermeyer says, the rule of a trade union, and the employer thinks it is unfair and undertakes to change it, and says, "You ought to strike out that provision"; well, section 5, subdivision (3) of this act says if he undertakes to influence the

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governing rules or policies of that union he immediately commits an unfair labor practice.

I am not talking now about employee representation plans; I am talking about an employers agreement with the union which offers him that kind of an agreement. In this particular instance these rules if this bill had been the law would have immediately defined an offense to influence that bylaw, no matter how bad it was.

I am sure, Senator, when one thinks about that he will say to himself, "It would be an absurd law that undertakes to say that an employer or employee, when one offers an absurd bargain to another—that would be just as bad if the employer did it, of course—if one said to the other, I cannot undertake to influence your conduct in that regard to changing that bylaw, that regulation, that rule of your policy, because if I do so I violate the law of the land.

Now, let me hurry to a conclusion, Mr. Chairman, because you have given me great indulgence and I know you desire——

The CHAIRMAN. We would appreciate it because there are so many other witnesses.

Mr. EMERY. I have said this bill grants a power greater in nature and extent than Congress has been willing to give any court in the United States. In the face of 50 years of continuous decision by the Supreme Court of the United States it distorts the Congressional power to regulate intercourse between States to an indefensible authority to seize from them and regulate relations exclusively local on farm, factory, and mine. To this end it establishes what, in form and operating effect, would be a gigantic Federal police court.

I want to recapitulate the leading cases very quickly. They are so old, they are so familiar, that I need hardly explain them to you but I will give you the citations so you will have them.

Let me emphasize a principle, and I wish my distinguished friend, the Senator from New York, were here because I know he would enjoy hearing the very interesting remarks of Mr. Justice Holmes made in a Pennsylvania case which he decided not long before he left the bench. The Senator exhibited some impatience to constitutional objection yesterday. Well, Mr. Justice Holmes, out of the wisdom of his many years, said in this case of the *Pennsylvania Coal Co.* v. *Mahan* (260 U. S. 416):

> We are in danger of forgetting that a strong desire to improve the public conditions is not enough to warrant achieving that desire by a shorter cut than the constitutional way of paying for the change.

That must be my justification for remarks about the proposal of commercial power here urged.

Now, it has been an accepted proposition that production and commerce are two different things. The one means the making and fabrication of goods and all the operations incident to it, and the other means intercourse between the States. That intercourse within the plenary and exclusive control of Congress. Production and all the incidents in relation to it are completely and exclusively within the control of the respective States.

One of the first cases to clarify that distinction, about 60 years ago, was the case of *Coe* v. *Errol* (116 U. S. 517). There a lumberman in New Hampshire, having prepared his logs for shipment, the log raft was tied up at Errol, N. H., and was there taxed by the town authorities. The tax was opposed on the ground that it could not

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be taxed by the State because that would be a burden on interstate commerce since the logs were intended to be taken down through the rivers to another State and then put into interstate commerce. In other words, that the loggers' intention to put them into interstate commerce made it impossible for the State to tax them.

"Oh, no", said the Supreme Court of the United States, "The intention of a man to put something into interstate commerce after he has manufactured it does not in the least change the exclusive power of the State over it while it is in production because commerce does not begin until manufacture has been ended."

Then in 128 U.S., at page 20, we had an interesting case that presents this distinction so clearly that I am sure the layman as well as a lawyer could easily see it.

The State of Kansas had provided for complete prohibition forbidding the manufacture of any kind of an intoxicating beverage. A brewer proceeded to make beer and was indicted for doing so. The case was defended on the ground that the brewery did not make the beer for sale in Kansas. It was making the beer for sale in another State, and since it was intended for interstate commerce, of course, the State did not have any authority to regulate the manufacture of the beer or any of the incidents of manufacture because that was the intent of the producer.

Well, the court put the difference between State and national control so clearly in denying that contention and declaring all the incidents of manufacture were within the control of the State that I venture to read just a part of the decision to you because it makes clear the principle of all these cases continuously accepted and applied up to this very last year by a unanimous court. In this case the court said:

> No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufactures and commerce. Manufacture is transformation, the fashioning of raw materials into a change of form for use. The functions of commerce are different, the buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation.

Now, says the court:

> If it be held that the term—

That is, commerce—

> includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested to the exclusion of the States with the power to regulate, not only manufacture but also agriculture, horticulture, stock raising, domestic fisheries, mining, in short, every branch of human endeavor; for is there one of them that does not contemplate more or less clearly an interstate or a foreign market? Does not the wheat grower of the Northwest and the cotton planter of the South plant and cultivate and harvest his crop with an eye on the prices at Liverpool, New York, and Chicago? The power being vested in Congress and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all these delicate, multiform, and vital interests, interests which in their nature are and must be local in all the detaiis of their successful management.

That was said by the Supreme Court nearly 60 years ago and that has been uniformly followed right straight down to the present. In the *Employers' Liability case* (207 U. S.), where Congress undertook

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to change the rule of employers' liability for carriers, the first act was invalidated and the second was sustained. In response to the assertion of the Government in the first case that because a manufacturer engaged in interstate commerce, therefore his local relations became subject to the power of Congress, the court rejected it in the most emphatic way and said that the contention of the Government rested "upon the conception that the Constitution destroyed that freedom of commerce which was its purpose to maintain except upon such conditions as Congress might prescribe even though the conditions were otherwise beyond the power of Congress." That is precisely what this bill proposes to do.

Again, just to show you how steadily the courts have the distinction between commerce and production, they have said that coal mining is not commerce. That was in the *Coronado Coal case*, reported at 257 U.S. and 267 U.S., that coal mining is not commerce and is not subject to the regulation of Congress; manufacturing is not commerce, production is not commerce, building is not commerce; all these acts of production never commerce. *Industrial Assoc.* v. *U.S.* 268 U.S. 64; *Oliver Iron Mining Co.* v. *Lord*, 262 U.S. 172; *Hope Natural Gas Co.* v.. *Hall*, 274 U.S. 284; *Champlain Refining Co.* v. *Cor. Comm.*, 286 U.S. 238.

Now, they said in the case of the *Yurkonis* v. *Delaware, Lackawanna & Western* (238 U.S. 439)—in involving the injury of a man engaged in loading a coal car which was intended for interstate commerce. In that case the court said he was not engaged in interstate commerce, he was working as a miner as a part of his work loading a car, and although the car intended for interstate commerce, Congress has no control over mining because that is not within their power but wholly within the power and authority of the State

Then came the most interesting cases of all, and these are cases of the most vital importance because these are the cases which undertake to point out——

The CHAIRMAN. Have you a recent case upholding that doctrine?

Mr. EMERY. Yes, sir; I have. The last case which I have is the case of the *Utah Power & Light Company* v. *Pfost* (286 U.S. 165). That was a case in which the State of Idaho undertook to levy a tax upon electric current and it was objected to on the ground that the current was carried over into the next State and that putting a tax on that current was putting a tax on interstate commerce.

The Supreme Court in a unanimous opinion held that what the State of Idaho undertook to tax was the transformation of mechanical energy into electrical energy, and when that product passed through the transformer and went as electrical current, transformed from mechanical power, manufactured into another stage like any other commodity in commerce, it became subject, of course, to the power of Congress and the State could not burden it, but the State retained exclusive right to tax it in the act of production.

The court said in this case, referring to the *Utah Power & Light Company* v. *Pfost* (286 U.S. 165, 181):

> **Commerce does not begin until manufacturing is finished, and hence the commerce clause of the Constitution does not prevent the State from exercising exclusive control over the manufacture.**

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That is the last word of the Supreme Court of the United States a little over a year ago in 286 U.S. 165.

Now, look at the particular measure that excites your interest and attention right now. The theory of this bill on which the Senator attempts to hang the power of Congress, is stated in section 205 (a) that reads:

> The board is empowered to prevent any person from engaging in any unfair labor practice that burdens or affects commerce or obstructs the free flow of commerce, or has led or tends to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

On that hypothesis this bill predicates the application of the commerce power. Well, now, just notice this: The Supreme Court of the United States has had occasion to examine the application of the commerce power to local labor disputes several times, first in the case of the *Coronado Mining Company* v. *The United Mine Workers* (in 257 U.S.). The question, among other things, before the court was whether or not a local strike prevented the production of coal, operated as a restraint upon commerce, and was, therefore, in violation of the antitrust act. In other words, was this restraint of the production of coal a restraint of commerce?

Mr. Chief Justice Taft, in writing the opinion, said that it was not. He said more than that in the next case and to this I invite the very special attention of the committee. *United Leather Workers* v. *Herkert*, 265 U.S. 457.

The court called attention to the opinion of one of the dissenting judges, since this was an appeal which reversed the decision of the court of appeals. The Chief Justice quoted with approval the language of the dissenting judge below, who said that if it were held that a local strike which restricted production, and to that extent indirectly affected the flow of commerce or obstructed commerce, violated the Sherman Act, then every local strike that successfully restricts production would become a restraint of trade under the Antitrust Act, and all the strikers would constitute an unlawful combination. Chief Justice Taft concluded, "We cannot think Congress intended any such result in the enactment of the Antitrust Act, or that the decisions of this court warrant such construction."

The reasoning upon which this bill proceeds, under the decision of the Supreme Court of the United States and the language of the Chief Justice, results in this: If you undertake to say that a strike, or other labor dispute, the object and purpose of which is not directly, primarily, and substantially affecting commerce, could be brought within commerce power, then you have made every local strike subject to restraint and prosecution as a violation of the Antitrust Act. The court goes into that at great length in the *United Leather Workers* v. *Herkert* (265 U.S. 457).

That presented a local strike of leather workers, a large number of them, in the city of St. Louis, and they were undertaking to prevent the manufacture of leather goods by their employer in order to enforce their demands. They were apparently conducting a very successful strike which the employer undertook to enjoin because of the effect of the strike. In refusing the injunction and in stating that the Antitrust Act did not apply to it, Mr. Justice Taft emphasized this fact again, that a local strike, confined to an attempt to affect manufac-

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ture, was not a strike that was within the control of the Antitrust Act as a restraint of commerce, and when they——

The CHAIRMAN. Mr. Emery, could you not amplify your legal argument by placing some of your citations in the record?

Mr. EMERY. Yes, sir. I can be through within 5 minutes, I think, sir.

The CHAIRMAN. Will it be just 5?

Mr. EMERY. Yes, sir; if you do not interrupt me.

The CHAIRMAN. I will call time on you at the end of 5 minutes.

Mr. EMERY. The case here is that of the *United Leather Workers* v. *Herkert* (265 U. S.), and with the permission of the committee, I will put the exact citation in the record:

> None of these cases, although they all illustrate the practical conception of interstate commerce as a flowing stream from one State to another formed by a regular course of business, can properly be said to support the argument that mere intention cutting down of manufacture or production is a direct restraint of commerce.

Now, Mr. Chairman, I will conclude very rapidly.

Our conclusion, then, is that in the light of the argument we have endeavored to present to you the bill is invalid in law and unsound in policy. By its structure, piece by piece, it is shaped into a design which, by the author's own statements, by his rulings as a member of the Labor Board, by its unmistakable terms, is plainly intended to execute the declaration of the president of the American Federation of Labor, "There is no room in the United States for any other labor movement."

The issue it presents is plain. It is no mere dispute over policy between employers and labor unions. It is a deliberate step toward a Nation unionized by the act of Government. It would block the pathways of opportunity to all but members of a privileged organization. It would ultimately result in permitting the transportation and marketing of goods produced by unions only. It would destroy the elementary rights to remain unorganized, to select individual or collective bargaining, and to determine its form. If one is not equal in bargaining with many, many are not equal in bargaining power with one. One among 10,000 employees dealing individually with a corporation is at the same disadvantage, it is true, as the employer of one or more persons dealing with the power of a million men. Each deserves the protection of the law.

This bill multiplies the tremendous power for private and public injury of a vast combination without any corresponding legal responsibility. It is to be vested by law with the power of economic life and death over the worker who does not accept its dictation or rejects its leadership. Its enactment would mean that the public could be continually subjected to the interruption of production and distribution through a private association, enforcing its demands by the threatened paralysis of farm, factory, and mine.

This bill makes Government its recruiting sergeant. Its philosophy, realized in actuality and attaining the announced goal of its creed, means that the public could obtain its food, its fuel, its clothes, its shelter, and all its daily needs, conveniences and requirements, only under conditions fixed by a self-governing monopoly protected by an administrative body against interference. Every other form of organization and collective bargaining is outlawed and a single

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private organization is lifted to exclusive control of employment, while relieved of legal responsibility for the abuse of its power.

The CHAIRMAN. Thank you, Mr. Emery. May I ask you just one question?

Mr. EMERY. Yes, sir.

The CHAIRMAN. Do the organizations which you represent believe in the principle of section 7 (a) of the National Recovery Act?

Mr. EMERY. Well, now, if I understand the principle, they do.

The CHAIRMAN. They do?

Mr. EMERY. Yes.

The CHAIRMAN. Would you modify or change that section or would you let it stand as it is and rely upon the criminal penalty that you referred to yesterday to be used to enforce it?

Mr. EMERY. I think the interpretation of the act by its administrator and by the President has been very fair, and I think the interpretation there presented would be generally accepted. The exception taken to it in the past is the use of the word "company union", which is one of those weasel words, the meaning of which varies greatly with the one who uses it. To one it means any organization which is not a labor union but represents an agreement between a company and its employees; to others it means an organization organized by the company, dominated by the company, carried on by the company under the pretense that it represents the will of the workers where, in fact, it does not.

I have no knowledge of such an organization and I know of no one in our group who has.

The CHAIRMAN. I have no more questions. Has any member of the committee any questions?

Senator WAGNER. I wanted to ask you, Mr. Emery, you read the last Executive order which the President issued in which he directed the Labor Board to hold elections of workers to elect representatives of their own choosing whenever a substantial number in a particular company desired it, and that those representatives were then to represent all those who participated in the election or were eligible to participate? Now, is that contrary to the philosophy of this legislation?

Mr. EMERY. You are speaking of the order of February 1, are you not?

Senator WAGNER. I do not remember the date, but the order provides for the holding of elections.

Mr. EMERY. That is the order of February 1; yes, sir.

Senator WAGNER. Are you in accord with that?

Mr. EMERY. I am in accord with that order as it has been interpreted by the Administrator and his general counsel but I am not in accord with the order as it has been interpreted by your Board.

Senator WAGNER. Read the language; we can all make interpretations.

Mr. EMERY. Sure.

Senator WAGNER. But the language of it is very clear, is it not?

Mr. EMERY. The language is very clear. It is so clear that the Labor Board has one interpretation and the Administrator charged with the responsibility of the act has another.

Senator WAGNER. Read the language. Does it not say——

Mr. EMERY. I accept the interpretation of the general counsel and his Administrator who is charged with the administration of the act.

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Senator WAGNER. Do you mind reading the language of it; just what the language of the order is?

Mr. EMERY. I will, sir. It is a very long order.

Senator WAGNER. I mean that portion of it which deals with the election and what the representatives are then authorized to do.

Mr. EMERY (reading):

1. Whenever the National Labor Board shall determine, in such manner as it sees fit, that a substantial number (as defined in the discretion of the Board)——

I am speaking of the order of February 1.

Senator WAGNER. Yes.

Mr. EMERY (reading):

1. Whenever the National Labor Board shall determine, in such manner as it sees fit, that a substantial number (as defined in the discretion of the Board) of the employees, or any specific group of employees, of any plant or enterprise or industrial unit of any employer subject to such a code or agreement, have requested the Board to conduct an election to enable them to choose representatives for the purpose of collective bargaining or other mutual aid or protection in the exercise of the rights assured to them in said section 7 (a), the Board shall make the arrangements for and supervise the conduct of an election, under the exclusive control of the Board and under such rules and regulations as the Board shall prescribe. Thereafter the Board shall publish promptly the names of those representatives who are selected by the vote of at least a majority of the employees voting, and have been thereby designated to represent all the employees eligible to participate in such an election for the purpose of collective bargaining or other mutual aid or protection in their relations with their employer.

That is it, sir. Now, I hold before me here the statement of General Johnson and Donald Richberg, his general counsel, under date of February 4, interpreting it——

The CHAIRMAN. Will you insert that in the record?

Mr. EMERY. I will. We accept that interpretation.

(The statement referred to by Mr. Emery is as follows:)

NATIONAL RECOVERY ADMINISTRATION

Release No. 3125

FEBRUARY 4, 1934.

National Recovery Administrator Hugh S. Johnson and Donald R. Richberg, the Administration's general counsel, today issued the following joint statement:

"Because of an erroneous press interpretation issued yesterday of the Executive order of the President which empowered the National Labor Board to supervise the conduct of elections to determine employee representation in certain cases, it is desirable to explain what is and what is not covered by the Executive order

"1. The Executive order provides a method whereby any specific group of employees or all the employees of a plant or of one employer may select, by a majority vote, representatives clearly empowered to act for the majority in their relations with their employer.

"2. This selection of majority representatives does not restrict or qualify in any way the right of minority groups of employees or of individual employees to deal with their employer.

"3. Section 7 (a) affirms the right of employees to organize and bargain collectively through representatives of their own choosing; and such concerted activities can be lawfully carried on by either majority or minority groups, organizing and selecting such representatives in such manner as they see fit. Also, in affirming this right of collective action the law lays no limitation upon individual action.

"4. The joint statement issued by the Administrator and the General Counsel on August 24, 1933, concerning section 7 (a) provided an interpretation of the section, which has not been changed and is not modified by the Executive order.

"5. The purpose of the Executive order is to provide a definite workable method for the selection by the majority of any group of employees of their representatives who will thereupon be entitled to recognition as the representatives of the will of the majority of the employees eligible to join in that selection.

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"6. As a practical proposition the National Labor Board would find it impossible to deal with every controversy that might arise between rival groups of employees, each seeking to represent a fraction of employee opinion, or to conduct thousands of elections so that every little group of employees could select representatives to represent every fraction of employee opinion. Nor could any employer maintain satisfactory relations with his employees through unlimited negotiations with an indefinite number of employee representatives expressing every possible variety of opinion. The most important question to be solved in carrying out the purposes of section 7 (a) is to determine who are the representatives of the majority of the employees affected. It is for the purpose of solving that problem that the Executive order was issued, which in no way excludes the exercise of right by minorities or individuals.

"7. As has been pointed out frequently the right of collective bargaining is not the right to obtain a specific contract, because a contract must be the result of an agreement, and neither employees nor employers can be compelled to enter into a specific contract. But it is to be assumed that if both employer and employees are assured that the representatives of the employees have been selected freely and without coercion to represent the desires of a majority of those affected, then any contract resulting from such collective bargaining will stabilize employment conditions and produce the most satisfactory relations possible between employer and employees.

"8. Insofar as the statement in the press release might be read as saying that employees' representatives in all company unions are chosen by employers it was not so intended as there is no evidence that such is the case. Nor is it true that employees if permitted to act in their own free choice, may not select a company union (meaning local plant union). The principal purpose of the order was to insure that the choice be free—not to influence the choice between any particular form of employee organization.

"HUGH S. JOHNSON,
"*Administrator for National Recovery.*
"DONALD R. RICHBERG,
"*General Counsel.*"

The CHAIRMAN. We thank you, Mr. Emery.

(The citations referred to by Mr. Emery in his statement are as follows:)

SENATE BILL 2926

According to its declared purpose the Wagner Bill (S. 2926) is designed to equalize the bargaining power of employers and employees, and to encourage the amicable settlement of labor disputes. The constitutional theory relied upon to promote these ends if the power of Congress to regulate interstate commerce. We submit that the power to regulate commerce granted to Congress by article I, section 8, of the Constitution will not sustain this proposed legislation.

ARGUMENT

The power to regulate commerce among the several States gives Congress no power to regulate business essentially local in character. Interstate commerce does not include transactions wholly internal within a State. Consequently, the production of commodities, regardless of their ultimate disposition, has uniformly been held not a part of interstate commerce. According to a recent utterance of the Supreme Court, in *Utah Power & Light Co.* v. *Pfost* (286 U.S. 165, 181):

"Commerce does not begin until manufacturing is finished, and hence the commerce clause of the Constitution does not prevent the State from exercising exclusive control over the manufacture."

See also *Heisler* v. *Thomas Collieries Co.* (260 U.S. 245); *Coe* v. *Errol* (116 U.S. 517); *United Mine Workers* v. *Coronado Coal Co.* (259 U.S. 344).

Contracts of employment and the relationship of master and servant incident to the manufacturing process are not part of interstate commerce.

Delaware, Lackawanna & Western Ry. Co. v. *Yurkonis* (238 U.S. 439); *Hammer* v. *Dagenhart* (247 U.S. 251).

Nor does the fact that labor conflicts interfere with production, and incidentally interfere with the movement of goods in interstate commerce, bring manufacturing within the scope of the Federal power.

United Mine Workers v. *Coronado Coal Co.* (259 U.S. 344); *United Leather Workers* v. *Herkert* (265 U.S. 457).

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Unless an effective conspiracy exists for the primary purpose of restraining trade, the burden on interstate commerce resulting from disputes over conditions of employment is indirect.

Coronado Coal Co. v. *United Mine Workers* (268 U.S. 295); *United Leather Workers* v. *Herkert, supra.*

The basis for excluding from the operation of the antitrust acts such incidental burdens on interstate commerce is clearly stated by the Supreme Court in 268 U.S. 64, at page 82, *Industrial Association* v. *United States:*

"The alleged conspiracy and the facts here complained of, spent their intended and direct force upon a local situation—for building is as essentially local as mining, manufacturing, or growing crops—and if, by a resulting diminution of the commercial demand, interstate trade was curtailed either generally or in specific instances, that was a fortuitous consequence so remote and indirect as plainly to cause it to fall outside the reach of the Sherman Act."

The conclusion is inevitable, therefore, that bona-fide labor disputes do not burden interstate commerce to an extent justifying their regulation by Congress.

The proposed legislation, however, purports to view commerce as one current in which conditions affecting manufacture are interrelated. This concept of interstate commerce has permitted the extension of Federal power over intrastate railroads, stockyards, and commodity exchanges.

Houston, E. & W. T. Ry. Co. v. *U.S.* (234 U.S. 342); *Stafford* v. *Wallace* (258 U.S. 495); *Chicago Board of Trade* v. *Olsen* (262 U.S. 1).

This concept of commerce on a national scale, however, is limited as pointed out by the Court in *United Leather Workers* v. *Herkert*, supra, after reviewing the cases above cited:

"None of these cases, although they all illustrate the practical conception of interstate commerce as a flowing stream from one State to another formed by a regular course of business, can properly be said to support the argument that mere intentional cutting down of manufacture or production is a direct restraint of commerce."

Indeed, even in the most nationalized of our industries, railroads, the power of Congress has been restricted with respect to employment contracts.

Adair v. *U.S.* (208 U.S. 161).

If the power of Congress in this broad field is limited by the Constitution, Congress certainly did not derive from that same grant an even broader control over industries primarily local. It must be concluded, therefore, that Congress has no constitutional authority to empower a national labor board "to prevent any person from engaging in any unfair labor practice that burdens or affects commerce or obstructs the free flow of commerce, or has led or tends to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce."

II

Not only is this proposed legislation beyond the scope of the commerce power, it also impinges on fundamental rights guaranteed by the fifth amendment.

1. The prohibitions contained in section 5 of the bill, and the abrogations of contracts resulting from section 304 (b), unduly restrict that liberty of contract protected by the fifth amendment.

Adair v. *U.S., supra*; *Adkins* v. *Childrens Hospital* (245 U.S. 229).

Although liberty of contract is not inviolate, nevertheless its protection is the rule. This liberty can be restrained only in the exercise of a paramount police power acting in the public interest.

Frisbie v. *U.S.* (157 U.S. 160); *Second Employers' Liability cases* (223 U.S. 1).

In those cases the power of Congress could not reasonably be disputed, but the subject-matter sought to be regulated in the Wagner bill is not within the power conferred upon Congress. It follows that, since there is no power to regulate the contract of employment by imposing restrictions upon its exercise, there is no power to abrogate contracts already made.

2. The settlement of disputes between employers and employees is necessarily a judicial determination. By withdrawing such controversies from the courts and submitting the determination of private rights to the National Labor Board, the Wagner bill deprives the parties concerned of that due process of law guaranteed by the fifth amendment.

(a) Jurisdiction, the right to declare the law, is the foundation of due process. In the words of Chief Justice Marshall, in *Rose* v. *Himely* (4 Cranch 241):

"It is not easy to conceive a power to execute a municipal law, or to enforce obedience to that law without the circle in which that law operates."

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These words are peculiarly in point when, as in the Wagner bill, Congress seeks to extend its legislative authority beyond the limits of its power.

(b) That the power conferred upon the National Labor Board is "judicial", cannot be denied. The determination of rights and duties of employers and employees involves the adjudication of private rights, and in *Murray* v. *Hoboken Land & Improvement Co.* (18 Howard, 272, 284), the Court said, speaking through Mr. Justice Curtis:

"* * * we think it proper to state that we do not consider Congress can either withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or in admiralty; nor on the other hand, can it bring under the judicial power a matter, which, from its nature, is not a subject for judicial determination."

Even assuming, therefore, that the power of Congress over interstate commerce extends to a regulation of local-employment contracts, the Wagner bill comes in direct conflict with the fifth amendment. This conflict is treated at considerable length in the case of *Crowell* v. *Benson* (285 U.S. 22, 56, 57):

"In relation to these basic facts, the question is not the ordinary one as to the propriety of provision for administrative determinations. Nor have we simply the question of due process in relation to notice and hearing. It is rather a question of the appropriate maintenance of the Federal judicial power in requiring the observance of constitutional restrictions. It is the question whether the Congress may substitute for constitutional courts, in which the judicial power of the United States is vested, and administrative agency—in this instance a single deputy commissioner—for the final determination of the existence of the facts upon which the enforcement of the constitutional rights of the citizen depend. The recognition of the utility and convenience of administrative agencies for the investigation and finding of facts within their proper province, and the support of their authorized action, does not require the conclusion that there is no limitation of their use, and that the Congress could completely oust the courts of all determinations of fact by vesting the authority to make them with finality in its own instrumentalities or in the executive department. That would be to sap the judicial power as it exists under the Federal Constitution, and to establish a government of a bureaucratic character alien to our system, wherever fundamental rights depend, as not infrequently they do depend, upon the facts, and finality as to facts becomes in effect finality in law."

In the case of *Crowell* v. *Benson*, supra, the statute was sustained only because the Court construed it to permit a trial de novo on the facts. The Wagner bill, however, will not admit of such construction. By limiting review in the courts to the record before the Board, and by giving finality to findings of fact supported by any evidence, the bill strikes at the very substance of due process of law.

(c) The legislation is equally defective in the formal procedure provided before the Board. A Board member may act as prosecutor and judge in the same controversy. The Board is not bound by rules of evidence prevailing in judicial proceedings. It is not required to give reasonable notice of its hearings. The Board's complaint may be changed at any time without affording the employer an opportunity to prepare a defense. Finally, the hearing itself is not in accordance with the requirements of due process. Section 205 (c) permits the Board to issue an order based solely on the examiner's report. The bill gives no right to be heard by the Board itself. A procedure which deprives an employer of liberty and property without notice of the charge or claim against him, and without granting an opportunity to be heard, by those who decide his rights, is clearly opposed to fundamental principles of due process of law.

Louisville & Nashville Ry. v. *Schmidt* (177 U.S. 230); *Londoner* v. *Denver*, 210 U.S. 373.

3. Section 5 of the bill, by exacting obedience to rules which are vague and indefinite, violates an essential requirement of the fifth amendment.

U.S. v. *Cohen Grocery Co.* (255 U.S. 81); *Connally* v. *General Construction Co.* (269 U.S. 385); *U.S.* v. *Penna. Ry. Co.* (242 U.S. 208).

An ascertainable standard of conduct to which it is possible to conform is an essential element in due process. In *United States* v. *Cohen Grocery Co.*, supra, it was held that the Food Control Act of 1917, which provided that it should be unlawful "to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries", did not establish any ascertainable standard of guilt nor inform accused persons of the nature and cause of the accusation against them. In substance it "penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of the

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court and jury." Such a statute is repugnant to the due process clause of the Constitution.

Nor is this requirement confined to criminal statutes.

Cline v. *Frink Dairy Co.* (274 U.S. 445); *A. B. Small Co.* v. *Am. Sug. Ref. Co.* (267 U.S. 233, 239).

In the latter case, after reviewing the cases involving the Lever Act, the Court said:

"It was not the criminal penalty that was held invalid, but the exaction of obediance to a rule or standard which was so vague and indefinite as really to be no rule at all."

Section 5 of this bill is particularly obnoxious in this respect. The affirmative duties imposed on employers, as well as the restrictions on their relations with employees, are couched in general language too broad to guide the business man in his daily activities. The phrase beginning "every reasonable effort" in paragraph 2, and "any discriminatory practice" in paragraph 6, when construed with the proviso directly following, are peculiarly objectionable. In effect an employer is compelled to deal with employees and labor problems at his peril. Such hardship is a fundamental evil sought to be condemned by the fifth amendment.

4. The proposed legislation purports to eliminate alleged burdens on interstate commerce created by industrial conflict. From a most casual reading of the bill, however, it is apparent that its primary purpose is to encourage the unionization of labor. It is not designed to foster industrial peace. By excluding strike breakers from its definition of the term "employee", it discriminates against a large class of labor. By failing to impose any restrictions on labor organizations in their negotiations and dealings with employers, it reaches only one element in the cause of industrial strife. Laws which operate arbitrarily or unequally are inconsistent with due process. In *Giozza* v. *Tiernan* (1893) (148 U.S. 657), the Court said:

"Due process of law within the meaning of the amendment is secured if the laws operate on all alike and do not subject the individual to an arbitrary exercise of the powers of government."

It is class legislation in its most pernicious form and bears not even a remote connection with promoting the uninterrupted flow of interstate commerce.

The words of Chief Justice Marshall, in *McCullough* v. *Maryland* (4 Wheat. 316, 424), and reiterated by the Court in *Bailey* v. *Drexel Furniture Co.* (259 U.S. 20), are strikingly in point:

"Should Congress, in the execution of its powers, adopt measures which are prohibited by the Constitution, or should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not intrusted to the Government, it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land."

See also *Hill* v. *Wallace* (259 U.S. 44); *Yick Wo* v. *Hopkins* (118 U.S. 373); *Peoples Petroleum Producers* v. *Smith* (1 Fed. Supp. 363).

The conclusion is inevitable, therefore, that this proposed legislation is arbitrarily designed to regulate employment conditions over which Congress has no control. It embodies a regulation of interstate commerce only in name.

The CHAIRMAN. Mr. Dennison, will you come forward, please? We were unable to hear Mr. Dennison last week. Mr. Dennison has some suggested changes to recommend to the committee in the pending bill.

STATEMENT OF HENRY S. DENNISON

The CHAIRMAN. Will you give us your full name?

Mr. DENNISON. Henry S. Dennison; Dennison Manufacturing Co., Framingham, Mass.

The CHAIRMAN. Are you now in Washington engaged in some public work?

Mr. DENNISON. Most of the time.

The CHAIRMAN. Just what is your position here?

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Mr. DENNISON. I am on the Industrial Advisory Board of the N.R.A., and a member of the National Labor Board, a very new member of the National Labor Board.

The CHAIRMAN. In what capacity on the National Labor Board, as representative of labor or industry?

Mr. DENNISON. Industry.

The CHAIRMAN. Your manufacturing plant, the Dennison Manufacturing Co., is located in Framingham, Mass.?

Mr. DENNISON. Yes, sir.

The CHAIRMAN. What do you manufacture?

Mr. DENNISON. Stationers supplies, printed paper goods, and so forth.

The CHAIRMAN. How many employees have you?

Mr. DENNISON. About 2,500.

The CHAIRMAN. You may proceed.

Mr. DENNISON. If I may, I would also like to speak for Mr. Leeds, of Leeds & Northrup, who was also to appear, and it will save your time, because what I have to say is practically his own views.

Senator WAGNER. He is also an employer of labor?

Mr. DENNISON. Yes, sir.

Senator DAVIS. Is Mr. Leeds a member of the National Labor Board?

Mr. DENNISON. He is not; he is a member of the Labor Advisory Board.

I shall confine myself to section 5, paragraphs 3 and 4. I suggest eliminating these paragraphs and depending on paragraph 1 and the progressive interpretations of subversive and nonsubversive practices which will come from the Board's decisions, because I am convinced, and for many years have believed, that employee representation is an essential supplementary and a necessary competing type of unionism, if the final structure of organization of employees is to reach workable form.

I am not against unionism as typified by many A. F. of L. and other unions, and am no recent convert. I am a firm believer in the necessity of the growth of such unions. But I am against forcing their growth, as this bill as it now stands tends to do, and at a pace which makes sound and socially wholesome development very unlikely, and which may, therefore, lead to a possibly fatal collapse of such unionism.

The CHAIRMAN. Are your employees organized?

Mr. DENNISON. Only such as have crafts for them.

The CHAIRMAN. There is no company union?

Mr. DENNISON. We have employee representation and have had since 1919. We have not called it a company union because we did not like the flavor of the word as it grew up shortly after the war.

The CHAIRMAN. What form of company representation? How do they select their representatives?

Mr. DENNISON. The employees' representatives constitute a council elected by them, set up by themselves independently, and dealing with management through joint committees or in any other way they may see fit on all the subjects that we have to deal with.

The CHAIRMAN. How often do they meet?

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Mr. DENNISON. They meet regularly once every 2 weeks, the executive committee does, but there are meetings as often as circumstances require, as they think they need them.

The CHAIRMAN. Is there any regular yearly or annual election?

Mr. DENNISON. Yes; an annual election in December.

They are subdivided into divisional committees for detailed work and joined by an executive committee of eight, and the council as a whole acts on such matters as interest the whole plant.

The CHAIRMAN. Do you understand that there are any provisions in this bill that would prevent you from carrying on the present relationship that you have with your employees?

Mr. DENNISON. The only way that we can read paragraphs 3 and 4 would seem to say that they could not meet during hours unless their wages were deducted. That is, we are making a payment to them virtually for their meeting on company time. As a matter of fact, we want them to do so and they want to do so because we are dealing with daily business and they are taking their part in it.

This has been in existence so long that there is no question of our starting such a thing; it began in 1919, but in both those paragraphs I believe it would be impossible to carry on in the form we have now.

Senator BORAH. Your organization is really a company union, is it not?

Mr. DENNISON. It is a company union, if that term—it is difficult to define it. They have no dues, for example; there are no requirements and never have been to join; there is really nothing to joining; you vote once a year if you wish to for this representative committee, and one does not know who votes and who does not. Usually a very large majority vote but it is really straining words to call it a union.

The CHAIRMAN. Aren't there any bylaws?

Mr. DENNISON. Yes; there is a structure, just the form of election and how committees should be related. It is a fairly simple set of bylaws.

Senator DAVIS. You have a plan of unemployment insurance?

Mr. DENNISON. A plan instituted for unemployment relief; it is not strictly insurance. We started it in 1915 and that had to be suspended. The employees wished to suspend it before the funds entirely ran out during the last depression.

Presumably it will be taken up again as soon as conditions allow.

The CHAIRMAN. Still in suspension?

Mr. DENNISON. Still in suspension; yes. There is a small sum left which they apparently prefer to leave, I suppose as a nest egg.

I am against one big union, the growth of which is surely here invited, because no single system of labor or other organization can be sufficient to cope with the complexities of a modern industrial civilization.

May I remind you that, usually unwisely, but, nevertheless actually, millions of working men and women in the United States are as much or more afraid of the A.F. of L. than are thousands of employers. Such deep-rooted fears are no basis upon which we can force the growth of a single form of unionism and have the slightest hope of success.

As to the attitude and practices of many employers, I have no illusions. I have fought these practices too long for that. I can understand and appreciate Senator Wagner's natural desire, arising

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out of his inestimable service on the Labor Board, to use a scalpel on them. But by virtue of its task, that Board saw chiefly the bad and some of the worst cases. There are hundreds of companies in which a sound system of joint and mutual participation in management has developed or is developing. These had no quarrels to bring to a Labor Board.

For similar reasons union leaders get to know many more of the unsound and vicious cases than of the sound ones.

Even if few, these companies who have established a basis for wholesome mutual business relationships between management and workers should be cultivated as seeding ground or laboratories from which we may learn, not dug up with the tares by these two paragraphs.

I know that if these two paragraphs are stricken out there will remain more so-called "company unions" under the employer's thumb than if they are left in. But my firm conviction is that under today's conditions, this evil will be short-lived, whereas the evils of forcing the growth of outside unions beyond the rate at which capable leaders can be discovered and can gain experience will last a generation. In few if any plans can a hog-tied company union survive more than a year or two; they either evolve into true and independent employee representation or blow up and reform into stiff and often antagonistic unions controlled from without. But a sufficient number of new unions unskillfully led—and union leadership is one of the most highly skilled of the arts—will lead to enough fool trouble, bitter strife, and bloodshed to set the whole country blindly against unionism in any form.

We must not forget, also, that the influences set up by this bill must apply themselves to the more than 90 percent of industrial establishments in this country which have less than 100 employees. To cramp all systematic contact in these plants, as this bill cramps it, is a proposal to be considered most carefully.

You are acting here not for the short but for the long pull, and in your eagerness to cure immediate ills cannot take too much risk of building up our industrial system into two armed camps—labor and management—always on the defensive and some time certain to adopt the German dictum that offense is the most effective form of defense.

It is possible, of course, that unionism, if thus forced in growth and limited to the single separatist form might become dominant in the overall management of the industrial structure. It has approached that point in England and if it should consolidate politically might do so here. Personally, I think that unlikely, but do not think it unwise to take some account of the chances and of the new sort of trouble which would arise out of the economic rigidities it would bring.

Much as I look forward to and favor the wider range of classical unionism in this country, I cannot overlook the flat fact that it is not unionism but the abilities of union leaders which determines whether unionism shall be of net service or disservice to workers and to the country. And this determination rests not nearly so much upon the abilities of the national union leaders as upon the local men who make the thousands of practical contacts where the work actually goes on. Theirs is a very exacting job requiring a combination of gifts rare among humans. We must remember the certain fact that we employers do not deal with Mr. Green. If in the past years all of us could have done so our attitude would be very different today.

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I am deeply, and through many years of conviction, in favor of the establishment of a labor board. I do not want to have its long-run success jeopardized by attempting too much success at first.

I am equally deeply convinced that employee representation, so built as to afford the maximum of mutual contact and participation inconsistent with full independnce, is invaluable as a supplement to outside unionism. I believe that out of their slowly freeing competition and the gradual comparison of the two forms we shall be able to develop modifications of each which will tend toward making possible the realization into actuality of the truth that any business organization which can knit itself into a single organism will prove superior as an institution of broad social value, to one which must exist in two somewhat stiffly cooperating and sometimes actively conflicting segments.

What has been a dream so far, has in 1933 entered the realms of the barely possible. To eliminate all chances of organized contact, as do paragraphs 3 and 4, takes the knife and at once cuts away much present evil, but leaves to the patient no chance of wholeness. I urge you to take risks, but the lesser risks, for what seems to me incomparably the greater chances of health; to choose to allow some present evils to continue for a time, rather than to root them out at the cost of all reasonable chances to increase the number of ably led unions at the complete sacrifice of all honest and mutually acceptable systems of employee representation.

Senator WAGNER. Mr. Dennison, outside of the criticism of the provisions to which you refer, have you any views about the remainder of the proposed act?

Mr. DENNISON. In general I am very much in favor of the whole act except for those two paragraphs.

Senator WAGNER. So that if the amendments you suggest were made, you would heartily favor the legislation?

Mr. DENNISON. I should.

The CHAIRMAN. Thank you. Mr. Gadsden, Mr. Edmonds; you are both here representing the Philadelphia Chamber of Commerce?

STATEMENT OF PHILLIP H. GADSDEN

Mr. GADSDEN. Mr. Chairman, I am Philip H. Gadsden, of Philadelphia. I am president of the Philadelphia Chamber of Commerce. I am here with a committee from the chamber, and Mr. Edmonds is our general counsel who will present our views.

STATEMENT OF FRANKLIN S. EDMONDS

The CHAIRMAN. Mr. Edmonds, will you give us your full name?

Mr. EDMONDS. My name is Franklin S. Edmonds, of Philadelphia, Pa., and I appear as general counsel for the Philadelphia Chamber of Commerce, which is an organization of about 5,000 members.

I may say, Mr. Chairman, that our organization has been in hearty sympathy with the N.R.A. legislation. We made it welcome in our offices and by September of 1933 we had more than 99 percent of the industrial establishments of Philadelphia under the President's temporary code. We have a record of complete consistency in sup-

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port of the general policy of what Congress has been trying to accomplish.

We have listened this morning to the excellent argument of Mr. Emery on the legal phases of this and it has taken a certain part of my thunder. I do not propose to repeat that, sir, and I assume it will not be necessary.

There are three things I would like to say to the members of the committee. In the first place, we feel that these bypartisan courts do not work out satisfactorily and we would like to emphasize Mr. Emery's argument that a court that consists of two representatives of employers and two of employees, and three representing the public is not the kind of a court that can function most efficiently in a problem of this kind.

We have noticed, for instance, that in the court over which Senator Wagner presides the industrialists are frequently absent. It is difficult to get men from business and have them take the time that is necessary even though their appointment might be for a year.

Senator WAGNER. May I say that that happened very infrequently, but in view of some things that have been said I wanted to emphasize that outside of, I think, one decision made by the Board, the decision was unanimous, the representatives of industry like Mr. Swope, Mr. Teagle, Mr. Kirstein, and Mr. du Pont, joined in the conclusions reached by the Board. I wanted to have that statement made about the activities of the Board corrected. I think it is two instances, and the decision of the Board has been unanimous.

Mr. EDMONDS. I think it must have been one of those decisions which came from Philadelphia in which the industrialists were absent at the time. I have heard Mr. Budd make the statement and I have no doubt it is correct.

The CHAIRMAN. The industrialists joined in the decision.

Mr. EDMONDS. Let us raise the question whether this is the right way to get at the problem. I noticed with interest in Australia where they adopted a labor court they put a high judge at the top of it, a single man, a man who is accustomed to declaring rights and understands rights, and for 14 years from 1907 to 1921 Chief Justice Higgins presided over that court with a trained mind, weighing rights. Frankly, that is what this court has got to do, and we do not think it is likely to be so satisfactory a representative of the public interest if it becomes a matter of balancing one side against the other. It would be much better to have a permanent commission composed of a group who represent the public, for a long term of service, in order that they may gradually build up a tradition of rights which is what is needed here.

Senator WAGNER. I might remind the chairman that the proponents of the bill, who appear in favor of the legislation, generally also favor that proposition.

The CHAIRMAN. I stated that when Mr. Emery was making comment of the same character, that even the proponents of the bill have favored a commission representing entirely the public rather than representing the employees and employers.

Mr. EDMONDS. Then we have no quarrel on that and I will pass to my next subject.

The CHAIRMAN. We have not agreed on it yet, but it is under consideration, and the argument is the same on both sides.

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Mr. EDMONDS. The next subject I want to speak about particularly—Senator Wagner, I would not be here today if I had not heard you on the radio Sunday afternoon. I understood you to say that the company union was essentially dishonest.

Senator WAGNER. You could not have listened with great care.

Mr. EDMONDS. I thought I did.

Senator WAGNER. I emphasized the word "dominated."

Mr. EDMONDS. Then, sir, I am very glad to accept that point of view now but it is not what I understood you to say.

Senator WAGNER. Wherever I have spoken—somehow or other the statement has not been accurately reported. I have always used the word "dominated" wherever I have spoken. I can understand that there can be an independent union within a plant so long as it is the free choice of the men.

That is what I am interested in. Whatever the men want to do, if they want to bargain individually, or through an organization within a plant, that is all right, only if it is the free choice of the men. Of course, we are all for that. That is all I am seeking to do, to make the worker a free man to make his choice, and I think that I have been emphasizing that. I think that the chairman will agree with me that whenever I have mentioned it here, I have emphasized "company-dominated union."

Mr. EDMONDS. I will give you a clipping from the New York Times of last Sunday, and I would suggest that you write to them. They have usually been most accurate in their quotations, and it seems to me that your statement as reported here is too sweeping to be true.

Senator WAGNER. I agree with you and, if you will do me the honor of reading the article which I wrote for the New York Times several weeks before, I emphasized that I was opposing the company-dominated union and that I had, of course, no objection to the company union if it is the free choice of the workers.

Mr. EDMONDS. Very good, sir.

The CHAIRMAN. Senator Wagner has repeatedly before the committee and repeatedly in private conversations with me expressed regret that the press should always insist upon reporting him as being opposed to company unions. I have every reason to believe he entertains no such view.

Mr. EDMONDS. I am very glad to hear it.

Senator WAGNER. The free choice of the worker is the only thing I am interested in.

Mr. EDMONDS. I want to call attention to the development of this company-union idea. Filene of Boston, Mr. Dennison, who has been here this morning. Leeds & Northrup, Philadelphia, and others—in Philadelphia the movement, curiously enough, came from the Society of Friends, which some years ago appointed a committee on social justice as between employer and employee. The Leeds & Northrup Association has two of the employees here today, who are hoping for a chance to be heard here.

My feeling is that these associations are among the most important developments we have had during the whole of this period, and I say it would be extremely dangerous for the United States if those associations which are honest—like the Senator, I have no sympathy with those that are dishonest—but if you put the quietus on those

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which are honest, you are stopping one of the most helpful agencies at the present time.

Senator WAGNER. I assure you, Mr. Edmonds, I am the last man who wants to do that. All I am interested in is to have the worker make a living.

Mr. EDMONDS. I agree with you, Senator; I think the language in the bill is very strict.

Senator WAGNER. I am not wedded to language. It is the objective that I seek. If better language can be proposed, I am not adamant.

Mr. EDMONDS. I think the whole trouble with this bill is that it scares everybody on the other side. I don't think that anybody is scared of leaving the matter to you, but in the N.R.A. there are at times interpretations of restraints and coercion.

I am an employer of labor. I have 20 clerks in my office. Under this act, if I say to my secretary that I am inclined to think that one of our office problems should be handled in this way or that way, does that bring me under the curse of the act?

You cannot create crimes in indefinite language and then expect people to be happy under them. My feeling is that there is a great deal here which you do not intend, and I would be glad, if you would revise the bill, to come down and give you my opinion of it then.

Senator WAGNER. We would be very glad to have it.

Mr. EDMONDS. Frankly, this bill impresses me as having been written by a man who had been reading Marx on Class War, and thought all employers and employees were standing in opposite corners making faces at each other, and it is unfair to American industry.

Senator WAGNER. I think if you make a man a free man you bring about a much better relationship than when you keep him under restraint.

Mr. EDMONDS. What do you think happens when you have all the restraint on one side?

Senator WAGNER. It should not be all on one side.

Mr. EDMONDS. It ought not to be; I agree with you, sir.

Let me go to my third point. We are very much interested in this question of industrial recovery, and we ask you to consider one side of this matter before you decide on any legislation on the subject at all, and that is the price level of the country and the effect on it since the N.R.A. legislation, the "new-deal" legislation, began, a year ago.

It is, of course, notorious that since 1929 prices went down. It is equally notorious that manufactured goods and agricultural products did not go down in the same ratio. If there had been a general decline in price levels, conditions could have been readjusted to meet it, but what happened was that manufactured goods went down about 50 percent and agricultural goods went down about 70 or 80 percent, and the result was that in agriculture there was no longer left a consuming power to purchase the manufactured goods. Thus began the depression.

Now, I ask you to consider the fact that in 1933 in February-March there was an upward price movement. That upward price movement was more rapid among agricultural products than it was among manufactured goods, which was as it ought to be; agriculture

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had gone down further and it ought to have come up more. That continued until July and since July it has not been continuing at all.

The disparity between the agricultural goods and the manufactured goods is greater now, in December 1933, which is the last month for which I have the figures, then it was in July of 1933.

What does that mean? It means that you are getting the price level out of balance again, and the price level is one of the most difficult elements entering into our economic and social life.

We are again finding that something is happening which is decreasing the consuming power of one large class. I do not want to burden you too much with these figures, but, on the basis of July 1929 as 100, raw materials in July of 1933 were 65.5 and in December of 1933, 65.8. They had gone up 0.3 percent.

Manufactured goods were 76.5 percent in July, and 79.6 in December. They went up 3.1 percent; that is, they have gone up 10 times as rapidly as the raw materials have gone up.

Foods, as a matter of fact, have gone down in that 6-month period, and nonfoods have gone up, and gone up markedly.

Now, I want to say to you gentlemen that this method of correcting the economic situation of the country by pulling upon one string until you get it out of gear with the other strings is harmful to the country, and it is delaying the restoration of general business recovery which is the thing that we all desire.

Senator MURPHY. Yet there has been a tremendous pull on the agricultural string?

Mr. EDMONDS. There is, and what are the facts? The facts are that foods in July were 63.6, and in December 1933, 59.6.

Nonfoods in July 1933 were 77.8 and nonfoods in December 1933 83.7

In spite of all your pulling on foods, foods have gone down 4 points in the 6 months, and nonfoods have gone up 4 points in the same 6 months.

Senator MURPHY. We are glad to have had your view on that point.

Mr. EDMONDS. I am glad to give it.

Senator MURPHY. What is your answer?

Mr. EDMONDS. To this question? My feeling is that the increase in wages which came about under N.R.A. has resulted in increased costs. I am a director in three industrial corporations, and I know in one corporation that in February of 1933 labor costs were 51 percent of our gross. In February of 1934 labor costs were 61 percent of our gross, and in the meantime our business had continued about the same. We happen to have a little surplus, and we are using the surplus in the hope that better times will come, but that can only be continued for a short time.

Senator BORAH. Ordinarily it would seem that if you increased wages you would increase purchasing power?

Mr. EDMONDS. You are increasing the purchasing power for one group only.

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Senator BORAH. It is a very large group, and ought to have its effect upon foods.

Mr. EDMONDS. It ought to have its effect upon foods, but it is not having it because there is still that over-plus.

Senator BORAH. There is a reason here, I think. Some of these prices here have been raised which are not founded upon sound economics, but ordinarily you would have to admit that one way to restore purchasing power is to increase wages throughout the country.

Mr. EDMONDS. If you could apply that in all lines of employment, and take in your 10,000,000 unemployed, you probably would be right.

Senator BORAH. You never can raise prices and hold them there without distributing the purchasing power and restoring it, and one way of doing it is to increase wages.

The CHAIRMAN. For your information, Senator, in your absence from the committee testimony was presented here that while there had been an increase of 25 to 30 percent in the textile industry, the increased cost of textiles was over 100 percent.

Senator WAGNER. I will not go into that now.

Mr. EDMONDS. That is another side of the question——

Senator WAGNER. Mr. Edmonds, pardon me. I have been summoned to another room, but I will be back in a moment. I did not want you to regard my leaving as a discourtesy.

Mr. EDMONDS. Not at all.

So, I am stating this, that your general policy has sanctioned the wage structure in certain lines of employment. It seems to me now that you ought to give the rest of the country time to overtake that. That is one of the reasons why it seems to us that this union scheme will interfere with the stability that is necessary in order that these other clauses may protect the wage earners in the industrial plants.

That is all I have to say. I thank you for the courtesy you have given me.

Our feeling is very strong that this is a subject on which there should be a great deal of study.

Senator BORAH. Mr. Edmonds, you were speaking about the statement of Senator Wagner with regard to company unions being dishonest.

Of course, Senator Wagner does not think that, and I do not think that any member of the committee does, but we do think unions ought to be unions of the men and not of the companies.

Mr. EDMONDS. We are with you 100 percent on that.

Senator BORAH. You would have no objection to the usual phrasing which would accomplish freedom of action on the part of the men?

Mr. EDMONDS. No; not the slightest. It may and it might be done on the basis that that does not bar all forms of organization except one.

Senator BORAH. I guess we all would agree on that, sir.

The CHAIRMAN. Will you let your table you were reading from go into the record?

Mr. EDMONDS. Yes; and we are going to send to each member of the committee a copy of the statement.

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(The figures referred to by the witness are as follows:)

National Bureau of Economic Research Bulletin 48, Oct. 31, 1933

Figures for December 1933:

All commodities	74.3
Raw materials	[1] 65.8
Manufactured goods	[2] 79.6
Foods	[3] 59.6
Nonfoods	[4] 83.7
Products of American farms, raw	54.6
All other products	80.0
Producers' goods	73.7
Consumers' goods	75.3

The CHAIRMAN. In this connection we will print in the record a communication from the Philadelphia Board of Trade, dealing with the same subject.

It that right, Senator Davis?

Senator DAVIS. Yes.

(The communications from the Philadelphia Board of Trade are as follows:)

MARCH 26, 1934.

Hon. DAVID I. WALSH,
Chairman Committee on Education and Labor,
United States Senate, Washington, D.C.

MY DEAR SENATOR: Under authority of the committees on legislation, foreign and coastwise commerce, and domestic productions, of the executive council of the Philadelphia Board of Trade, in joint session March 26, 1934, the attached statement is presented to you by the undersigned, with the request that the same, as reflecting the sentiment of the board of trade with reference to the proposed enactment of the so-called "Wagner-Connery bill", be included in the record of your committee's hearings.

Thanking you for this courtesy, I am, on behalf of the aforementioned committees,

Very truly yours,

H. W. WILLS, *Secretary.*

MARCH 2, 1934.

Hon. WM. P. CONNERY, Jr.,
Chairman Committee on Labor,
House of Representatives, Washington, D.C.

MY DEAR CONGRESSMAN: The executive council of the Philadelphia Board of Trade in session February 19, 1934, authorized the following protest gaainst the proposal to effect any further reduction in the standard working time of employees as proposed in H.R. 7202, for the reason that such policy, if adopted, would prove unwise and economically unsound. The board of trade was actuated in this conclusion by certain facts.

Certain of the heavy industries upon which prosperity is fundamentally dependent already find it difficult to secure the necessary amount of skilled labor to carry on a subnormal volume of business.

If a volume of business equal to that enjoyed in 1926 was at present available it would be impossible for the heavy industries to fulfill such requirements even at the old 54-hour week. This for the reason that since the beginning of the depression many of these skilled workers have passed out of the picture through natural causes or drifted into other fields of work and no replacement has occurred.

It must not be overlooked that the employment of ordinary mechanics and ordinary labor is dependent upon the activities of skilled labor and any reduction in the volume of the latter is immediately reflected in unemployment of the lower grades of labor.

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[1] Plus 0.3 since July.
[2] Plus 3.1 since July.
[3] Minus 4 since July.
[4] Plus 5.9 since July.

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A further reduction of the working week to 30 hours would be fatal to recovery of the heavy industries and as no general prosperity can exist without prosperity in this class of industry, such a reduction of working hours would be reflected on all industry, thereby tending to retard rather than assist general recovery.

The National Industrial Conference Board in January, 1934, made an employment survey which indicated that if average employment were continued at the 1929 level, approximately 9,000,000 wage earners would now be gainfully employed. At the business level of October 1933, with workers averaging 35.8 hours per week, there would be 2,314,000 unemployed. If the working hours were reduced to 30 per week, unemployment would be theoretically reduced by 1,293,000 persons, leaving more than 1,000,000 still unemployed.

Average hours per week would have to shrink 26.6 to take up theoretically all the slack in manufacturing industry. In July 1933, the average hourly wage was 42.7 cents; in October 1933, this wage averaged 52.5 cents. If the working week were reduced to 30 hours, the hourly rate would rise to 62.7 cents, if the total pay per week remained the same. The conference board pointed out that as industry is evidently operating on a very narrow margin of profit it cannot bear increased labor costs without advancing the price of its product. Increased prices have already made it difficult to maintain the sale of the product.

The National Industrial Conference Board prepared a chart giving manufacturing changes from 1923–33. The study upon which the chart was based shows that after July with the higher wage rates imposed by the Government policy that labor costs increased per man-hour; curtailment of hours lessened efficiency of plant operation; introduction of new workers lowered average efficiency of the employees; and as a result labor cost per unit of production rose, while total production decreased. From July 1933, to the end of the year, prices of finished manufactures rose 3.6 percent, labor costs per man-hour 25.5 percent, labor costs per unit of product 54.3 percent, and labor costs in relation to manufacturers' gross income 48.8 percent. On the other hand production declined 30.9 percent.

A further reduction of weekly working hours by increasing costs to a point which may smother the slowly gathering wave of advancing business would defeat the very purpose of this act, if it may be assumed that such purpose is to decrease unemployment.

It is the sense of the executive council of the Philadelphia Board of Trade that the United States Government should withdraw from the direct control of industrial and commercial activity as expeditiously as prevailing conditions make advisable, for the reason that unwise persistence in standardizing methods, such as that proposed under the 30-hour week plan, tend to stifle rather than encourage the returning individual initiative and commercial enterprise which, under natural improvement of domestic and international economic conditions, is now asserting itself.

I am, on behalf of the executive council of the Philadelphia Board of Trade,

Very truly yours,

H. W. WILLS, *Secretary.*

In addition to the foregoing, the following telegram was dispatched to the President of the United States, under date of March 17, 1934, as reflecting the sentiment of the Philadelphia Board of Trade:

To the PRESIDENT OF THE UNITED STATES,
Washington, D.C.

We ask your careful consideration of the want of confidence, even fear, now pervading the minds particularly of the owners of heavy industries over threatened shortening of hours of labor. Catering to labor organizations evidences to employers threatened monopoly by organized labor. Investigations of capitalists and employers, but no investigations of labor unions (not incorporated) salaries paid or distribution of their millions of dollars of income suggests prejudicial attitude. The N.R.A. has been helpful but not the sole cause of increased business which now wishes a chance to adjust itself and go ahead with Federal assistance rather than despite Governmental bureaucratic interference.

THE PHILADELPHIA BOARD OF TRADE,
PHILIP GODLEY, *President.*

Senator DAVIS. I would like to put into the record this letter from the Chamber of Commerce of Pittsburgh.

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The CHAIRMAN. Senator Davis wishes to put into the record a communication from the Chamber of Commerce of Pittsburgh.

(The letter referred to is as follows:)

MARCH 21, 1934.

Hon. JAMES J. DAVIS,
Senate Committee on Education and Labor,
Washington, D.C.

MY DEAR SENATOR: May we call your attention to the attached copy of a declaration concerning the Wagner bill now pending in Congress, and ask your kind consideration of our views on this legislation?

This declaration was unanimously adopted by the board of directors of the Pittsburgh Chamber of Commerce at their regular meeting yesterday, March 20.

Very truly yours,

FRANK C. HARPER,
Secretary-Manager.

The Pittsburgh Chamber of Commerce, which on the day of President Roosevelt's inauguration sent him a message of good will and a pledge of heartiest cooperation in all measures facilitating national recovery, and which has redeemed that pledge by unflagging efforts to make the N.R.A. program effective in Pittsburgh, deplores every attempt to pervert the instrumentalities of recovery and use them for the selfish advantage of any particular class or group and the detriment of the people as a whole.

While unwavering in its loyalty to the fundamental purpose of the recovery movement, the Pittsburgh Chamber of Commerce confesses that such outgrowths of the movement as the Wagner bill now pending in Congress give it the gravest solicitude.

That bill is frankly subversive of the whole spirit of the original recovery legislation. Under cover of the provisions for collective bargaining in section 7 (a) of the N.I.R.A. a professional group of labor agitators are undertaking with the aid of Senator Wagner, chairman of the National Labor Board, to compel the great free majority of American workingmen to join a labor federation which they have never been willing to join of their own accord, and the professional leaders of which are endeavoring to make themselves masters of a labor monopoly with unprecedented powers tantamount to dictatorship over all American labor and industry.

Persistence in the efforts to force the Wagner bill through Congress will unquestionably jeopardize the whole recovery objective, raising possibilities of disorder of far-reaching and disastrous proportions. The free workingmen of America, no less than their employers, view with deep concern this tragically unfortunate complication, and the Pittsburgh Chamber of Commerce trusts President Roosevelt will bring his great influence to bear at once upon the forces involved to make it clear not only to Congress but to the country that he has no sympathy with any attempt, no matter by whom sponsored, to degrade the free collective bargaining between employers and employees stipulated in the original recovery act into an utterly unprecedented labor tyranny which could end only in bitter conflict and ultimate catastrophe.

This declaration is unanimously adopted by the board of directors of the Pittsburgh Chamber of Commerce at its meeting on March 20, 1934, and it is hereby ordered that a copy of it be transmitted to the President of the United States, to the members of the Senate Committee on Education and Labor, and to all of our Representatives in Congress.

Adopted by the board of directors of the Chamber of Commerce of Pittsburgh, March 20, 1934.

[SEAL] FRANK C. HARPER, *Secretary.*

The CHAIRMAN. Mr. Higgins.

STATEMENT OF JOHN W. HIGGINS

The CHAIRMAN. Your full name?
Mr. HIGGINS. John W. Higgins.
The CHAIRMAN. You reside where?
Mr. HIGGINS. Worcester, Mass.

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The CHAIRMAN. What is your business?

Mr. HIGGINS. I am president of the Worcester Pressed Steel Co., a small manufacturer of steel.

The CHAIRMAN. You are an independent steel company?

Mr. HIGGINS. Yes.

The CHAIRMAN. Your plant is located at Worcester?

Mr. HIGGINS. It is.

The CHAIRMAN. How many employees have you?

Mr. HIGGINS. Two hundred and fifty, now.

The CHAIRMAN. Mr. Higgins, we will be glad to get your views in regard to this measure.

Mr. HIGGINS. We are operating under two codes, the steel code and the fabricated iron and steel code, and we are entirely opposed to this bill for reasons which have already been stated.

We are a small steel manufacturer, independent; we have no unions nor company unions, because I or my superintendent or my assistant knows every man by name and by residence. They live in the neighborhood around us.

I would like to state that three quarters of the firms in this country employ 20 men or less, and we are in that large majority group which stands in a serious position if any bill like this is passed.

The CHAIRMAN. Have you a union among your employees?

Mr. HIGGINS. No; we have not.

The CHAIRMAN. Company or otherwise?

Mr. HIGGINS. No.

The CHAIRMAN. Your employees all live in the city of Worcester?

Mr. HIGGINS. They do.

The CHAIRMAN. They are not organized?

Mr. HIGGINS. No; they are not.

The CHAIRMAN. Two hundred fifty employees, you said?

Mr. HIGGINS. Yes.

Senator MURPHY. What is your objection to permitting the employees to organize?

Mr. HIGGINS. We have no objection. I began with this company as a worker——

The CHAIRMAN. Is this a family company? Is it a company that you own yourself?

Mr. HIGGINS. I am a stockholder; I am the majority stockholder at this time.

The CHAIRMAN. Is the other stock owned by the general public or by members of your family?

Mr. HIGGINS. By members of my family, and also by others; by employees and by our directors.

The CHAIRMAN. How much is owned by employees?

Mr. HIGGINS. About 10 percent—I guess 20 percent.

The CHAIRMAN. Your employees have made no effort to organize at any time?

Mr. HIGGINS. They have not.

The CHAIRMAN. And have shown no inclination to organize?

Mr. HIGGINS. They have not.

The CHAIRMAN. Do you think if this bill were adopted they would be forced to organize?

Mr. HIGGINS. I think they would.

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Senator BORAH. I do not understand why they would be forced to organize under this bill. Will you state why?

Mr. HIGGINS. Because of the activities of organized labor which would come into the field as they did in these early years of the war, and at that time there was so much activity that industry was greatly slowed down.

Senator BORAH. What you fear is that outside labor organizations will come in and impose themselves upon your people and compel them to become organized or become members of their organization?

Mr. HIGGINS. That is the result that we expect.

Senator MURPHY. And yet that right is theirs today without that law?

Mr. HIGGINS. Yes, sir; absolutely—and I, as a worker in this small firm, would wish to be represented as a minority worker. I do not think it is right for a few to impose their outside domination on the rest of the independent workers.

Senator MURPHY. You have no objection to a company organization?

Mr. HIGGINS. Absolutely not, to represent those who are members of a company union, but not those who are not.

If this bill goes through, undoubtedly this company will liquidate and, if so, I shall endeavor to get a job. I am a mechanic and a machinist, and I shall endeavor to get a job in a factory where I may be able to bargain individually and independently, if I care to, and I think that superior workers will always be able to bargain independently to their advantage rather than in groups.

Senator MURPHY. But yet they are a very small percentage, the independent workers are a very small percentage of the workers?

Mr. HIGGINS. They are 100 percent in the small industries, in our industry.

The CHAIRMAN. Do you mean in the character of steel production that you are engaged in?

Mr. HIGGINS. Yes; in New England.

Senator MURPHY. Every man is a man who can step out and get a job trading independently, offering his services independently, every man in your employ is a specialist who can do that?

Mr. HIGGINS. No. We have suffered very much from unemployment and only the superior men have been able to regain their jobs, and that puts a premium on skill, and I would hope, if I were an independent worker again, to have the opportunity to have the reward of my skill and ability.

The CHAIRMAN. You are paying your men the wages and employing your men the working hours defined in the code for your industry?

Mr. HIGGINS. We are; absolutely.

The CHAIRMAN. How many other companies are in this code, the code which you signed?

Mr. HIGGINS. We have two codes; the iron and steel code has many, and I cannot state right off.

The CHAIRMAN. What is the fabricated material that you make?

Mr. HIGGINS. The steel stampings. We roll steel and then we fabricate it into parts for automobiles and other machines.

The CHAIRMAN. Are you in competition with other producers?

Mr. HIGGINS. Yes; very much.

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The CHAIRMAN. And under the code you have to agree upon the same rate of wages and the same hours of employment?

Mr. HIGGINS. Yes.

The CHAIRMAN. So that there is no plant now making the same products that you are producing that is not giving to its employees the same rate of wages for like work and the same number of hours of employment?

Mr. HIGGINS. I assume that there are not.

Senator MURPHY. You would not feel that it would be obligatory upon you to liquidate your business if company unions were organized?

Mr. HIGGINS. No, we would not.

Senator MURPHY. And if we made it impossible in this law, or sought to make it impossible in this law, for any interference by employers in the organization and conduct of that so-called "company union", would that impel you to want to liquidate?

Mr. HIGGINS. I do not think it is possible for any bill to guarantee life, liberty, and the pursuit of happiness to any small group of employees at the expense of the majority. I think that this bill undertakes to carry out an impossible class legislation, which would be a great detriment to the large majority of workers.

Senator DAVIS. What materials do you produce?

Mr. HIGGINS. We produce cold-rolled strip steel from billets which we purchase in the Pittsburgh district.

Senator DAVIS. Cold-rolled strip? What gage?

Mr. HIGGINS. From 10 to 250, and down to half-inch strips, and bands to 14 inches wide, and these are fabricated into automobile parts and machine parts which in the old days when we had commodity rates, we shipped all over the country.

Senator DAVIS. What size billets do you use? What weight?

Mr. HIGGINS. Our largest coils as received from the Pittsburgh district would be about 1,000 pounds.

The CHAIRMAN. Thank you, Mr. Higgins. We appreciate very much having your views.

The next witnesses represent the workers from Leeds & Northrup Co.: Mr. E. R. Fiske, Jr., and Mr. J. E. Whisler. Will you both come forward?

STATEMENT OF EDWARD R. FISKE, Jr.

The CHAIRMAN. You are both employees of Leeds & Northrup Co., of Philadelphia, Pa.

Mr. FISKE. Yes, sir.

The CHAIRMAN. What is the nature of your employment?

Mr. FISKE. We have sent two delegates here, one from the salaried group of employees, and one from the hourly group. I am a salaried employee, and Mr. Whisler is from the hourly group.

The CHAIRMAN. What group?

Mr. FISKE. What we call the hourly group; employees who receive their compensation on an hourly rate rather than a weekly wage. It might also be said that Mr. Whisler is a manual worker, while I am in the office.

The CHAIRMAN. Have you a union of employees at Leeds & Northrup Co.?

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Mr. FISKE. Yes, sir.

The CHAIRMAN. By the way, what do they produce?

Mr. FISKE. Senator, we have reduced our statement to writing, in a very few words. We have a statement which, I think, in as few words as possible, covers the questions you are asking me now.

The CHAIRMAN. If it is in your statement, you may proceed.

Mr. FISKE. Thank you.

We appear before you as representatives of the Cooperative Association of Employees of the Leeds & Northrup Co. To the members of our organization, after having read the Wagner bill and after having heard it discussed by its sponsors, it appears that the effect of the bill would be to legislate our organization out of existence. It is the sense of the members of the association that they wish to continue to function. On the assumption that our understanding of the effect of the bill is correct, our organization has sent us to plead with you that, in some way, provision be made to prevent the destruction of a form of employee representation which, in our experience over a long term of years, has proved entirely satisfactory and adequate.

The Leeds & Northrup Co. manufactures electrical measuring instruments for sicence and industry, and electric heat-treating furnaces. Its factory and headquarters are located at Philadelphia, Pa. On March 1, 1934, it had 606 employees, of whom 330, a little over 50 percent, are compensated on an hourly basis; the remaining 276 employees are on a salary basis. The total number of employees before the depression was well over 1,000.

The Cooperative Association of the Employees of the Leeds & Northrup Co. is an organization composed of all of the employees of that company. It was formed in 1918 and has functioned without interruption since that time. The legislative and executive powers of the association are vested in a council composed of elected representatives. This council represents the employees in all their relations with management. Business considered by council is investigated through the medium of standing and special committees, appointed partially from council and partially from the association at large.

Council considers problems relating to wages, hours, safety, working conditions and any other matters which concern the employees. It deals not only with general company policies which affect all employees, but also with individual grievances. In addition, it supervises the operation of a pension plan, a savings plan, an unemployment relief fund, an educational plan, and an athletic association. It is consistently consulted by management in the development of all policies affecting the employees.

The Cooperative Association is the nucleus of the Leeds & Northrup Co. employee plan which won first award out of over four hundred entries in a Nation-wide contest conducted by Forbes Magazine in 1931.

The above is a brief description of the form of employee representation which we are anxious to continue. We present the following reasons for asking you to amend the bill now before this committee in order to permit its continued existence.

1. We point first to the 16 years during which the employees and management of the Leeds & Northrup Co. have satisfactorily settled

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all matters pertaining to employee relations. We believe this long record of uninterrupted and effective service is, in itself, sufficient reason to justify the continued existence of our cooperative association.

2. The Wagner bill, as we understand it, would make it impossible for an employee organization dealing with grievances, labor disputes, wages, or hours of employment, to act for the employees in matters relating to general employee welfare. In our case the latter include educational, pension, and unemployment relief plans to which the company contributes financial and other support, and plans for improving working conditions supported by the company.

The CHAIRMAN. You have heard the discussion here this morning in reference to dominated employees' organizations and nondominated employees' organizations, have you?

Mr. FISKE. Yes, sir.

The CHAIRMAN. You would not consider your organization as one which was dominated by your employers?

Mr. FISKE. No, sir. I was going to take that up as one of the later points.

The CHAIRMAN. I am inclined to think the Wagner bill would have no effect upon your operation.

Mr. FISKE. We think it will, if I may proceed.

Senator DAVIS. May I ask if your company contributes to the pension plan?

Mr. FISKE. The company contributes a fixed amount and the employee can add as much as he wishes but is not required as a condition of having the benefit to make the payment and contribute himself.

Senator DAVIS. As a condition of employment he is not required to take part?

Mr. FISKE. No. When he becomes employed the company automatically sets up a certain amount with respect to pension in his behalf, and if he wishes to contribute he may do so to increase the pension, but he is not required to do so.

Senator DAVIS. Thank you. Who are eligible to be members of the council?

Mr. FISKE. Any employee.

Senator DAVIS. Foremen?

Mr. FISKE. Yes, sir, if the employees choose to elect him. Of course, the votes in any one division would give the employees complete control. In other words, if they elected a foreman it would be their own choice.

The CHAIRMAN. Is the council composed of representatives of the various departments?

Mr. FISKE. Yes, we have 10 arbitrary divisions.

The CHAIRMAN. That is, one council member from the clerical department and one from one processing department and another from another processing department?

Mr. FISKE. We have the plant divided into 10 divisions, some of which take in small sections. Each division has representation in proportion to the number of its members. There is a formula worked out whereby they get from 1 to 3, depending upon the number of employees in the particular division.

Senator MURPHY. Is the election by secret ballot?

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Mr. FISKE. Yes, sir.

Senator DAVIS. The membership includes the heads of the divisions? That is, the head of the division is a part of the organization?

Mr. FISKE. What do you mean by the head of the division, the department head?

Senator DAVIS. The foreman of that particular division is also a member of the employees' representative plan?

Mr. FISKE. Oh, no; not unless he is elected. In most cases he is not.

Mr. WHISLER. He is allowed to vote, if that is what you mean.

Senator DAVIS. He is permitted to vote?

Mr. FISKE. Yes, he has a vote in the election.

The CHAIRMAN. Can the employees, the members of the council, change the bylaws as they choose from time to time without approval by anybody else?

Mr. FISKE. We have a constitution which can only be amended by general election of the entire association which means the entire employees.

The CHAIRMAN. But it does not require the assent or approval of the employers?

Mr. FISKE. No, sir.

The CHAIRMAN. Very well.

Senator DAVIS. If there are any disagreements, do you have any right of appeal to anyone from the organization?

Mr. FISKE. Disagreement of what sort?

Senator DAVIS. Is the decision of your organization final? For instance, someone is aggrieved by a decision of the organization; is there any right of appeal or is the vote of the organization final? I mean, do you appeal to the president of the company or the general manager of the company or somebody?

Mr. FISKE. You mean if the council makes a decision and it is not upheld by the management?

Senator DAVIS. Yes; I mean, for instance, the council would make a decision; is there any appeal from that, from the council, or is that final?

Mr. FISKE. You mean if the employees disagree with the council?

Senator DAVIS. Yes.

Mr. FISKE. The council would find it out very quickly and would be told that the representatives had not represented the true opinion of the employees and they would go back into meeting and reconsider their action.

Senator DAVIS. Who tells them that?

Mr. FISKE. The employees. They do not hesitate to speak up. That happened once last summer.

Senator DAVIS. The final decision is with the employees themselves?

Mr. FISKE. Yes; in other words, council is supposed to be the voice of the employees in its dealings with management. The representatives from these 10 divisions have to find out what the employees' sentiment is from their constituents and be guided accordingly when they get into council meeting.

Senator DAVIS. What I have in mind is in a case when an employee has a grievance, he comes to the council, council makes a ruling, and if he is still aggrieved, is there any appeal from that particular council,

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and, if so, to whom? Does council report back to the employees and they have to confirm it?

Mr. FISKE. I don't quite follow the question. For instance, we have as a committee of council an appeal board which is set up for the purpose of hearing any case of dissatisfaction other than a rate case. There is an entirely separate body which would hear individual grievance on a rate.

But, supposing a man is laid off, we will say, or is discharged, supposedly for cause, and he appeals the case to the appeal board; they hear it, and if they feel the decision was right, that he was asleep on the job, for instance, and the foreman did right in firing him, all right; if they do not feel the decision was right they inform council that they recommend him to be reinstated or they recommend that the man be transferred.

Now, the council reports that finding over its signature to the management of the company, the president and his immediate executive committee, and in every csae that has ever come before the appeal board the decision has been final by the management. There has never been a disagreement. When they found that a man who had been discharged should be reinstated or transferred to another department that decision has never been overruled by management.

The CHAIRMAN. You have given us a very excellent illustration of a company union that is apparently not dominated.

Mr. FISKE. My next point that I want to make very clearly is one that I believe has been an objection in some such organization. Management is not represent, at the meetings of council. Therefore, council's discussions and decisions are free from management influence. Council is at liberty to make recommendations based solely upon the employees' viewpoints, and has shown no hesitancy in so doing. Recommendations originating in council and counterproposals to management proposals have, in most cases, been accepted by management. In all cases where management has not immediately accepted a recommendation of council, a compromise agreement, satisfactory to the majority of the employees, has ultimately been reached.

4. We submit that our present internal organization, representing all the employees, accomplishes much, through mutual understanding between management and the employees, which would be impossible between management and an outside agency or any agency representing only part of the employees. The present council is in a position to recognize and refrain from making unreasonable demands, including those which would work for the benefit of a minority at the expense of other employees. The effect of this policy on the part of council has been to strengthen any recommendation endorsed by it.

5. No other form of representation could adequately represent the entire group of I. & N. employees. Only about half of our employees would be eligible for membership in the usual type of labor organization. As we understand the Wagner bill, it would automatically disfranchise a large group of our employees.

An organization representing only hourly workers, for example, might very easily obtain a management decision favorable to them at the expense of salaried workers. The effect of an organization which represented only part of the employees would be to pit one group of employees against another, which is undesirable. Our

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present council, because its membership represents every employee viewpoint, is in a position to prepare recommendations which properly balance the interests of the employees as a whole. We submit that our cooperative association preserves a unified body of employees which would be split by internal differences under any other form of representation known to us.

6. While it is true that the company has granted our present organization the privilege of holding meetings on company property and on company time, and has budgeted an allowance for minor incidental expenses in addition to its contributions to the activities already outlined, this support does not operate to influence the opinions or recommendations of council. The sponsors of the Wagner bill may point out that management could terminate the activities of our organization by withdrawing its support, but our company has never indicated by any of its actions that such a step would be taken. However, in the event that the company's support should ever be withdrawn, there would be no interruption of employee representation. Under such circumstances the present setup would provide ample initiative and leadership to maintain the activities of the association.

7. One of the stated purposes of the Wagner bill is "to encourage the amicable settlement of disputes between employers and employees." We believe our cooperative association has gone one step further. Past relationships have fostered a feeling of mutual respect between council and management. The result has been that differences of opinion have been settled constructively, through an exchange of ideas, without the occurrence of an actual dispute. This has been our experience with the vitally important problems handled during the period of depression, and has convinced us that our present cooperative association is eminently fitted to settle disputes by avoiding them.

To summarize our presentation, we have appeared before you to testify that the cooperative association we represent has proved its worth over a period of years. We have outlined briefly how this has been accomplished. We have endeavored to show that our employees would have lost certain definite advantages which they now enjoy if their present form of representation should be made illegal, and that our organization is free from certain objections which have been cited as characteristics of so-called "company unions." While we represent only one such organization, we are certain that there are other companies where organizations such as ours are operating satisfactorily, and still others where such organizations could operate for the best interests of the employees. It is our contention that the restrictions which the Wagner bill places upon employers definitely limit employees in their right to choose the type of organization they want to represent them. Therefore, we ask that you amend the Wagner bill (particularly sec. 5, which defined "unfair labor practices") insofar as may be necessary to permit the employees of a specific company to choose or reject a form of representation such as we have described, instead of legislating all such organizations out of existence.

Senator MURPHY. By that you mean that you do not permit the employees to vote on the question of whether or not they should join an outside union?

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Mr. FISKE. Yes, sir. In other words, in our particular case our management has stated time and again that if we do not like that it is our privilege to dispose of it immediately. The reason we have been sent down here by the employees without the company even knowing we were coming, really, is because the employees want to continue it.

Now, where it is entirely voluntary, our plea is that we be allowed to continue it.

The CHAIRMAN. Very well. Mr. Handler, general counsel of the National Labor Board, is here and has asked permission to ask you a question which you need not answer unless you wish, because we do not extend the privilege of asking questions to others than members of the committee.

Mr. HANDLER. This plan as described has some desirable features that I would like to have the privilege of asking you a question or two about the way in which it operates. You mentioned that foremen are permitted to share the representatives. In many plans the grievances are presented in the first instance to the foreman of the department in which the grievance occurs. Is that true in your plant?

Mr. FISKE. Yes; it is. In other words, a man with a grievance—of course, if he has been laid off by the foreman then that grievance is already for the full board at this stage of the proceeding, but in every other instance it would be handled within the department unless he was unable to obtain satisfaction in that way, in which case it would go before the appeal board.

Mr. HANDLER. I was just wondering if there would be a difficulty in the development of the plan if the foreman could be the representative of the workers and at the same time be the representative of the management and pass on the grievance?

Mr. FISKE. It is specifically provided in the constitution and rules that no individual may sit on the appeal board in a case in which he is one of the principal parties. That is provided for in the rules.

The CHAIRMAN. That is very good.

Mr. FISKE. In that case he would have to withdraw.

The CHAIRMAN. So that if there were a dispute between an employee and a foreman and the foreman was on the appeal board he would have to step off?

Mr. FISKE. The appeal board has never had on it the sort of person who would be in the position of hiring and firing.

The CHAIRMAN. The appeal board is not the council?

Mr. FISKE. It is a committee of council. We have about a dozen standing committees.

The CHAIRMAN. Does the council itself hear grievances or just the appeal board?

Mr. FISKE. The appeal board would report back to council. Council is the main legislative body of the organization and it appoints these standing committees, and anything it does is under the authority of council and they have to report back to it.

Mr. HANDLER. Do the representatives receive a compensation from the company?

Mr. FISKE. None whatever. At one time we had an executive secretary but that office no longer exists. Don't misunderstand that statement; they receive no salary, but they are permitted to attend meetings on company time, and the statement of the management of

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the company on that has always been that they consider that a legitimate function of business and they are perfectly willing to have meetings held on company time and have hourly workers compensated for the hours they spend there. Of course, in the case of the salaried men they just lose their time, and it does not make any difference in the amount they receive.

Mr. HANDLER. Can you meet off the company premises if you were so minded?

Mr. FISKE. We can if we are so minded, but we have never wanted to do that.

Senator MURPHY. In some of these meetings you discuss ways and means of improving the output of the plant? The methods relating to the benefit of the manufacturers themselves?

The CHAIRMAN. Perhaps he has not understood it. You are not only interested in protecting your own rights, but the employees are interested through council in helping the employers by suggesting how waste can be eliminated or suggesting improvements that will bring about more efficient and cheaper production, is that not true?

Mr. FISKE. Several subcommittees of council have done very important work on that.

Senator MURPHY. Yes; it is altogether logical that you should do that on the company time.

Mr. FISKE. Yes, sir; and if we are considering a question of wage policy or any other such matter the company takes the attitude that that is legitimate business and should be done on the company time.

Senator MURPHY. As compared with other industries in your organization, has the standard of wages been higher than others?

Mr. FISKE. It is at least average, I should say.

Mr. WHISLER. I should think our own particular standard is probably a little above average, in our own industry.

The CHAIRMAN. Thank you both very much. This is very helpful and has given us a picture of a relationship between employees and employers that is gratifying.

Mr. FISKE. Thank you for your attention.

The CHAIRMAN. Mr. Crockett.

STATEMENT OF A. E. CROCKETT

The CHAIRMAN. Mr. Crockett, you represent the Rochester Chamber of Commerce?

Mr. CROCKETT. I represent a large manufacturing group in the Rochester Chamber of Commerce.

The CHAIRMAN. Your full name is A. E. Crockett?

Mr. CROCKETT. Yes, sir.

The CHAIRMAN. You are an attorney at law?

Mr. CROCKETT. No, sir.

The CHAIRMAN. A manufacturer and business man?

Mr. CROCKETT. I am manager of this group of manufacturers.

The CHAIRMAN. You may proceed.

Mr. CROCKETT. To give you our views, I will read this statement, if you please. The preamble is a little long but we want in the preamble to justify our right to speak.

This appearance on the Wagner Senate bill "to create a National Labor Board" is made before the United States Senate Committee

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on Education and Labor by the Industrial Management Council of the Rochester Chamber of Commerce.

This council was organized 17 years ago by leading manufacturers in this city of 333,000 population, to help them to learn and apply the best and latest methods and policies of management, by the adoption of ever-higher standards and intelligence to life management, to lift employee efficiency and earning power, to lift employee morale.

These 33 firms today employ more than 50 percent of Rochester manufacturing employees. Conditions of employment in their plants are good. Working hours for years have been shorter than in most centers; in 1928 and 1929, the average was 47.6 per week. Wages have been high. Real contentment has existed. There has not been an industrial dispute in any of these companies for years, and not a serious strike anywhere else in the city.

Members of this council had the leadership of a committee of the Rochester Chamber of Commerce which, working month after month, drafted a workmen's compensation bill which a year later became law in the State of New York, the first State in America to enact a workmen's compensation law.

The CHAIRMAN. What was the year you enacted the workmen's compensation law?

Mr. CROCKETT. 1914, if I remember correctly.

The CHAIRMAN. We had a workmen's compensation law in Massachusetts before that, and I think Wisconsin had one before we had one, so I think that may be a little inaccurate.

Mr. CROCKETT. We will not quarrel about that, Senator.

The CHAIRMAN. I was governor in 1914, and I know we had a workmen's compensation act before I became governor.

Mr. CROCKETT. We can both check on our dates, Senator.

The CHAIRMAN. But it was among the early compensation laws.

Mr. CROCKETT. Before the depression, Rochester manufacturers in this council had achieved an excellent degree of stabilization of employment in both seasonal and nonseasonal lines. When the facts of their stabilization were disclosed by survey, taken by request, they elicited the generous praise of Miss Frances Perkins, then industrial commissioner of the State and now Secretary of Labor in the Cabinet.

Later on, in response to appeals from Washington, Rochester Manufacturers suspended stabilization of employment and wholeheartedly went into "share-the-work." On a check-up made in December 1932, among 51 concerns, 7,395 more persons were on pay rolls than would have been required on the firms' full time week of 44 to 48 hours, or on "no share-the-work."

In February 1931 desirous of assisting laid-off employees, 19 companies from out this council instituted the Rochester unemployment benefit plan, effective January 1, 1933, and are said to be the first group of employers independent of one another to take such action. That step, too, was taken voluntarily in a time when employee conditions were most excellent. President Roosevelt, then Governor of the State, commended it in a statement to the public, beginning:

> I am much interested in this because it in a way embodies one of the hopes of the recent Governors' Conference on Unemployment which was that in working out some kind of a reserve or insurance, more private companies would work out their own plans.

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Public approval of this unemployment benefit plan and its adopters also was given by the present Governor of the State, Herbert H Lehman, and by Miss Frances Perkins.

N.R.A.—THE RECORD

These Rochester manufacturers in the Industrial Management Council have tried faithfully to go along with the national recovery program, in accordance with the spirit as well as letter of N.R.A. By and large, they have succeeded.

Scrutiny of the N.R.A. survey returns from Rochester, as reported to Washington in October 1933 shows that practically every manufacturer in the city was signed up. Not a single important company was missing. The percentage of all employers signed was 93.6, the unsigned being little employers bewildered and uncertain as to how to adapt themselves to P.R.A. Concerns can be named that have gone beyond the letter of the agreement in their desire to assist the recovery program.

Those Rochester manufacturers applaud many good things in N.R.A. They are set against unfair practice and unfair competition. They have no sympathy with any individual or concern that fails to deal fairly with employees under all conditions and is not generous in times of plenty. Anything within reason that would correct chiseling and exploitation and promote fair practice, they would be for, in self-protection as well as in the public interest.

THE WAGNER BILL

The foregoing statement has been made to make clear that Rochester manufacturers in the Industrial Management Council would give instant and hopeful consideration and study to any important proposal directly affecting industry and the Nation, from N.R.A. or from these intimately connected with N.R.A.

And also to suggest to the Committee on Education and Labor that these Rochester manufacturers in reading the Wagner Senate bill to create a National Labor Board would examine it with particular attention to what its probable effects would be on the excellent employee relationships existing for so many years among the present 30,000 or more employees in their plants.

On reading it, it is natural that they asked of themselves:

(*a*) Would this bill, if enacted, help to maintain the friendly relationship existing between their employees and themselves?

(*b*) Would it improve and strengthen that relationship? Would it inevitably provoke suspicion, bad feeling, unreasonable demands, and in the end lead to trouble?

Every answer they got, no matter how closely they studied the text, was against the Wagner bill, because, as they saw it, it would take away and destroy what these Rochester manufacturers have prized and nurtured over so many years—the right to deal intimately and directly with their employees, to discuss with them, as occasion arises, any subject of mutual interest affecting the business and their relationships, the right to help their employees as fellow workers.

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To see these rights turned over to outside labor leaders, most likely with no knowledge of the business, and not necessarily acquainted with the employees but given authority to make and enforce unreasonable and destructive demands is not only alarming to these manufacturers but to their mind not in the public interest. They believe it would be equally alarming to employees, to customers, and the general public if fully understood. They can conceive of no greater obstacle to recovery than the condition which inevitably would arise if this Wagner bill became law.

UNFAIR LABOR PRACTICE

Here are some items in the Wagner bill which disturb these Rochester manufacturers—and they think their record entitles them to speak:

1. They do not accept it as true or consistent with conditions in Rochester and many other communities that the individual unorganized worker is, as the Wagner bill preamble says he is, "helpless to exercise actual liberty of contract to secure a just reward for his services, or to preserve a decent standard of living."

2. Definite unfair labor practices, forbidden to the employer, would not be forbidden to the employee or to organized labor. Labor organizations are specifically exempted.

3. A worker who replaces a striking employee (sec. 3, no. 3) is not an employee—even though the strike is unjustified and so be held by the National Labor Board.

4. The employer may be required to hire and keep only union employees (secs. 5 and 6) and at the same time he must not encourage membership in any organization (sec. 5, no. 1).

5. The employer must not advise or supervise an election of his employees (sec. 5, no. 3). But a labor organization or organizer may come in and advise, influence, and even coerce employees in such election—and the employer's hands would be tied.

6. When the National Labor Board, at request of either party, serves as arbitrator (sec. 206), its decision is final, subject to one appeal. That is, final to the employer. Employees, if decision is against them, can strike, because nothing in the act is to be construed so as to interfere, impede, or in any way diminish the right to strike (sec. 303).

7. The employer is forbidden (sec. 5) to "influence or favor any organization of employees, even those organized for mutual aid and protection" (sec. 4). Thus contributions by the employer to employee mutual-benefit associations, common in Rochester, to pay sick benefits and funeral expenses, would be outlawed. Revenues from employee garages, candy counters, and the like, operated by the company, could not be turned over to these associations, as frequently has been done since the depression depleted their funds.

8. Under section 205–D, on vague information or little more than surmise, a representative of the National Labor Board could issue a complaint against an employer.

Twenty-four hours later, at any place he pleased, hearing could be held.

He could exercise his authority to obtain information from this employer's reports to the Census Board or Internal Revenue Office.

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At any time, as a result of this hunt, he could change the complaint. In other words, it would easily be possible to convict an employer of a charge to which he has had no opportunity to prepare an adequate defense.

9. The bill sets up two bureaus with duplicate purposes and authorities—the National Labor Board (sec. 206) and the Conciliation Service (sec. 302), each authorized to offer its services to any party in a labor dispute. Further than this, both bureaus are placed outside the civil service.

This bill violates all principles of conciliation in forbidding any relations between the employer and his employees. How could we hope for friendly relations when any relations whatsoever are forbidden? The whole policy of setting up a fence between the employer and employee is wrong.

Company unions, employee representation or trade unionism have not been widely adopted in the manufacturing plants of Rochester. This condition may truly be attributed to employee satisfaction over many years of good and ever improving working conditions, to short hours and good wage scale, to employee confidence in management and supervision, and to a high type, intelligent class of employees.

These Rochester manufacturers do not want this mutually satisfactory relationship destroyed—to see a few employees, perhaps acting under outside instigation or incentive, stage a "dispute", bring in a representative if the National Labor Board, have him hold an election and inform the company that the representatives of its employees hereafter shall be a certain labor union. They see no reason why such things should ever be done in such a community as Rochester and they do not assume that Rochester is a mere oasis of good conditions of employment and of good employee relationship. They believe the country has many such communities. They believe their situation is truly typical of actual conditions among the many millions of workers who, by choice and preference, have not joined any union and do not want any union restrictions and domination.

These Rochester manufacturers have faithfully conformed to N.R.A.; they have not hesitated, in conforming to go beyond the letter of the President's agreement and the codes. They recognize many excellent results for which N.R.A. has been responsible and the constructive part N.R.A. has had in assisting the country to win back prosperity. They applaud its correction of faults, reforms it has instituted, better practices it has brought about. It would be contrary to their record of many years if they stood against anything that would be wholesomely progressive and in the best interests of their employees, their community, and the public. It would be contrary to their record if they advocated anything that would not aid in the perpetuation of every sane advance made in this battle against the depression. They do not want the Labor Board to be without ample authority to administer and correct—on hours of labor, minimum wage, and fair competition. But they do object with all vigor against having it built up through law into a powerful, autocratic membership-campaign organization.

They would warn, with all respect and sincerity, against any legislation or act which might set recovery back indefinitely, when so many factors are working for recovery and so many evidences exist that they are succeeding.

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Appended to this statement, Mr. Chairman, is a list of these companies and the codes under which they are operating, which I will submit for the record as follows:

The companies (members of the Industrial Management Council) with type of product and code:
American Laundry Machinery Co., laundry and dry-cleaning machinery.
Josiah Anstice & Co., foundry.
Art in Buttons, Inc., P.R. agreement.
Bausch & Lomb Optical Co., scientific apparatus, optical.
Consolidated Machine Tool Corporation, machine tool and forging machinery.
Cutler Mail Chute Co.
Davenport Machine Tool Co., machine tool builders.
Delco Appliance Corporation, national electrical manufacturing code.
Eastman Kodak Co., photographic.
Folmer Graflex Corporation, photographic.
R. T. French Co., spice manufacturing.
General Railway Signal Co., P.R. agreement (railway equipment).
Gleason Works, machine tool and forging machinery.
Haloid Co., photographic.
Hickok Manufacturing Co., belts, leather, jewelry.
Morgan Machine Co., machine tool.
Pfaudler Co., dairy machinery.
Richardson Corporation, P.R.A. modified for fruit and flavor sirup.
Ritter Dental Manufacturing Co., P.R.A. (dental code not yet approved).
Robeson Rochester Corporation, electrical appliances.
Rochester Gas & Electric Corporation, P.R.A. and temporary code.
Rochester Telephone Corporation, P.R.A.
Suron Optical Co., optical manufacturers.
J. Hungerford Smith Co., P.R.A. modified for fruit and flavoring.
John P. Smith Printing Co., printing.
Stetcher Traung Lithograph Corporation, P.R.A. lithographic.
Stromberg Carlson Telephone Manufacturing, electrical manufacturing (telephones, radios).
Symington Cos., steel casting, malleable iron, railroad equipment.
Taylor Instrument Cos., scientific apparatus, temperature recording.
Todd Co., graphic arts, office equipment (office appliance division).
West Tire Setter Co., machine tool and forging machinery.
Yawman & Erbe Manufacturing Co., business furniture, storage equipment, and filing supply.

The CHAIRMAN. Thank you very much, Mr. Crockett.

Mr. CROCKETT. We will be glad to present each member of the committee with a copy of this statement, Senator.

The CHAIRMAN. The record will have your full statement.

Mr. CROCKETT. Thank you, Senator.

The CHAIRMAN. Mr. Mowitz.

STATEMENT OF A. P. MOWITZ

The CHAIRMAN. You are representing here the Full Fashioned Hosiery Association, Inc., of 1420 Walnut Street, Philadelphia?

Mr. MOWITZ. That is right, sir.

The CHAIRMAN. You are an attorney at law?

Mr. MOWITZ. Yes, sir.

The CHAIRMAN. Residing in Philadelphia?

Mr. MOWITZ. Yes, sir.

The CHAIRMAN. And you desire to be heard in connection with this bill?

Mr. MOWITZ. For just 5 minutes.

The CHAIRMAN. That is all we can give you. Will you proceed for just 5 minutes?

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Mr. MOWITZ. Mr. Chairman, I simply want to say this, and I not only speak as counsel, but I believe I am organizer of the Full Fashioned Hosiery Association which comprises about 100 mills employing between 25,000 and 30,000 men and women.

The CHAIRMAN. All located in the vicinity of Philadelphia?

Mr. MOWITZ. Pennsylvania and New Jersey.

The CHAIRMAN. Have they any unions in these hosiery plants?

Mr. MOWITZ. They were all what is known as "open shop" until the advent of the N.R.A.

The CHAIRMAN. Since then what has been the status?

Mr. MOWITZ. Since then they have operated to the fullest extent as the employees desired. Some have shop organizations, like the Apex Hosiery Co., which employs about 3,000, have had for many years a sort of a representative organization in their mills whereby the employees had a means of expression. Others did not do that and they just went on. The organizations were built very largely for the purpose of inaugurating and taking in both employer and employee in that sort of a system by improving the industrial relations in the plants. This organization is directed entirely toward the industrial relations between employer and employee.

Our aim is to elevate the wages, which we have done, fixing standards which are fair, and I can say that in no instance are they below the organized union scale and, in a great many instances, in advance of them.

The CHAIRMAN. The members of your organization are opposed to this bill?

Mr. MOWITZ. We are opposed to this bill because of its many objectionable features which we believe will undo a great deal of the good that has been done and will be done after the real principles that underlie section 7 (a) are fully understood by the employer and the employee alike.

I believe, like the gentleman who spoke here this morning—I believe it was Mr. Dennison—that one of the really fundamental defects in this bill is the unnatural forcing of organizations which heretofore in a great many instances have given no evidence of constructive leadership, and they are more feared than anything else, the possibility of giving them the dominance of industrial relationships is more feared than any other element in this situation.

Senator MURPHY. Were you present at the hearing yesterday?

Mr. MOWITZ. No, sir; I was not.

Senator MURPHY. It was stated yesterday that 7 (a) does not make it obligatory upon the employer to deal with the association of his employees.

Mr. MOWITZ. That is what I meant when I said the education of the employee. I think when the employee is educated to the real intent of section 7 (a) he himself will enforce that. I think the average employer, when he becomes educated will realize that the old order has passed and a new order is before us, and that an amicable approach from both ends to that new order is the best solution of this problem.

Senator MURPHY. That is the theory under which that provision of N.R.A. was adopted, doubtless, and Senator Wagner emphasized the fact yesterday that there has been this refusal to deal with associations of employees. Do you think there would be any in-

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justice imposed upon your industry if it were made obligatory upon employers, if that could be done legally, requiring them to deal with employees?

Mr. MOWITZ. No; I do not.

Senator MURPHY. You do not think there would be any injustice?

Mr. MOWITZ. Not if it is done under a system which will deal fairly with both sides of the situation.

The CHAIRMAN. And which will permit the employees to organize freely and without domination or influence from other outside labor unions or from their own employers?

Mr. MOWITZ. That seems to be one of the difficulties of this present discussion on this bill—what is dominance? One side considers that the encouragement, the good will of the employer toward an established organization, might be dominance, and that is one of the difficulties. I think that if that word can be truly understood by both sides, fairly understood, and made sensible and workable, I do not think you will find any trouble about the whole matter after this situation is fully understood.

Senator MURPHY. I think the reference is to the undercover agent of the employer influencing the employee.

Mr. MOWITZ. We have not come in contact with that.

Senator MURPHY. And reporting to employers the employees who may not have been subservient.

Mr. MOWITZ. I think that is a bad system, espionage. That is very bad in any situation.

Senator MURPHY. Our task, of course, is difficult because we do not want to set up an industrial absolutism on the one hand, or capitalistic absolutism on the other, but we do want a free man.

Mr. MOWITZ. But the difficulty with this bill, Senator, is this: There are so many clauses in it in the first place, which are new; in the second place, they are ambiguous if they are not brutually frank. Take, for instance, the clause in the bill that provides although an employer has an understanding or agreement with a group of his employees it does not prevent him from making a different agreement with another group of employees. That is specifically provided for, that if a majority of his employees should subscribe to union principles, or a labor organization as they call it in the bill, that the employer can enter into an agreement with that group of employees and make membership in that organization a condition of employment as to the whole group. I have not yet found somebody who can tell me what the two things standing together mean. That is just an illustration of the things that aroused suspicion in the minds of the average layman when he reads that. I have not been able to explain it. I may be dense, but nobody else has explained it to me.

Then you have that other clause where the board has the right to investigate the question of who is the representative elected by the employees of a plant and may designate that employee without the right of appeal and may order an election with secret ballot and prescribe the methods and the classification of employees and their qualifications to vote.

Then, superimposed upon that you have the clause in the Wagner bill to the effect that the word "employee" shall include anyone who has severed his relations with that employment by reason of a current industrial dispute, and, at the same time, they say that no one who has

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been employed in the course of that industrial dispute shall be an employee.

Senator MURPHY. Of course, you must take this view of the bill, that it is something that has been set up for you to shoot at.

Mr. MOWITZ. Of course.

Senator MURPHY. And it is being shot at.

Mr. MOWITZ. Of course, I understand. I am afraid I have been shooting at it for a long time.

Senator MURPHY. And the purpose of these hearings is to develop all these points of view and then the wisdon and the sense of equity of men such as the chairman of this committee, Senator Walsh, will evaluate out of this testimony——

Mr. MOWITZ. May I say this, that my people have all subscribed to this idea? I was in this business myself, but unfortunately business was not so good. 'I have been in contact with this business in legal connections for many years and I have always maintained this principle in the industry, that when an employer came to me in regard to an industrial dispute the first question I would ask him was, "Let me see your pay roll and your working conditions," because if they were right his cause was right, and if they were wrong, he would be licked because of economic conditions if the law did not do it for you.

I think most of them have come to a full realization of the fact that industrial justice is the real solution in all fairness.

The CHAIRMAN. Is Mr. Kiss here?

Mr. KISS. Yes, sir.

The CHAIRMAN. Mr. Kiss, you and the other witness, Mr. Cush, have you prepared statements for the record? If so, we will be glad to have your statements go into the record. We have not time to hear them this morning because we are called to the Senate floor.

Mr. KISS. Here is mine [handling].

(The statement of Mr. Kiss is as follows:)

MARCH 27, 1934.

STATEMENT SUBMITTED BY JOE KISS, NATIONAL SECRETARY OF THE NATIONAL FURNITURE WORKERS INDUSTRIAL UNION OF THE UNITED STATES

Submitted to the United States Senatorial Committee on Labor, which is considering Senator Wagner's bill no. 2926. The following six points to be dealt with in this statement are:

1. National Industrial Recovery Act.
2. The National Labor Board.
3. Section 7 (a).
4. Company unions.
5. Wagner bill no. 2926.
6. Our demands.

Mr. Chairman: Our organization comes before the Senate Committee on Labor with serious objection and protest against the passage of the proposed bill of Senator Robert F. Wagner, commonly called the "Magna Carta for American labor" now before your committee for consideration.

NATIONAL RECOVERY ACT, THE "RAW DEAL" FOR THE "FORGOTTEN AMERICAN WORKERS"

The United States now finds itself in the fifth consecutive year of crisis, the longest, deepest, and most destructive economic crisis in the history of the world. The main sufferers are the workers. The "new deal" is now more than a year old and it has proven to be a very "raw deal" for the worker.

Many American workers looked hopefully toward the greatly heralded National Recovery Act which was to bring about employment, lessen hours of labor, increase earnings and thus reestablish the purchasing power of the American people.

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But we old trade unionists warned the workers even at that time that the National Recovery Act has but one purpose; that of lowering the living standard, decrease our meager purchasing power, in order that the bosses profits be maintained for only thus can they attempt to stabilize their shaking system. Stagger plans, furlough plans mean wage cuts to which a further wage reduction is added in the form of inflation. Our living standard has been vastly lowered, while on the other hand huge subsidies were given to the banks—the big trusts—were strengthened. This was followed up by the adoption of the National Recovery Act slave codes.

The outstanding action of the new deal was the National Recovery Act. This program intends to save big business at the expense of the workers. It was heralded by Miss Perkins, Mr. William Green, president of the American Federation of Labor, and by the President of the United States as the savior of the workers.

The workers realized in a short time that it was not their duty to further contribute to the upkeep of unemployment relief from their meager earnings, but that the responsibility lay with those who created this crisis. To be more explicit, the responsibility lay with those who own the productive forces, those who control the very life of this country; in other words, with big business.

The block-aid system proved a total failure and vanished quickly. Then we workers were told about the famous 90 days' return of prosperity by Mr. Hoover. Then came the forced stagger plan introduced by such firms as the General Electric Co. and others; and approved by Mr. Hoover and Mr. Green, putting the workers on a 1 to 3 days a week basis, accompanied by wholesale wage cuts, beating down the living standard of the American workers to a point where no human being could possibly support his family decently.

Mr. William Green, John Lewis, McGrady, Berry, and other high officials of the American Federation of Labor were always in the forefront to endorse and support all of these solutions to the crisis which they considered were solutions both for labor and capital. During the past 4 years of the worst economic crisis, labor was told to wait; that there was still a hope left to change the administration from Republican to Democratic. The latter in its preelection campaign promised the American people a new deal, unemployment insurance and a radical change in the redistribution of the country's wealth, so that "no one shall go hungry, and no one shall be unemployed, and justice for all."

A year has now passed and it has brought workers bitter experiences without building the promised road to recovery. But let us carefully examine just what has been accomplished by the National Recovery Act for the benefit of those who are mainly responsible for the condition in which the American people find themselves today.

In our industry, the furniture industry, a minimum scale of 30, 34, and 42 cents an hour was set which in many instances has become the maximum, especially in the South for the Negro and white workers. The North is no exception to this rule, however. At the last hearing of the National Recovery Administration, held before General Johnson, we placed into the records the figures of official Governmental statistics, showing us, that the average wage scale in Grand Rapids, Mich., was $13.57 in January 1934, or 3 cents below the 34-cent minimum as compared with the $14.73 average in December 1933.

On the other hand, the National Recovery Act has increased profits for the bosses, this is clearly shown by the table the National Recovery Administration uses to gage its results (Federated Press, Mar. 3, 1934), according to the Labor Research Association of New York.

	Industrial production (1932-25=100)	Factory employment (1932-25=100)	Factory pay rolls (1932-25=100)
1929 (average)	119	101	107
1930 (average)	96	87	87
1931 (average)	81	74	66
February 1932	69	67	58
February 1933	63	59	30
February 1934	81	72	53

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Thus, while February 1934, industrial production had reached the same level as the average for 1931, workers' earnings as indicated by pay rolls were 19.7 percent below the 1931 average.

Comparison of the indexes of February 1934 with those of February 1932 shows that industrial production was 14.8 percent less.

What this has meant in profits for the bosses is indicated by the National City Bank bulletin for March 1934 which reports that net profits of 810 industrial corporations engaged in various lines of industry and trade were $440,643,000 in 1933. This compares with a net deficit of $45,802,000 in 1932 for the same companies.

Comparing figures on employment, wages and the cost of living in December 1933 with those of June 1933 the New Republic, February 14, 1934, finds that:

"The net results of the National Recovery Act has been to decrease the real earnings of the average worker, even below the poverty level of last June."

Indicating the rising wave of workers' struggles against these National Recovery Administration wage cuts, Senator Wagner, in a report on National Labor Board problems, admitted:

"A growing complaint is reduced weekly earnings from the shorter work week under industrial codes." (N. R. A. release, Feb. 21, 1934.)

In San Antonio, Tex., where 10,000 to 15,000 workers are employed in pecan shelling, Maury Maverick, resident of San Antonio told National Labor Board, companies are paying as little as 4 cents an hour to women. Father Peter Wynheven, chairman of the New Orleans Regional Board, after visiting San Antonio, stated:

"Wages are too low, some persons are making only $3 a week, while the minimum scale under the President's plan is $12 a week. I never saw so much chiseling."

Report of the Consumers' Advisory Board of the National Recovery Administration (New York Times, Mar. 5, 1934):

"The following industries have failed to increase mass purchasing power: Furniture, bituminous coal mining, knit goods, rayon, men's shirts and collars, brick and tile, cement, paints and varnishes and glass."

To crush the rising strike struggles of the workers against these slave codes which results in the lowering of our living standards, the National Recovery Act has set up the National Labor Board which has shamelessly broken strikes in the interests of steel, coal, automobile, furniture, and other companies.

In this task the National Recovery Administration had the close cooperation of the American Federation of Labor leadership in the person of Mr. Green, McGrady, Lewis, Berry, etc. The National Recovery Administration fostered the rapid growth of the company unions. Although the last official survey of company unions by the employers research agency, National Industrial Conference Board, showed only 313 different "employee representation" plans in force in this country in 1934, a study by "Pen and Hammer" labor research organization in cooperation with the Labor Research Association of New York shows at least twice that number—625. Nor is this by any means complete. According to the latter survey, nearly 5,000,000 workers are covered by these plans as against a total of 1,263,000 found last year by the National Industrial Conference Board in its study called "Collective bargaining through employee representation." The National Recovery Act and related events have thus apparently increased coverage of company union schemes by almost 300 percent.

THE NATIONAL LABOR BOARD

We believe, that the existence of the National Labor Board of which Senator Wagner is the present chairman, is designed for the purpose of enforcing compulsory arbitration and to "prevent strikes." This stated fact completely eliminates any possibility of exercising the so-called "right of collective bargaining." The workers' only weapon against the bosses is the right to strike and picket. Actions of the National Labor Board and the regional labor boards have proven them to be strike-breaking organizations. Their intervention in strikes has resulted in workers being sent back to work without having won their demands. Their tactics have also encouraged the development and strengthening of company unions.

Let us examine the personnel of the National Labor Board, regional labor boards, etc., of whom are they composed? Primarily of big business men and of American Federation of Labor officials. Among the employer representatives are:

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Gerard Swope, president of the General Electric Co., which employs some of the deadliest speed-up devices in the United States. Swope is the author of the fascist-like Swope plan. General Electric workers have been forced into company unions for many years and all sorts of welfare schemes imposed upon them.

Walter C. Teagle, president of the Standard Oil Co. of New Jersey, one of the foremost advocates of company unions, regarding final "say" of the company union, is with Teagle's board of directors of the company; has effective spy and blacklist systems. Labor organizers have been repeatedly arrested.

Pierre S. Du Pont, chairman of the board of directors of the big chemical manufacturing company, E. I. du Pont de Nemours.

Henry S. Dennison, of Dennison Manufacturing Co., another company famed for its fake welfare schemes employed to fool the workers.

Lewis S. Kirstein, of William Filene & Co., Boston department store.

Ernest Draper, of Hills Co., paternalistic advocate of various welfare schemes.

Senator Robert F. Wagner, a lawyer and chairman of the Board.

The so-called "labor representatives" are confined principally to the top officialdom of the American Federation of Labor.

William Green, president of the American Federation of Labor who has continually endorsed N.R.A. and told workers not to strike.

George L. Berry, International Pressman's Association.

John L. Lewis, president of United Mine Workers of America.

Father Francis J. Haas, Catholic priest, Catholic Welfare Committee.

Leo Wolman, professor at Columbia; economic expert of the Amalgamated Clothing Workers Union.

Leon Marshall, economist, former adviser to the American Federation of Labor.

Tactics employed by the labor boards which have broken strikes may be summarized as follows:

Roosevelt's Executive order of March 3, 1934, interpreted by press reports as adding "new power" to the National Labor Board to be used against recalcitrant employers, was in reality only part of the administration's apparent concessions to labor designed to allay an expected epidemic of strikes this spring, admits the World-Telegram (Mar. 9, 1934). The order also veiled the strengthening of the strike-breaking personnel of the Labor Board by the addition of five new members on the same day.

This so-called "new power" is merely that the Board may now make appropriate recommendations for action, based on its findings in the disputes referred to it. Previously, the findings of the Board were subject to review by the Compliance Board or the Department of Justice. Action still rests in the hands of these two departments which have in such cases as the Frick, Weir, Budd, and Ford strikes, either openly upheld the company's action or quietly put the case in cold storage.

The American Civil Liberties Union in a survey of 1933 states:

"That 'labor's rights to meet, organize, and strike have been widely violated' * * *. At no time has there been such widespread violation of workers' rights by injunction, troops, private police, deputy sheriffs, labor spies, and vigilantes * * *. More than 15 strikers have been killed, 200 injured, and hundreds arrested since July 1, 1933. More than 40 injunctions of sweeping character have been issued against miners, agricultural workers, bakery workers, shoe and leather workers, food workers, hotel workers, furniture workers, etc. Troops have been called out in half a dozen strike districts. Criminal syndicalist charges are again being used against active strike leaders."

Outright failure to consider cases referred to it.

Shifting cases back and forth between the various agencies, the Regional Labor Boards and Compliance Boards, the National Labor Board and other divisions of the Government.

Example: The Tool and Diemakers strike in Detroit. Workers appealed case to National Labor Board, but Board referred it back to Detroit Regional Board despite worker representatives' protest. The auto bosses had already defied the Regional Labor Board twice and refused to deal collectively with the workers.

In the Ford—Edgewater, N.J., and Chester, Pa.—strikes, too, the case was batted back and forth between the Regional and Compliance Board, neither wishing to take responsibility. When it reached the National Labor, General Johnson declared that the workers' charges that Ford had violated section 7 (a) were not substantiated by facts and no action was taken.

Industrial and other members absented themselves from Labor Board meetings, thus increasing the delay in reaching any decision and giving bosses ample time to develop company unions and break workers' unions.

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Calling countless meetings which bosses refused to attend, thus exhausting physical and financial resources of workers.

Dr. F. J. Haas stated before the Senate Labor Committee (N.R.A. release no. 3842):

"An employer came to the National Labor Board and held that he had observed the law, although it was clear that he has had no intention of coming to an agreement. He had held conversations with the workers' representatives extending over several weeks and climaxed a 2-day negotiation with them in Washington by throwing them, along with their attorney, in jail on their return home."

Sending workers' representatives to Washington and shifting them back and forth between various agencies. Workers who went to Washington declared it almost hopeless to present their cases before the Board. (On Mar. 15, 1934, Phil Raymond, of the Auto Workers Union, demanded to know: "I ask again whether the Government will guarantee our delegates against victimization. Did the Board give the photographer permission to take pictures of the men?" Chairman Williams, of the Auto Codes, said that the plates would be confiscated, but Raymond's demand that the Board should question employers was refused.

The settlements made by the National Labor Board included the following provisions:

(*a*) Immediate termination of strike. Thus workers were sent back to work without the granting of their demands.

(*b*) Arbitration of dispute—this is practically compulsory arbitration.

(*c*) Reinstatement of strikers—

1. "As rapidly as possible."
2. "As soon as business permits."
3. "Without discrimination." But "Workers guilty of violence or destruction of property shall not be reinstated."
4. "Placing of strikers on 'preference list.' "

(*d*) Election of "representatives of their own choosing" under supervision of National Labor Board at a much later date. This meant the breaking of the strike without winning union recognition or other demands and allowed the bosses to develop their own company unions to break the workers' unions.

Outstanding example of effect of setting elections at a much later date:

Weirton strike: Strike was on September 27, 1933, National Labor Board set December 15 as date for election. Result: Weirton held company-union election on that date. Weeks previous to election were utilized to fullest extent to break workers' organization. At election workers were intimidated, threatened with loss of jobs, and assaulted if they did not vote for company union.

New York shoe strike: Referred to National Labor Board in October. Set January 2, 1934, as date for election.

Submission of further disputes to National Labor Board, its decision to be final. This is compulsory arbitration.

RESULTS OF NATIONAL LABOR BOARD INTERVENTION

1. Strikes broken.
2. Strikers were discriminated against. Rosedale Knitting Mills, Philadelphia Taxi Workers Strike, Budd Manufacturing Co., New York Hotel strike, Chester and Edgewater strikes at Ford plants.
3. Union members were discharged. Houde Engineering Co., Buffalo, N.Y.; Harriman Knitting Mills; Great Lakes Steel Corporation (subsidiary National Steel).
4. Trade unions broken.
5. Company unions were maintained and strengthened. Weirton Steel Co., Budd Manufacturing Co.
6. So-called collective bargaining ignored. Frick Coke Co. has refused to deal with union representatives of workers duly elected. Maintains it will recognize them only as individuals. Rosedale Knitting Mills agreement is based on same.

Ford Motor Co. has refused to deal collectively with workers. Republic Iron & Steel Co. also refused to deal with workers' representatives or submit anything to arbitration.

In a letter to President Roosevelt, February 21, 1934, the American Civil Liberties Union stated:

"The present procedure of the National Labor Board constitutes a positive encouragement of company unions * * *. Through elections for 'employee representatives' held after too long notice, enabling the companies to push company unions * * *."

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SECTION 7 (A)

President Roosevelt has repeatedly reassured labor by saying that the workers had the free choice to decide to which organization they want to belong. Their own unions, or company unions. He said that the Government would see to it that they get that right. He did not recount his repeated promises to the Weirton Steel Co. workers whose strike was broken by the National Labor Board through similar promises. He did not explain how he twice promised the Weirton Steel workers that he personally would see to it that the Government would supervise a free election and then abandoned the workers to the very company union that foisted upon them acceptance through the medium of section 7 (a). (So much for Presidential promises.)

We further refuse to recognize that Mr. William Green, who purports to speak for labor, really represents the interests of the workers when he uses the workers to accept these slavery codes. He has as much in common with workers earning $13.57 a week with his $10,000 yearly salary and traveling expenses as I have in common with J. P. Morgan.

In an article in the New York Times, which was also published in the Upholsterers' Journal an American Federation of Labor publication, written by Mr. Green, under the heading of "National Planning; Labor's Point of View", he says:

"We went along with no attempts at planning until the N.R.A. was instituted to pull us out of this depression. Agencies for planning incidental to control were set up to shorten the work-week so as to provide more jobs and to increase wage rates so as to increase consuming power. This sort of control has achieved a degree of success that encourages us to continue."

This article appeared in the January 1934 issue at a time when the Government's Statistical Bureau was reporting that the average weekly earnings of the furniture workers in Grand Rapids, Mich., in January 1934 was $13.57 or 3 cents below the bare minimum. Mr. Green thus seriously contradicts himself in his attempt to urge the workers to continue with the best of hopes. He admits in the same article:

"Even during the depression * * * labor-saving methods have gone steadily forward. A study of the National Board of Economic Research shows that the workers' producing power per hour in our factories increased 7 percent from 1927 to 1929 and 12 percent from 1929 to 1932. Thus, depression intensified the search for timesavers."

So in spite of admitting that during the economic crisis there were no attempts made on the part of the bosses to cut down the deadly speed-up system, but have been increased during this depression period and that they had no intention of giving the slightest concessions to labor—yet in spite of that, Mr. Green, president of the A. F. of L. tells the workers that it is "success that encourages us to continue."

But we clearly see with whom we are dealing. In a declaration by Mr. Hugh S. Johnson, N.R.A. Administrator, before the "4,000 bentlemen who control industry" held in Washington, D.C., March 8, 1934, he declared of the A. F. of L. leaders to this gathering, that "their interest is your interest" thus reassuring the 4,000 of the nation's biggest monopolists. Gen. Johnson then made the following statement:

"We know something about what is toward in this country—the worst epidemic of strikes in our history. Why suffer it? Here is a way out. Play the game. Submit to the law, and get it over quickly.

"I want to tell you this for your comfort, I know your problems. I would rathr deal with Bill Green, John L. Lewis, Ed McGrady, Mike MacDonough, George Berry and a host of others I could name, than with any Frankenstein that you may build up under the guise of a company union. In fact—take it from me and a wealth of experience—their interests are your interests and under the law and in this modern day, it is the best and qiuckest may to economic peace. Here is one cloud that we can erase from our horison with one stroke. Let's do it."

So the only thing asked is to "play the game" and get it over with quickly. General Johnson would rather deal with Mr. Green, Lewis, McGrady, and so forth, and a host of others than with any Frankenstein. We know for instance, that since the above-mentioned gentlemen have been fully cooperating with the "new deal" administration, tremendous burdens have been shifted onto the backs of the workers. It has intensified monopoly, trust developments, increasing profits. All this was done at the expense of the workers thus tremendously lowering our living standards. For example, the report of the Morgan con-

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trolled National City Bank on profit gains the bosses have made under the Roosevelt "new deal", and particularly the N.R.A. the survey prints the following amazing facts:

"A survey of 810 industrial corporations show that in 1933, these companies, with the help of the N.R.A. were able to show profits of $440,643,000. In 1932, the same companies showed a net loss of $45,802,000."

We know that these profits came out of the lowered real wages through the N.R.A. codes; through the intensified speed-up and rationalization and through raising of prices due to inflation. We may also quote President Roosevelt's speech which he made at Constitution Hall, before the 4,000 capitalists at the close of the N.R.A. public hearing, March 4, 1934:

"I give to industry today this challenge, it is the immediate task of the industry to reemploy more people at purchasing wages and do it now. Only thus can we continue recovery and restore the balance we seek."

For that matter, 5 cents or $5 a week can purchase something also. But President Roosevelt stated also that recovery must continue * * * on the same day that President Roosevelt made his speech, we read that just the opposite of the N.R.A. promises which were testified to by the report of the N.R.A. Consumers' Advisory Board, were stating:

"The average purchasing power per employed idustrial and commercial workers has been decreased (under N.R.A.) by rising prices. Although the new workers employed at minimum wages necessarily pull the average down, it seems very probable that the low average also means that some of the gains of the reemployment program have been made at the expense of the previously employed."

This admission of the N.R.A. Consumers' Advisory Board, proves once more conclusively the truth and correctness of our statements before the N.R.A. public hearing of February 27, 1934.

GROWTH OF COMPANY UNIONS

According to the National Industrial Conference Board survey of January 13, 1934, the number of companies in manufacturing and mining industries operating under company union increased 180 percent since the enactment of the N.R.A. while the number of companies having trade union agreements has increased only 75 percent. This survey, which covered about 2,586,000 wage earners stated that 653 companies, employing 1,184,294 workers or 45 percent of the total number of workers covered in the survey, had some form of "employee representation" scheme.

In out industry, company unions were organized twice as fast after the introduction of the N.R.A. Some of these facts were presented to the N.R.A. Administration before our code was promulgated (Nov. 9, 1933) and a number of them at the February 27, 1934, public hearing. We know that this will be the end of it.

No action will be taken, except such action which was taken not so long ago in the New York I. Miller Shop, where the workers were forced to fill in their names on a voting blank, registering their intention whether to join the Shoe and Leather Workers Industrial Union or preferring to remain in the company unions. Workers were intimidated and threatened in the voting—if by this method then "free choice" is meant, then we must say you can keep it. Labor does not accept such "free choice", as instanced in the foregoing.

Here is a bona-fide example how the N.R.A. helps to work out the building company unions. Elinore Morehouse Herrick, vice chairman of the New York Regional Labor Board, cited cases illustrating labor's present inability to enforce code hours and labor provisions, especially that of the Everready Label Corporation, self-styled "largest printers of N.R.A. labels", which held an employer-supervised election resulting in a strike against the representatives elected and subcode wages.

In this case, she said, the employer appeared before her board and said, "I am here to represent my employees." (World-Telegram, Mar. 17, 1934.)

WAGNER BILL NO. 2926

We are drawing our own conclusions of this proposed act, based on previous acts which were introduced for "labor" namely: The antiinjunction Clayton Act which was hailed by the American Federation of Labor as labor's charta at the time of its enactment. It was supposed to prohibit injunctions. Then the Federal injunction bill which was also hailed by the American Federation

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of Labor as a "victory". But in practice we saw that both laws are a farce. Injunctions have been granted on the ground that property rights are threatened. The courts used this point and the granting of injunctions went on just as freely as before. Injunctions have continued to be granted in the States exposing the ineffectiveness of the labor board.

The American Federation of Labor leaders' participation in the administration of the N. R. A. is not in the interest of labor. The National Labor Board which includes in its ranks such distinguished gentlemen, as the representatives of John D. Rockefeller, in the person of Mr. Walter C. Teagle, president of the General Electric Co.; Mr. William Green, president of the American Federation of Labor; Mr. John L. Lewis; Mr. McGrady, the entire top A. F. of L. officialdom shows their real role, their interests are the same as the interest of Morgan, Ford, DuPont, Rockefeller, Weir, Krohler, and so forth. Thus drawing on past bitter experiences with the National Labor Board headed by Senator Wagner, we see that their sole interest is to scrap the strike weapon, thus fostering company unions. Wagner's bill—compulsory arbitration bill—designates this as its main purpose for in its opening paragraph it states:

'To equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a national labor board, and for other purposes."

We notice in title II, section 210 the following:

"There is hereby created a board, to be known as the 'National Labor Board', which shall be composed of seven members to be appointed by the President, by and with advice and consent of the Senate."

We refer you to our foregoing factual statements regarding the National Labor Board. But let us hear Senator Wagner speak at Constitution Hall, March 8, 1934. He cites the enormous growth of company unions under the N. R. A Then, referring to the "threat to industrial peace and security implicit in the present state of affairs", Senator Wagner declared:

"There must be above all cooperation between employers and employees, and the first step in this direction is, that they settle their dispute amicably, without resort to the bitter and futile measure of the strike."

So a law must be passed which will prohibit the "threat to industrial peace and security?" Whose security? Surely not labor's? There can be mistake, that this new powerful National Labor Board's aim is to force "amicable settlements, without a futile resort of strikes." He tries to convince labor that the interests of Mr. J. D. Rockefeller; J. P. Morgan; Walter C. Teagle; Gerard Swope; William Green; and the interest of labor are the same. We cannot believe this—that the interest of 810 industrial corporations making $440,643,000 profit in 1933 with the help of the N. R. A. are the same as that of the Grand Rapids furniture workers making an average of $13.57 per week.

An illustration of how the big newspapers favor these bid industrial corporations and hail Senator Wagner's bill, we quote from the editorial column of the Philadelphia Record, March 3, 1934, one day after the bill was made public. It declared:

"It can be a charter of new liberty and power for business, too—if business be wise enough to see where its own salvation lies", continuing by advising big business to support it:

"Enlightened employers will fight for, not against, the Wagner bill."

Finally the editorial further recommended, that this proposed bill be accepted without any further hesitation and as quickly as possible by industry:

"They must take up the historic battle to save capitalism in spite of itself * * *."

Some times even these newspapers owned and managed by the big trusts inadvertently tell the truth—as happened in this instance. Of course, the bosses will fight for the bill. They have undertaken the historic battle of saving capitalism during the past 5 years, "in spite of itself." Of course, wise business men will fight for the adoption of the bill, because it gives them additional power.

To quote the Wall Street Journal, March 3, 1934, would require much space but suffice it that the Journal is fully conscious of the fact that the Wagner bill means to put teeth into compulosry arbitration. It says:

"Lawyers will find a contradiction there * * * For the so-called "right" to strike is supposed to have grown up as a means conferred on labor by the courts. * * * On the face of it, therefore, a law which sets up elaborate machinery for the settlement of disputes and puts so much authority in the hands of a national arbitrating body could scarcely do anything except diminish the 'right' of labor to take other measures."

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To continue the points of law which the Wagner bill proposes:

"Sec. 204 (a). The board may, either by itself or through its agents, act as conciliator or mediator in any labor dispute."

Dr. F. J. Haas, member of the National Labor Board, before the Senate Labor Committee, quoting from N. R. A. release No. 3842, March 15, 1934, stated:

"* * * the bill defines certain acts as unfair labor practices and sets up machinery to prevent or restrain them. There are, of course, persons who object, and strenuously, to the proposed machinery but, in my opinion this machinery is the only method of increasing buying power now and of maintaining it. * * * Briefly, the machinery is necessary, first for the emergency, and second for the long pull."

In our foregoing factual statements of past experiences with the National Labor Board; the opening paragraph of the Wagner bill; and Dr. Haas' statement now following—very clearly points out that this is class legislation. An "Emergency" exists, for whom? Then he continues by saying: "And second for the long pull." Yes, this is class legislation and capital against labor. And this is what sec. 205 (a) declares:

"The board is empowered to prevent any person from engaging in any unfair labor practice that burdens or affects commerce or obstructs the free flow of commerce, or has led or tends to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce."

Yes, we repeat, class legislation—capital against labor—that is the meaning of the Wagner bill. But then let us go on. In the light of past experiences the acts and decisions of the National Labor Board—which had no "mandatory power"—how did the "majority rule" work out? The National Labor Board broke strikes, forced and made arbitration compulsory through intimidating workers to join the company unions (so-called "majority rule"). Organizers, witnesses, and other workers struggling against compulsory arbitration have been punished mercilessly (one, a Detroit auto workers' organizer, was killed) and sec. 205 (a) means to carry out these punishments. But let us continue this examination of the Wagner bill. Sec. 207 (a) declares:

"In any dispute as to who are the representatives of employees", the Board "if the dispute might burden or affect commerce or obstruct the free flow of commerce, may investigate such dispute and certify to the parties, in writing, the name or names of the individuals or labor organizations that have been designated and authorized to represent the employee * * * the Board shall decide whether eligibility to participate in elections shall be determined on the basis of employer unit, craft unit, plant unit, or other appropriate grouping."

Let us listen to Dr. Haas again, he says:

"Customarily, the wage relationship prior to June 16, 1933, was referred to as an individual bargain. In point of fact, among the overwhelming number of 48,000,000 workers in the United States, there was no bargaining whatsoever. True, for approximately 10 percent there was union collective bargaining * * * but this was restricted for the most part to the busy seasons of the year. Outside these two groups, there was no bargaining at all of whatsoever nature."

Therefore, what does Dr. Haas mean? He means very definitely that not even this so-called 10 percent of organized labor, that is, collective bargaining, will be tolerated. For section 207 (a) states the "Board shall decide whether eligibility to participate in elections shall be determined on the basis of employer unit, craft unit, plant unit, or other appropriate grouping." The Board will decide then the appropriate group. Dr. Haas cites an incident; he says:

"In a recent case before the National Labor Board involving over 4,000 employees, the labor adjuster two attorneys for the workers received half of their compensation from the company and half from the employees."

Does Dr. Haas mean to say that this bill will do away with such practices? Here is what Mr. Knudson of the General Motors, a powerful corporation, told the National Labor Board: "His corporation refuses to recognize any other union, than a company union." (New York Times, Mar. 16, 1934.) Labor must be bound at all costs, and since the N.R.A. failed, big business is forced to show more and more its true character, unrelentless brutality, exploitation. Company unions will not suffice, as Dr. Haas testifies, declaring:

"What are employers most opposed to and what do workers most want? Employers are by no means opposed to company unions. In fact, they foster and finance them. They are most opposed to unions officered by representatives freely chosen by employees. On the other hand, employees looking to their true interests want genuine unionism more than anything else. * * * What

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will best protect the legitimate rights of workers and increase purchasing power, is unhindered, free labor organization."

But Dr. Haas is very cleverly preparing the way for that so-called, "free labor organization", which is controlled exclusively by its top leadership—and which was so highly commended by General Johnson—The American Federation of Labor. But let us continue with the Wagner bill, for instance; section 209 says:

"The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this act. Such rules and regulations shall be effective upon publication in the manner which the board shall prescribe."

And again we quote Dr. Haas, who says:

"The functions of the proposed board are two: Conciliation and mediation, limited arbitration * * * trained conciliators will clarify respective rights of the parties to an industrial dispute * * * and thereby avoid what may result in costly industrial warfare."

Yes, strike! Warfare! for this is the only weapon that labor has whereby to express its disapproval, its protest against starvation, and demand its rights. But then Dr. Haas continues by stating:

"The object of this title is to strengthen the existing service in that department, which since last August has been of tremendous assistance to the National Labor Board created by Executive order on August 6, 1933. The second function is arbitration. One is the matter of bringing collective bargaining negotiations to a conclusion. The other is the determination of workers' representatives. The National Labor Board is necessary to meet both."

We must, therefore, declare that the American working class is not bound by the limitations of the N.R.A. under the domination of big business and trusts. It is no secret that a new strike wave is brewing against the N.R.A. and that there is a growing unity between the employed and the 16 million unemployed in this country. We know that also, that the gains made by labor under the N.R.A. was gained by striking for it or by threats of a strike.

Never has anything been delivered to us on a "silver plate." We always had to fiight for our conditions, and will always have to. When the codes were discussed, we were invited to present our point of view. Our recommendations in formulating the furniture codes—we told the N.R.A. administration at that time, the least attempt toward absorbing the unemployed in our industry, will require the adoption of the 30-hour working week.

In order to save the integrity of the American family, to provide a decent living standard. We proposed a minimum wage scale of 75 cents an hour for all unskilled and 75 cents to $1.25 an hour for all skilled mechanics in the furniture and allied industries. Our recommendations have been tabled, buried. Now we realize why General Johnson in his reply to our presentation at the last public hearing held at the Department of Commerce Auditorium, February 27, 1934, declared:

"Congress has provided that only employers could initiate a code."

This then is the crux of the entire question. No matter what bills shall be introduced, accepted, these are exclusively the privilege of the employer class, and the Wagner compulsory arbitration bill is part of it. It is worded in usch a clever two-faced manner that on the surface this vicious bill appears to be very prolabor; but close scrutiny and its actions, for which ample lawful provisions are made (secs. 204, 205, 207 (a), 209 (particularly) and 210) are against labor. We workers cannot believe Senator Wagner that he will use section 209 in behalf of labor!

Obviously everything can be done but only when our bosses are the initiators. Therefore, the only thing remaining for us is to accept it, without argument, urging us that "above all there must be cooperation between employers and employees."

The cooperation we are getting from our employers, especially since and during the N.R.A., is such, that the living conditions of the Nation's population stand today to the disgrace and shame of those who control the productive forces. The workers are undernourished, disease is widespread, children lacking elementary subsistence, milk, shoes, barefooted in bitterly cold winter. Because their parents are unable to buy these things in spite of the fact that the warehouses are full of surplus supplies. Mass starvation is progressing in this country and Congress refuses to consider the enactment of the workers' unemployment insurance and social bill (H.R. 7598) introduced to Congress on February 2, 1934.

The bill was the center of a 2-year fight by the American Federation of Labor. Rank and file committee for unemployment insurance is endorsed by more than

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1,200 locals of the American Federation of Labor and 3 State federations of labor, the unemployed councils of the United States, the Trade Union Unity League with all of its affiliated trade unions, including ours, which voted for it at our last national convention held in New York City, February 9, 10, 11, 12, 1934, and hundreds of other labor mass organizations.

Then you gentlemen speak about "cooperation." We know from experience that when any kind of bill comes before Congress which intends to really benefit labor—it is tabled. We know through experience, that many more Wagner and other bills will come up for discussion, will be quickly acted upon, even before seriously considering the workers unemployment and social insurance bill (H.R. 7598).

We repeat a simple fact to you gentlemen: "There was an increase of $440,643,000 in profits for the 810 Wall Street industrial corporations, monopolies in 1933 as compared with a deficit of $45,802,000 in 1932, and a slash of 11 percent in real wages of the working class since President Roosevelt's N.R.A. "new deal" began to send prices upward."

We declare, that the road of the Roosevelt's administration was one of the worst against labor, in spite of the various camouflaged acts, bills, which are periodically introduced to Congress—preeminently the N.R.A. with its section 7 (a). Wagner's compulsory arbitration bill is the next to come.

Our demands are as follows:

1. We demand the enactment of the 30-hour working week without any reduction in pay.

2. We demand (next few words obliterated on copy) * * * meet the rising * * * (indistinguishable on copy) skilled furniture and allied trade workers.

3. We demand the immediate passage of the workers unemployment and social insurance bill (H.R. 7598) introduced to the United States Congress on February 2, 1934.

4. We demand without the creation of the old or new National Labor Board, the unconditional right of the workers to strike, picket, to settle their disputes with the employers through the elected representatives of their own, without the interference of compulsory arbitration for workers, through the strike-breaking National Labor Board or any other representative of the N.R.A. or any official Government agency.

5. We demand the immediate withdrawal from the National Labor Board all American Federation of Labor leaders, William Green, Lewis, McGrady, Berry, MacDonough, sitting pretty with McGrady, Teagle, Swope, gentlemen pretending to be friends of labor. Oil corporation which fights savagely against labor at every occasion and ruthlessly suppresses all attempts to organize among its workers; Mr. Swope, head of the electrical industry which is notorious as the most callous enemy of all labor organizations. This National Labor Board is constituted of the most violent antilabor representatives available.

6. We demand the abolition of all forms of Government regulations; such as the proposed Wagner compulsory arbitration bill and any like attempts in trying to control, enslave workers' trade unions.

7. We demand the immediate abolition of all company unions. That elections be held in all factories where these "innocent employers associations" were organized and fostered by company agents. That these elections be on the basis of "secret balloting." That there be no interference of any company representative or any representative from the N.R.A. or Government. That the demands thus collectively reached by the workers and presented to the bosses through their own duly elected representative shall be the final decision. That there be no interference of any "higher" body from the National Labor Board.

Mr. Chairman, these are our demands. We believe that we have very clearly presented our claims, registering our disapproval of the proposed Wagner compulsory arbitration bill, based upon bitter factual statements of experience.

We know that nothing will stop you gentlemen from—in spite of our protest and that of other labor representatives—passing this bill. In the long run, the Wagner bill will become law, just as the N.R.A. became a law in spite of our vital protests and vital demands for bread for our families.

The executive power is in your hands today. But we do not hesitate to remind you gentlemen that the final word will be said by the workers in the mills, mines, and factories, railroads, and workshops of the Nation. Improvement, betterment will be won not through Wagner's or similar bills, but only through the united, collective action of all workers.

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These bills are epidemic solutions of the present administration trying to solve its ills by driving its millions of citizens to adopt these paper bills, driving toward mass starvation, effecting wider strata with unemployment.

We say better conditions will be won only through united action of employed and unemployed workers, and the only way in which we will win immediate relief—paid in cash—as against the proposed relief cuts, proposed dismissal of C.W.A. workers, is to fight for union wages, union conditions on all jobs, and for the immediate enactment of the unemployment and social insurance bill (H.R. 7598).

(The statement of Mr. Cush, which was to be presented for the record, was not received in time to be included in the transcript for the day's hearing, but will be included in the hearing for the next day if it is received.)

The CHAIRMAN. The meeting stands adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 12:50 p.m., the hearing in the above-entitled matter was recessed until 10 a.m., Wednesday, Mar. 28, 1934.)

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TO CREATE A NATIONAL LABOR BOARD

WEDNESDAY, MARCH 28, 1934

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The committee met, pursuant to adjournment, at 10 a.m., in room 318 Senate Office Building, Washington, D.C., Senator David I. Walsh (chairman) presiding.

Present: Senators Walsh (chairman), Murphy, Davis, and Erickson.

Also present: Senator Wagner.

The CHAIRMAN. The committee will come to order.

Mr. KISS. Mr. Chairman.

The CHAIRMAN. What is your full name?

Mr. KISS. Joe Kiss.

The CHAIRMAN. Whom do you represent?

Mr. KISS. I am representing the National Furniture Workers Industrial Union.

The CHAIRMAN. And your residence is where?

Mr. KISS. New York.

The CHAIRMAN. You were requested to appear yesterday?

Mr. KISS. Yes.

The CHAIRMAN. And the committee was unable to hear you because it was called to the Senate for a vote, is that true?

Mr. KISS. Yes.

The CHAIRMAN. And we asked you to place in the record your statement?

Mr. KISS. Yes; that is true.

The CHAIRMAN. And you did that?

Mr. KISS. Yes.

The CHAIRMAN. Now, is there anything else you want to say to the committee?

Mr. KISS. I understood that I was summoned here to speak before the committee.

The CHAIRMAN. You were not summoned; you made a request to come here and we consented to have you come. You have a statement that you prepared?

Mr. KISS. Yes.

The CHAIRMAN. And it is in the record?

Mr. KISS. Yes.

The CHAIRMAN. It will be read by the members of the committee and given as much attention as if you spoke for several hours.

Mr. KISS. But the wishes of our organization were that I should present also a verbal statement to the committee.

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The CHAIRMAN. My dear man, if we complied with such requests we would never get this bill reported to the Congress and never get any action on it because we have requests, not from hundreds but thousands of people to appear here and we have to limit all of them.

Mr. KISS. From your assurance of the three telegrams we were sure we would be given the opportunity to present our case. We are representing 10,000 organized workers, and, as far as yesterday's hearing is concerned, I heard a representative of a company union testify before your committee.

The CHAIRMAN. I will read your statement when the stenographer gives it to me after the hearing today and decide whether there is any reason why you should amplify it. How much time would you want?

Mr. KISS. I do not know exactly. It would take me about an hour or an hour and a half, for my statement.

The CHAIRMAN. Then your request is denied. I cannot give you an hour and a half for the presentation of your evidence in view of the fact that it is already in the record and the statement contained in the record.

Mr. KISS. All right, we will notify our organization accordingly. I accept the ruling under protest, Mr. Chairman.

The CHAIRMAN. Is Mr. Ward here?

Mr. WARD. Yes, sir.

STATEMENT OF LOUIS B. WARD

The CHAIRMAN. Your full name?

Mr. WARD. Louis B. Ward.

The CHAIRMAN. What is your business or occupation?

Mr. WARD. I am a business counsel, in Detroit, Mich.

The CHAIRMAN. Whom do you represent?

Mr. WARD. No one but myself, sir.

The CHAIRMAN. How much time do you want?

Mr. WARD. Five minutes.

The CHAIRMAN. Thank you. You may have it.

Mr. WARD. I come to appear against the bill as presently drafted. I believe that it is class legislation in its present form. I have to submit to the committee a proposed amendment that will take it out of the field of class legislation, and by paralleling your proposed code of abuses with a similar code in the interests of industry and a protection from labor itself, it will make the legislation eminently fair.

(The amendments presented by Mr. Ward are as follows:)

Amend section 4, line 25, by adding section 4 (A): "When 10 per centum of the employes of any employer, where the manufacturing plant is located in a single city, or 10 per centum of the employees where the manufacturing plants are segregated in several cities, organize and join labor organizations, as provided in section 4 of this Act, or where they organize an association of labor or trades union, or affiliated as a chartered body or with a division of a chartered body of a labor organization or trades union, which is either actually existing and conducting its operations by virtue of a charter, constitution, or articles of association, or which is hereafter created, they shall form a body corporate and politic by incorporation under the laws of the State of the Union of their own choice, preferably the State of the domicile of the incorporators, and shall make and execute articles of association or incorporation under their hands and seals, which said article shall be acknowledged before some officer of the State of incorporation authorized to make acknowledgments of deeds.

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"Corporate name and Powers: Every association formed by virtue of the provisions of this Act, shall have a corporate name, and may sue and be sued, plead and be impleaded, prosecute and defend in all courts of the United States and the State of incorporation. The association may take, receive, purchase, and hold in its corporate capacity and for its corporate purposes, real and personal property, and the same or any part thereof, demise, sell, convey, use and dispose of at pleasure; and may erect and own suitable building or buildings to be used in whole or in part for meetings of labor orgainzations or for any other purpose in the interest of labor organizations and may borrow money, and for that purpose may issue its bonds and mortgage its property to secure the payment of said bonds.

"Articles; Contents: The articles of association shall state: First, the names of persons associating in the first sentence with their place of residence; second, the purpose of the association, conforming with the provisions of this Act and the Act under which the incorporation is created; third, the corporate name and period of incorporation, not to exceed a period of thirty years; fourth, the terms, conditions, and qualifications of memberships in the corporation; fifth, the officers and committees created, with the names of the officers and members of the committees first selected, the terms of such officers and members, and the time of holding an annual meeting.

"Articles; Filing and recording; Use as evidence: The articles of association shall be filed with the secretary of state, or such other officer in the State of incorporation as by law is designated to have jurisdiction, and said articles shall be recorded in a book to be kept in his office for that purpose and thereupon the persons who have signed said articles of association, their associates and successors, shall be a body corporate by the name expressed in the articles of association. A true copy of said articles of association shall be filed with the county clerk of the county within which said corporation shall be created, or where it shall have its principal place of business and it shall be recorded by such county clerk in a book to be kept in his office for that purpose, and a copy of said articles of association under the seal of the secretary of state or other office, or county clerk, in whose office said record is kept, duly certified to by him, shall be received as prima facie evidence in all courts of this State of the existence and due incorporation of such association.

"Stock; Liabilities of stockholders: The authorized capital of such association shall be divided into shares having a par value of not less than $25, nor more than $100 each, payable in periodical installments, as the bylaws may provide, which shall in no case be less than 50 cents per month nor greater than $2 per month: *Provided*, That the bylaws may provide for the advance payment of installment dues and for which there may be issued an advance payment certificate. The shares may be issued in series, or at any time as the bylaws shall determine, and subscriptions therefor shall be made payable to the association. No membership fee in excess of $3, the actual amount of which shall be determined by the secretary of state or that officer of the State of incorporation having jurisdiction over the corporation, may be charged for each $100 of capital stock subscribed.

"All moneys received from whatever sources, including membership fees, shall be paid into the treasury of the association and disbursed by the proper officers as provided by the bylaws. Said shares shall be deemed personal property, transferable upon the books of the association in the manner prescribed by the bylaws, and shall be paid off and retired as the bylaws shall direct. Each share shall be subject to a lien for the payment of unpaid dues and such other charges as may be lawfully incurred thereon, and the bylaws may prescribe the manner of enforcing such lien.

"All stockholders of the corporation formed, as provided in this act, shall be limited in their liability to creditors of such corporation, to an amount equal to the amount unpaid on their said stock. The corporation shall be liable for the damages resulting from any unlawful and criminal acts of its officers and members where the same grows out of any violation of the provisions of this Act, or any other Federal or State statute, providing the unlawful acts are in the interest of the promotion of the purposes of the articles of association or have grown out of and in the course of the promotion of the corporate purposes.

"Bylaws: Every association incorporated under this Act shall have the power to make all needful bylaws for its government and enforce the same by the usual penalties and forfeitures; they may thereby establish a uniform system of dues, assessments, or benefits to be levied upon members, prescribe the duties of officers, and require bonds of the same for the faithful discharge of their duties. In the interest of supporting the Board, in its orders and awards, the bylaws shall

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provide certain penalties, to wit: For failure to comply with the order and award of the Board; failure to return to employment after being so ordered; and violating any of the provisions of section 5 (A) of the Act. The president, with the consent of the board of trustees, shall have the power to penalize said member by a fine of not less than $20 and not to exceed $100 for each offense. All fines and forfeitures shall be paid into the treasury.

"Officers; Board of trustees: The officers of the association shall consist of a president, secretary, treasurer, and board of trustees of not less than three members of the association. The president, secretary, and treasurer shall be ex officio members of said board of trustees.

"The Board of trustees; Powers; Quorum: The board of trustees shall be the executive board of such association, and shall be charged with the general management of its affairs. Said board shall adopt bylaws for the association, and change the same at pleasure: *Provided*, That the bylaws for the election of members of said board of trustees and their own term of office shall be of no effect until the same is ratified by a majority vote of the members of the association. A majority of said board of trustees shall be a quorum for the transaction of business.

"Existing societies; Incorporation: All societies, unions, or associations of tradesmen or laborers actually existing and conducting their affairs under a constitution or articles of association, shall become a body corporate and politic, as provided in this Act and shall be subject to the provisions of the Act.

"Rights vested in new corporation; Recovery: All moneys, property, rights in action, equitably belonging to any society, union, or association at the time the same shall become incorporated under the provisions of this Act, shall vest in the corporation so formed, and may be recovered by such corporation in an action of assumpsit, or on the case, from any person lawfully withholding the same."

Amend by adding new section to be known as "section 5–A" following line 15, page 6, to read as follows:

"5–A. It shall be an unfair labor practice for an employee or any one acting in his interest, directly or indirectly:

"(1) To attempt by interference, influence, restraint, favor, coercion, strike, picketing, intimidation, boycott, criminal act or otherwise, to impair the right of an employer to enjoy the peaceful conduct of business.

"(2) To wrongfully combine and conspire by interference, influence, restraint, favor, coercion, strike, picketing, intimidation, boycott, criminal act or otherwise, to impair the right of the employer to enjoy the peaceful conduct of business.

"(3) To interfere with employer's intrastate or interstate commerce by combination, conspiracy, restraint, favor, coercion, strike, picketing, intimidation, boycott, criminal act, or otherwise.

"(4) To refuse to recognize and/or deal with representatives of employers or to fail to exert every reasonable effort to make and maintain agreements with such representatives concerning wages, hours, and other conditions of employment.

"(5) To attempt by interference, influence, restraint, favor, coercion, strike, picketing, boycott, intimidation, or other criminal act to prevent the unorganized free employee to enjoy the right to continue his customary and usual employment.

"(6) To chisel, racketeer, coerce, influence, intimidate, picket, boycott the employer or his representative, thereby contributing to the financial or other material support illegally or involuntarily.

"(7) To fail to comply with all safety rules of the employer and such other rules or orders as are published in the plant by the employer in the interest of public health, safety, and welfare.

"(8) To violate any shop practice which violation, in case of accident to a fellow employee, would under the common law or statutory law, constitute an offense of contributary negligence.

"(9) To attempt by interference, agitation, influence, restraint, coercion, intimidation, boycott, or criminal act to force a fellow employee into the membership of a labor organization:. *Provided, however*, That nothing in this section shall impair the right of free labor, or the representatives of free labor, to voluntarily contract with employers and enter into agreements independent of labor organizations concerning wages,hours, or other conditions of employment."

Amend section 205–D, lines 9 to 13, page 12, by striking out "no objection" and insert in lieu thereof the following: "The proceedings before the court shall be tried de novo both as to facts and law."

Amend section 205–D line 12, page 13, by striking out the word "not".

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Amend section 205–E, line 4, page 14, by striking out line 3, beginning with the word "No" down to and including the word "conclusive" in line 7, and in lieu thereof insert:

"The review of all proceedings of the board by a court of competent jurisdiction shall be by trial de novo."

Amend section 205–E, line 6, page 15, by striking out the word "not".

Amend section 205–F, line 10, page 15, by changing the period to a comma and adding the following words: "providing such complaint is supported by competent affidavits, copies of which have been served on the party complained against in the proceedings."

Amend section 205–H, line 16, page 15, after the word "delivering" insert the words "in the daytime."

Amend section 205–H, line 20, page 15, by inserting after the word "Thereof", the words "with the person in charge of." Strike out the word "at".

Mr. WARD. I believe that as presently drafted the Wagner bill is an expedient, and I like to compare the battle between capital and labor with the battle over slavery, where, starting with 1820, a series of expedients attempted to solve the problem; the Missouri Compromise, the Clay Compromise of 1850, the Kansas-Nebraska Act, the Dred Scott decision, and the slavery bills, were all expedients postponing the settlement, and I like to follow Lincoln with the theory that no question is settled unless it is settled right.

So, I have come today to submit, besides the amendment suggested, a thesis on this question of capital and labor that has no rival in the world. I refer to the Quadragesimo Anno, an encyclical letter of Pius XI, having to do with the problem facing this country today. It has had all the scholarship in the world behind it. It reaches back to first principles and gives a solution, and I would ask that this become a part of the transcribed record.

The CHAIRMAN. Your request is granted.

Mr. WARD. The third thing I have is an interpretation of the Quadragesimo Anno and the present labor conditions in America as of this week in the form of a radio address by the man who made that Quadragesimo Anno known to millions of homes, and because of its distinct reference to the Wagner bill I happily had a public stenographer in my hotel room Sunday make a transcription.

Senator WAGNER. I heard the address.

Mr. WARD. The Senator heard it?

Senator WAGNER. I hear most of them.

Mr. WARD. There are two or three omissions due to the inability of the stenographer, but I would rather have it appear as the stenographer had it, and I want to submit that to the committee as having the thought of years instead of the personal appearance of a man who rushes in to you to give you an idea.

The CHAIRMAN. Just what is the subject of the radio talk?

Mr. WARD. The Wagner bill, the automobile strike, and it is by the Reverend Father Charles E. Coughlin.

Senator WAGNER. I should call it a very sympathetic criticism.

Mr. WARD. It is fair, as you will always find it. I am his biographer and a close student of his life.

Senator WAGNER. The father expressed sympathy.

Mr. WARD. The bill is absolutely wonderful in principle and the company union could never be defended in this world. It is a piece of camouflage.

The other thing is to put our Labor Department to work and let all labor be organized. As I have advised industry for 14 years, it is

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organized, and labor is not. Labor should be, labor should be organized on a fee basis that a laboring man can pay and should not be organized on a basis of $18 a year for membership, but $3 a year.

The CHAIRMAN. The radio address may be inserted in the record at this point.

Mr. WARD. Thank you.

(The radio address of Rev. Charles E. Coughlin is as follows:)

CAPITAL AND LABOR

(Radio address by Rev. Charles E. Coughlin Mar. 25, 1934)

Good afternoon, my friends. May I explain just a few words before entering upon the title of "Capital and Labor", already expressed by Mr. ———.

During this trying year I have attempted to tell you the unsullied truth. I have no political or social aspirations, as you know. Outside of glory to my God and to my Christian religion, we have nothing to desire except your welfare. It was in this spirit that I spoke to you each Sunday save last Sunday, when my physical condition held me fast in bed. It will be in this spirit always, I trust, that I shall seek entrance as a guest into your homes as long as we continue broadcasting.

This season is fast coming to a close. Only four more pleasant Sunday visits are left. So as a souvenir of these Sundays which you and I have spent together, if only for a short hour, I have gathered together the various talks with which it was my high privilege to address you. I have bound them in a beautiful little book and now ask the privilege, a privilege indeed, of sending this book to you with my compliments. Be you Catholic or Protestant, Jew or Gentile, you are all my friends, and you are all indeed most welcome to write me this week requesting your copy which, in one sense, will be a seal of our mutual friendship, and I assure you that as speedily as possible I shall mail you this souvenir of a year's work that for me was one of high romance.

Sometimes I wonder whether or not I have been useful. Sometimes, especially last Sunday, I wondered if my poor efforts have been worth-while. God knows, and so do you, it matters little what I think. So before concluding this announcement, which is most sincere in inviting you to write for your book at no charge, may I also add that my mass on Easter Sunday morning will be offered up for your happiness, for your success, and for our national restoration for the present grave crisis.

When writing me this week, please address your letters carefully and sign your names clearly, and, if you don't mind, please request only one book in each letter. And now for "Capital and Labor.

My friends, this Sunday, which ordinarily should be dedicated to Jesus Christ, the Savior, the accused, the betrayed, and the crucified, finds me in the dilema of speaking not of His sacred beliefs, but of devoting this hour to a discussion of a momentous question which must be answered courageously and clearly within the next few days.

In one sense we are entering upon the holy week of the laboring man as he is crucified upon the cross of exploitation, his heart pierced with a sword of grief. Oh, there he hangs between the two teams of greedy capital and of cruel government. Of him I speak, trusting that in this sacred hour his elder brother, Jesus Christ, will bless him, hoping that at least one will turn to his defense with a contrite heart when all the array of high finance mock him and curse him and question his right to live.

First as I address you with words that appear to be as dry as dust, for a few moments, therefore bear with me while I outline the Christian purpose, the Christly doctrines, relative to "Capital and Labor . Then will I speak to you in concrete language of the impending strife and the acute labor trouble which threaten our Nation.

My friends, your working men are anxious for peace, as are we all. You long to own your own home, but surrounding you is the fog of fear, of unemployment, of an economic struggle that is unfair and uncalled for. You pause to take inventory of the life you have spent. It is measured by gallons of sweat and by tons of steel. It is bounded on the east by a struggle against poverty and on the west by a prospect of pain. Yes, there was and is a great love burning in your heart, the girl you wed, the baby she bore you. There were dreams of a home, a little home where love could stretch his baby limbs, when a pantry kitchen smiled its

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bounty upon hungry mouths, where a row of pegs were placed on the wall and thereupon were hung warm coats and bundles of school books. Your boys and your girls, flesh of your flesh, your sweetheart wife, your home, all yours, every flower that grew upon its white walls, every chair which caressed your tired body, every cry of pain or joy which etched its way into the humble home—your home, all yours.

Oh yes, you pause to take inventory, and you wonder if your dreams will ever come true. You know that they cannot, if you and your kind are denied the wherewithal to buy your home, to own your home, to keep your home safe from the shadow of fear.

Thus let me come to you as a priest of God, caring for no living politician but caring only for your welfare. Let me counsel you, let me direct you and inspire you toward the fulfillment of your legitimate and God-given aspirations. I say that you will heed me when I tell you of your rights to property and of your duties to your fellow men—rights and duties that lead us to economic liberty.

First of all I will speak to you of the question of property, of home ownership, without which a man cannot live and a nation cannot endure. Now, the Christian teaching on this point is definite and clear. We maintain that ultimately and primarily all property belongs to the Creator. Under the title of statutes the right to own property has been given to man by divine providence, so that both individuals and the human race may survive. No man and no group of men may exclude others from ownership. This title to private possessions formerly was acquired either by occupation, as was the case with the original pioneers of this Nation, or by industry, whereby a man through his labor and his sacrifice makes something valuable that formerly was either less valuable or not valuable.

Such was the case whereby a person carded and spun and wove a few pounds of wool into a cloth and afterward tailored a coat. Altogether different, however, is the condition of our modern factory laborer. He can gain no property by occupation, as every acre of ground in our Nation belongs either to the State or is already occupied and owned by some individual. The factory laborer of this day and age, when even tools as well as machinery are owned by mammoth corporations, is forced to obtain the private ownership of his bread, his clothing, and his home, all his comforts, by hiring out his labor at a profit and under conditions which are profitable.

Ownership that is profitless is worse than no ownership at all. Ladies and gentlemen, bear that point in mind. No one can afford to be ignorant of it. No one can dare assail its soundness. But it is your God-given right, antedating all governments, all edicts, to own property—at least sufficient property which through your own industry will permit you to live in liberty.

It is evident that the 24,000,000 industrial laborers and the 40,000,000 general laborers of all types in this country depend upon industrial and other employers for the possession of private property. It is likewise evident that the owners of the industries cannot man their factories and survive without the laborer. Truer today than at any other time in the history of modern civilization is that axiom: "Capital cannot do without labor, nor can labor do without capital."

Now, the natural law, which is superior to any civil or Federal law, demands that labor share justly in the products of any industry or factory wherein it is employed. Oh, but the capitalist has long since disavowed this philosophy, because capital has long appropriated to its advantage and credit all the profits and products and left to the laborer the bare minimum necessary to repair his strength and to insure the continuation of his class. It joined with the movement to cut down the cost of a family's existence and demanded a profitless wage.

By an inexorable economic law, capital maintains that all the accumulation of riches must fall to the share of the wealthy, to the absentee stockholders, while the working man must remain perpetually in indigence or reduced to the minimum required for subsistence. The immense number of perpetual wage earners and the superabundant riches of the fortunate few, is an unanswerable argument that the earthly goods so lavishly produced in this age of mass production are far from rightly distributed and equitably provided among the various classes of men.

In its Gargantuan greed capital forgot that it could not survive unless purchasing power and profitable private ownership were charged with labor, and todav the confused capitalist, wedded to his false philosophy of coercion, of greed, of industrial slavery, stands whimpering for mercy at the bar of public opinion.

Then, again, there are the unjust claims of labor. The cause of the hardest working man was espoused by the Red, by the Communist, who, unable to think straight, was driven into an extremity by his opponent, the greedy capitalist.

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These devotees of the red flag and of the pink pennant set up in opposition to the standard of capitalism a moral principle that all profits and products except those required to repair and replace invested capital, belong by every right to the working man. Oh, this is more subtle than the principle of the Socialist, who holds that all men's production should be transferred to the State; this error is, for that reason, more dangerous and apt to deceive the unwary.

This radicalism is growing apace, while the have-nots lust after the possessions of those who have. Both the radical capitalists and the radical communists preach confiscation and deprivation. In the middle course stand those who demand a just distribution of profits, a plentitude of private ownership, and an equitable management of the bountiful goods which were created to minister to man's needs, to the needs of all men willing to work.

Now, passing from the principles which underly a just wage and a just share in the profits for the working man, let us pause to consider a second group of Christian principles relative to capital and labor.

It is an obvious truth that work or labor, especially hard labor, has an aspect that is social as well as individual. What do I mean? Simply this: Man is absolutely a social creature in the sense that one man and one group of men are dependent for their livelihood upon other men and other groups of men. Human society forms an organic whole wherein each individual is related to the other as the foot to the leg, the leg to the torso, the torso to the shoulder, the head to the neck, and so forth.

It is just as destructive for the group of capitalists to deprive the group of laborers of their profitable wage as it is for the hand to deprive the mouth of food. Sooner or later it means suicide for both, unless there is harmony in their mutual actions. Science, finance, capital, and labor must work together for the common good, and not for selfish gain, if the whole work of society shall not perish.

Now, because the laborer must be consulted as a social as well as an organic unit of the Nation, these conclusions follow:

First, socially the laborer must earn sufficient to keep himself, his wife, and his children in decent comfort.

Secondly, it follows socially that children and women must not engage in industrial work of such a nature where the tender years of the former and the weakness of the latter are abused.

Thirdly, from a social standpoint it follows that opportunities for profitable work must be supplied by the Federal authority whose business it will be, if necessary, to regulate business, but only insofar as the common good of all the citizens is concerned.

And lastly, the aim of social legislation must be toward the reestablishment of vocational groups.

Today capital and labor are in a strained and unstable state. Both are suffering from taxation that is burdensome beyond measure. Both are victimized by financial interests who know little of the burdens of the industrialist and care less for the tears of the laborer. Both capital and labor suffer in common from an outworn financial theory which perpetuates a famine of currency. Both are blood-sucked by specialists in the stock market and profiteers on Wall Street, who are banded together and unionized more closely in the pursuit of their prey than are the 40,000,000 laborers of this Nation, and more than they can ever hope to be.

That is the reason above all others that laborers must organize today in vocational groups. Until that will be accomplished, the laboring man will be regarded as a mere cattle to be hired and fired at will, so that man exists for the product, the motor car and the refrigerator, instead of the product existing for him.

The last philosophical observation is relative to the christian doctrine on unions. It is the teaching of the Catholic Church that laborers not only have the right but also the duty to establish vocational groups of unions. These unions must be formed of men who are bound together not according to the divers functions which they perform in society, but policemen in one union, all steel workers in another union, all automotive workers in a third union, all bakers in a fourth union, all taxicab drivers in a fifth union, and so on.

"There cannot be any cure to our social disease", says Pius XI, "until the opposition between capital and labor be ended and well-ordered members of the social body come into new being.

"Vocational groups must be established which bind men together, not according to the position they occupy in the labor market", says he, "but according to the divers functions which they exercise in society. For as nature inducts those who dwell in close proximity into united municipalities, so those who practice the same

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trade or profession, economic or otherwise, should combine into vocation groups. These groups in a true sense, self-governing, are considered to be the natural and spontaneous development of civil society." And that is the end of the quotation.

Now, there are two more points relative to unions taught by the Catholic Church. The first is this, namely, quoting from Pius XI:

"Not only are the laborers free to institute these unions, which are of a private character, but the laborers have the right to adopt such organizations and such bylaws or rules which may best acquire their proper objects, namely, just wages, equitable share in profits, and industrial independence."

The second point to be remembered is this:

Free competition must be abolished, both in hiring labor and in selling the product of labor. This has been amply proven by the sad consequences that have followed from the free rein given to the sweatshops and those sellers of goods who cut prices and force their competitiors to do likewise in order to remain in business. Eventually it all comes out of the hide and the heart of the laborer. Free competition in hotshops or in cutthroat shops is absolutely forbidden. To this end, therefore, all industrial and manufacturing institutions must be imbued with the spirit of justice. This justice must build up a social order, a social code of ethics, able to pervade all economic activity.

Now to summarize what I have practically quoted on the teaching of the Catholie Church, as contained in the writings of Pius XI—

First, man has a right to a share of the profit;

Second, it is unjust for capital to assimilate all profit;

Third, it is unjust for labor to make a demand for excessive profit;

Fourth, it is the business of the Government to protect the laborer and see that profits are justly distributed; and

Fifth, labor should unionize in vocational groups.

Let me now become concrete and refer specifically to the labor situation as we find it in the United States at this hour.

For the past 10 days our Nation has been duly alarmed at the prospect of a strike in the automotive industry. Everyone realizes that Michigan, the powder keg of the banking blow-up, is today the dynamite cap capable of demolishing the industrial world. Should there be an explosion, it will bring to grief the steel industry, the mining industry, the textile industry, and the entire Nation will be rocked.

The United States of America is bigger than any American Federation of Labor and is mightier than any automobile industry. The Government neither dares permit a strike in Michigan at this moment nor dares sidestep the issue of settlement which has been presented to it. Indecision and inactivity would be an irredeemable step backwards. In my opinion the Government will act and act justly and sanely.

For more than one quarter of a century Detroit and Michigan have been famous for their motor cars. Today more than 250,000 men and women are employed directly in the manufacture of automobiles and motor trucks. I dare say that there is no industry in all the world that has grown so rapidly or that has created so much wealth.

On the other hand, there is no industry which has developed with so little regard to social organization among those who are engaged in it. For 30 years the motor manufacturers have clung to the policy that there must be no organization among the laborers engaged in their industry, while the mechanical workers, the diemaker and every other type of artisan and laborer had been organized. Nevertheless, it became evident, year after year, that the hourly wage system under which they worked and according to which they were paid was becoming an inadequate means of remuneration, simply because the motor industry became and will always remain a seasonal industry permitting the vast majority of those engaged in gaining a livelihood from it to work not more than 8 months in a year.

In other words, the laborer who receives 80 cents an hour or $24 a week, is in reality receiving not more than $16 a week on a yearly basis.

With the progress and development of machinery added to the constant speeding up of production, the 8 months of actual labor in the motor industry will be reduced gradually to 6 months. This is the fear which is present in the minds of the automotive workers. More than that, every person engaged in making automobiles realizes that when thousands of workmen have been dismissed from their occupations, with no provision for more wages, all the stockholders whose money is invested in the motor corporations continue to draw down their dividends even though the factories are closed.

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Against this evident inequality and unjust practice, the workmen in the motor industry are protesting. They maintain and rightly maintain that if dividends are to be paid to the stockholders while factories are closed, wages must also be paid to the laborers.

My friends, this is the real, basic bone of contention which is smokescreened behind the industrial unrest here at Detroit. Sixteen dollars a week or eight hundred and thirty-two dollars a year spells destruction for the automotive laborer and the capitalist both. Who can live and buy a car on that meager wage? Who can purchase a home? Who can afford to pay taxes on $832 a year? It is idle folly to attempt the continuation of such an injustice. In order to acquire a just distribution of the profits arising from the motor industry, the laboring class recognized, despite all advice to the contrary, that the first thing to be done is to organize.

For 30 years the stockholders have been perfectly organized. For 30 years the motor manufacturers themselves have been more or less organized. With the exception of one great manufacturer, every other group that amounts to anything in the motor industry speaks in unity, acts in harmony, and legislates cooperatively through the unit of organization known as the "National Automobile Chamber of Commerce."

Now, what is good for the stockholders, and what is good for the manufacturer, is also good for the laborer. He has just as much right to step out of his factory and organize with somebody in another factory as the head of one motor concern has the right to organize with the head of another motor concern. He has just as much right to protect himself through united action as have the absentee owners who are scattered all over every continent on the face of the earth. He has just as much right to seek Federal legislation for his protection as did the manufacturers throughout the past years.

Therefore, in this struggle for the recognition of labor unions, the laborer is absolutely on the side of the angels. To protect his wife, his children, to protect the right to live for 12 months in the year, when he is permitted to work for not more than 6 or 8 months, is not only his right, it is his duty, and if he doesn't live up to that duty he is a damnable coward.

Unfortunately, the motor manufacturers who have in season and out of season scuttled every attempt on the part of the laboring man to organize; these manufacturers now find themselves in a position that is in no wise a happy one. Let me explain:

In this Nation there is only one labor organization which is vocal enough to be heard in this crisis. I refer to the American Federation of Labor. This organization likewise has existed for practically 30 years. That it has accomplished much good no one will deny, but that it has accomplished as much good as some people expect of it, in proportion to the financial support received, no one will claim. Why?

Over a period of 30 years that the American Federation of Labor and its affiliates of various unions have collected in dues and in fees an average of $30,000,000 a year, $900,000,000 in all, it spent little of its time and money upon organizing the actual laborer. It was concerned chiefly with organizing the skilled mechanics and the artisans of the Nation, such as the steel worker, the railroad men, the bricklayers, electricians, stone masons, and so forth; but until recently it had little success or made little headway in organizing the 24,000,000 men employed as real laborers in the industrial field.

Today it represents not more than 3,000,000. It is smaller by far in its numerical strength than are the friends of this broadcast hour. It is no larger in number than the American Legion and the Veterans of Foreign Wars combined. No one denies that the principle at the bottom of the American Federation of Labor is just, namely the principle of organized labor; but like the capitalist system of modern days, the American Federation of Labor is suffering in the public mind from the implication of being organized for a profit.

It is this federation which the capitalists of the automotive industry are compelled to face, a hostile federation. Oh, had the motor manufacturers been in the least intelligent, they would have helped to organize a free and efficient union years ago instead of fighting against the laws of God and the natural law of man.

But let me speak for the American Federation of Labor. It cost less than $5,000,000 for the Republican Party to elect Herbert Hoover. It cost approximately $4,000,000 for the Democratic Party to elect Franklin Roosevelt. Had the American Federation of Labor been efficient, there is no question but with their $30,000,000 a year, with the $900,000,000 over a period of 30 years, they and their affiliates who collected this money should have gone 30 times as far

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as they have gone today. But they failed to eliminate child labor. They permitted women to replace men in factories. They stood stupefied when the so-called "open shop" city of Detroit voluntarily raised wages to a minimum of $5 a day in the automotive industry, and they set up as their chief representative here in Detroit, in this center of mass production, a nationally known individual whose name has time after time been associated with racketeering.

All this was unfortunate as far as this organization was concerned, unfortunate for themselves and for the laborer. In recent months the American Federation of Labor openly and officially protested against President Roosevelt's efforts to restore sound money. This, too, was unfortunate for their prestige among the laboring class. They did not have sufficient intelligence at the top of their organization to realize that we are suffering from a financial disease, to realize that as long as the old gold-standard capitalistic system continued it mattered little whether the laborer was paid $1 an hour or $10 an hour, because the financialist whom they supported in their campaign a few months ago, in their fight against revaluation of gold and the nationalization of our currency and credit, these financialists were able to siphon the money from the pocketbooks of the laborers by boosting the price of bread and butter—a sad thing for the American Federation of Labor that it has not more intelligence to direct it.

In no sense am I opposed to the fundamental principles established by the American Federation of Labor. I am a member of an organization, the Catholic Church, which for centuries has upheld that principle and will always uphold it, namely, the right of the laboring class to organize and through organization to acquire the just distribution of profits which in these latter days have been concentrated in the hands of a few. Yet, despite the harsh criticism employed in the words I have just spoken, the basic principles advocated by the American Federation of Labor are also positively on the side of the angels.

If it has been inefficient, so have been the churches in some respects and so, too, the same criticism can be launched against the other organizations whose basic principles are likewise sound. If in this industrial crisis when the stakes for which we are dicing are not other than the industrial, economic, and financial freedom, there are manifestations of bigotry, class and industrial, if these exist on the part of the American Federation of Labor there is no reason why the basic principles espoused by the federation should be quartered and sawed upon the altar of public opinion.

By class bigotry in the American Federation of Labor, I refer to the fact that the American Federation of Labor ordinarily supported the policy that a union man cannot work alongside of a nonunion man, that the best carpenter shall be paid not more than the worst union carpenter, that an attempt to hire a nonunion man in a union shop must encounter the possibility of a strike or a walk-out—that is industrial bigotry. When 4,000,000 organized men at a fee of $18 per year, paid into the union, take it upon themselves to dictate the fallacious errors through the 20,000,000 unorganized industrial laborers or the 40,000,000 laborers of all kinds who are resident within this Nation and who do not belong to the unions—that is industrial bigotry.

Now, it is against these errors and this high cost of organization that today I protest in the names of millions of working men who are standing on the sidelines overburdened with taxes, oppressed by industry, and spun upon the wheel of economic ——— ———, laboring men who in this crisis realize and recognize that they must organize, but who if they had a voice that could be heard would refuse to submit at least to a double system of taxation without representation, one to the American Federation of Labor and one to the United States Government who should be their protector but who has played the part of the biggest Judas Iscariot in the annals of all history.

If the American Federation of Labor and the affiliated unions would lower their dues to $3 a year, 25 cents a month, they would have in a week's time an enrollment of 40,000,000 men, with a revenue of $120,000,000 to carry on their campaign free from the charges of organization for a profit, free from the implication of industrial bigotry.

In this crisis, however, what can the laboring man do? Can he be expected to sit on the sidelines while his fellow men are fighting for industrial freedom? He cannot be a traitor to his cause and to his own family, and he must organize. And thanks to the stupidity of the industrialist who in season and out of season has fought against organization, there is only one decision for the laborer to make, there is only one organization for him to join.

My friends, by this last statement do not misinterpret me. In that I mean you and I and everyone else must surrender to the American Federation of Labor as it exists today. After all, it is a private corporation. Even though it

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has done more to organize the American laboring man than all other organizations combined, nevertheless it is still subject to the United States Government. It is still subject to section 7, article (a), of the National Industrial Recovery Act. It is still subject in the matter of its finances and bylaws to Federal modification and to the Wagner bill that is coming up in a few days.

There are two sentences in this National Recovery Act which I would like to read you before commenting further. I shall brief them. The first sentence legally compels the employer to respect and acknowledge the right of his employees to join any organization or union which the employees choose to join, and the second sentence, among other things, legally protects the employee, the laborer, to the extent that he is free to join or not to join any labor organization or union.

Now, the disputed point in the automotive industry as it exists today is whether or not the American Federation of Labor shall be recognized by that industry. The manufacturers refuse to recognize the American Federation of Labor. The American Federation of Labor demands to be recognized because they claim that according to free choice of the laborers this organization is the duly representative voice of the employees, and the manufacturers want the complete list of all the members of the American Federation of Labor. Well, they will never surrender that. They would be fools if they did. The American people demand that both the automotive manufacturers and the American Federation of Labor surrender to the United States Government in the name of the public good. They are both wrong.

In this crisis the Federal Government dare not sidestep and must not put a joker in the new deal unless its house of cards shall come tumbling down upon its head. What do I mean? Well, we have heard much talk about "cracking down" on industry. Perhaps there should be a little talk, at least a sentence or two, about "cracking down" on the American Federation of Labor. There will be presented to Congress in the near future a bill commonly referred to as the Wagner bill, replete with "must's" and "don'ts" to industry. No one denies that industry needs to be placed over the Congressional knee and soundly spanked. No one denies that its attitude toward the laborer must be readily altered; but despite this legislation, which aims at unionizing all industrial labor in vocational groups, is the Wagner bill complete unless it removes the capitalism from the American Federation of Labor, unless it tempers the financial powers, and unless, in fine, it sets up a code of fair play for labor as well as fair play for industry?

If Senator Wagner is endowed with the intelligence which I think he possesses, he will not stop at rescuing the innocent American laborer from the ———— of industry only to hand him over to the ——— of the American Federation of Labor as it now exists. It is time for our Government to pass legislation that will really protect the working man and rectify both industry and the American Federation of Labor.

For many years we have had a so-called "Department of Labor" in this country, and a so-called "Secretary of Labor." For many years it has been the most hypocritical and four-flushing Department in all our Government. Ordinarily it has been presided over by a sphinx who either cared not or dared not open his mouth in defense of labor. Silently the Secretary of Labor sat in his office while the miner slaved in his pit, while the textile industry sweat blood, while long hours and short wages were the portion of millions of our citizens and while wealth was concentrated in the hands of a few.

The Department of Labor was the Department of "doing nothingism," a Department for which you and I paid taxes to support while it accomplished nothing that was substantial, a Department which even in this year exacted for the laboring man 12 months of taxation while it permits him to work 6 months for starvation.

Mr. Laboring Man, why do you pay taxes? Simply to build up an Army and Navy for the protection of goods that you do not own and cannot own? Simply to perpetuate in office a Department of Labor that has never been for you or for your interests? That is why you members of the American Federation of Labor have to pay your taxes twice—once to a government who did not use them for your welfare and once to a private organization that today appears to be a government within a government.

As I conceive it, the time has arrived, this administration, this year, this month, for the Department of Labor through the Wagner bill to begin to function or else change its name to the Department of Industrial Slavery.

Single taxation is all that any of us can bear even in prosperous times. Double taxation for a government within a government is unjust and unsound. The time has arrived for the government not only to crack down on industry but also

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to eliminate the necessity of your paying double fees for the preservation of your rights.

My laboring friends, I sypmpathize with you as you hang transfixed between the thieves of exploitation and cruel government. But I hope, as do you, that at least One is ready to say a word for our own, a word of love for you. There is profit in this industrial age for all of us. Industry of its own volition will not expend this benediction of justice to you. You must organize, and your Government must begin to function for you. Your Government can do this if it wills and wants to do it.

Industry today is controlled by absentee owners who know you not and who would never scratch the frost from your window pane to see how your children and your wife are waiting for you to come home with a crust of bread in your hand and happy news of a job on your lips.

"Cordial relations have always existed between industry and labor", oh, they tell us. If cordial relations were born in the hell of injustice, I would subscribe to that libel on cordiality. There never will be cordiality until hungry mouths are fed, until poverty is eradicated, and until the sun of industrial liberty begins to shine through the cloud of oppression.

But your ———, Mr. Laborer, is not too much to blame. He, too, works for a salary. But he knows him better than you do. He knows that your factory and your speed-up system which produces both mass production and mass poverty are controlled by the fat-headed financialists who control the major portion of the motor industry, of the steel industry, of the railroads, the mines, of the whole Nation. They control it as they snap out their orders with the fierceness of a Simon Legree, coiling upon your shoulders the lash of oppression, my friends. You talk of striking, but if you must strike, strike in an intelligent manner, not by lying down your tools but by raising up your voice against the financial system that keeps you today and will keep you tomorrow in brutal bondage. Have I wasted my words upon you as I told you that one prize bank controls 40 billion dollars of American industry and occupation? Have I merely dreamed that there is a shortage of money in the Nation and the purpose for freezing up credit so that independent manufacturers dare not break against the will of the bank of the Morgans? Have I been an idle dreamer in explaining to you that there is a vast market in the Orient waiting for the products of your skill and your industry? If money were brought back to normal value, all the Anglo-Chinese merchants and the Anglo-Chinese bankers to whom Mr. Morgenthau sent an ambassador, together with ——— will tell you it is a dream because they wish to hold you in bondage, Mr. Working Man, and to force you to take the pauper's oath and to identify yourselves with the C. W. A., while they break down industry and buy General Motors for 20, and Chrysler for 30, and United States Steel for 10.

Manufacturers and laborers, wake up. Now is the time to strike together for independence from Wall Street. Nine tenths of the difficulties behind labor and capital have sprung from the millsprings of modern finance, and today these financialists hide behind the smoke screen of labor difficulties created for the most part through a famine of money and a disease of debt.

But the smoke screen has been penetrated and there is every hope that your Government, ably assisted by your moral support, will free itself from the blight of the brain-trusters and bankers who even at this very hour are endeavoring to control and until this very hour are impeding the progress of our financial independence without which there can be no industrial independence.

That is the conclusion, my friends, of this talk on capital and labor. It will be included in the book which I am inviting you to write for free of charge. Write this week. It is your last opportunity. Place your name an address plainly, and it shall be my happiness to send it to you and to wish you a happy Easter.

The CHAIRMAN. Do I understand you to say that you are opposed to the company union?

Mr. WARD. I am, sir. I think they are delusions and snares.

The CHAIRMAN. You do not make any distinction that has been made here between the dominated company union and the non-dominated company union?

Mr. WARD. I make no distinction in company unions because some splendid ones have arisen. Those should not be taken care of by law. They are fine. But, the company union is simply camouflage.

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It gives labor nothing. I know that. I have been with industry for 14 years. And neither is a system which extends the domination of the present American Federation of Labor good for labor.

The CHAIRMAN. Were you here yesterday?

Mr. WARD. I was not. I read all the testimony for the bill.

The CHAIRMAN. Did you hear the representatives of a company union who testified?

Mr. WARD. No, Senator; I did not.

The CHAIRMAN. I want to get your position clearly. You think there is no such thing as a company union that is not dominated directly or indirectly by employers?

Mr. WARD. I believe that, absolutely.

The CHAIRMAN. I thought that was your position, so that you favored a legislation that will prevent any such thing as a company union?

Mr. WARD. Anything such as that.

The CHAIRMAN. And that the employees, even if they wished to have a company union, should not be permitted to have one?

Mr. WARD. Correct, because they wish it because they are told to wish it.

The CHAIRMAN. Do you go so far as to desire legislation that will require all employees to be unionized whether they want to or not?

Mr. WARD. No; voluntary association of the laborers by industry; all the automotive workers in one, $3 a year.

The CHAIRMAN. I know, but how are you going to compel them?

Mr. WARD. Don't compel it. Make it voluntary. But have the Labor Department organize that union, go out to the factories, sell labor the idea of organization, and then turn it over to labor. Then, if you have a voluntary system, those that once enjoyed the craft unions and do not want to join your Labor Department union, let them join what they wish. Then if you want to have representation, have it proportional.

The CHAIRMAN. You would not interfere with the existing unions?

Mr. WARD. Not at all.

The CHAIRMAN. But where there is no union you would have the Federal Government encourage and set up an organization of unions of the workers and after they have organized such a union in any particular industry they would turn over the whole organization to the men themselves to conduct it and run it?

Mr. WARD. That is correct, Senator.

The CHAIRMAN. But you would have the Government take the initiative?

Mr. WARD. The initiative.

The CHAIRMAN. In introducing to these employees their right to organize and mapping out for them a form of organization under which they could obtain their right to collective bargaining?

Mr. WARD. Absolutely, Senator. As another step further, I would have it vigorously sell the idea of organization to labor instead of being as it is today.

The CHAIRMAN. Would not the result of that be, in all probability, the elimination of the present trade unions?

Mr. WARD. I think that they would go on to some extent. They are very experienced in dealing with crafts, and those whose income can pay the bill. I think they have done wonderful things for labor

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but I do not think they have done that they have been paid to do for labor.

The CHAIRMAN. Do I understand the amendment which you have offered is an attempt by you or somebody to translate into legislation the ideals and purposes of the pope in his encyclical letter?

Mr. WARD. Yes.

The CHAIRMAN. Have you consulted with any other Catholic leaders who have studied our social problems, in the preparation of this amendment?

Mr. WARD. I had my bishop as my guest yesterday in Washington because I do not believe that a layman should stick his neck out without a little consultation. So, I asked the Rev. Michael J. Gallagher, the bishop of Detroit, to listen, and he did. I did not ask him for any imprimatus or anything like that, but I wanted his judgment.

I wanted to make labor responsible for its action, highly organized; and industry responsible and highly organized.

I wanted them to reach back to the principles of social justice with a living wage as the fundamental principle. That cannot be accomplished without organization. Wealth is concentrated so heavily today into the hands of the few that one thirty-third of 1 percent have one half of our national wealth and the wage earner is without property by and large in this country.

Senator WAGNER. Except the services that he can offer?

Mr. WARD. Yes.

Senator WAGNER. This is his only property?

Mr. WARD. That is his only property.

Senator WAGNER. If you do not give him a chance to bargain fairly for that, there is nothing left and he is an economic slave?

Mr. WARD. He is.

Senator WAGNER. Under those circumstances?

Mr. WARD. I truly believe that where—I taught the largest classes in America 24 years ago in Albany and I used to see you then—20 years ago.

I really believe that slavery was abolished from this country, not because of what the books tell us, but because the free competitive system in the labor market is cheaper for industry than is slavery.

We hire the man at 18 and we fire him at 45. In the 27 years that he has as a laborer in highly organized industry he has earned as high as $1,265 a year. Roughly, that is $34,000 for a lifetime period. He expects to live 70 years and if he works every day throughout the 27 years which industry accepts him he gets $480 a year.

I believe that the first tax on productive industry is labor's wage, and I believe there must be a redistribution of wealth if capitalism is to remain.

I have worked too. I have not only counciled industry, but I have worked by the hour as a day laborer and know something about it.

I have one final point and I am through. This question and most others will not be settled on their merits or by expediencies or even by legislation until income is restored to the Nation. Therefore, a fundamental settlement of the capital and labor dispute today, better than the Senator's bill, better than the Senator's bill with my amendment, or better than anything, is to restore national income and divide it fairly.

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Our income has dropped from $85,000,000,000 in 1929 to $71,000,000,000 in 1930, to $57,000,000,000 in 1931, to $37,500,000,000 in 1932, and to a little over $30,000,000,000 in 1933.

We owe $235,000,000,000 public and private debt. The interest charge on our debts in this country, plus taxation, is a full $23,000,000,000 a year. We have left less than $12 a week per family for the 30,000,000 families to live on.

If any man gets over $12 a week somebody else gets less as the head of a family in this nation.

The CHAIRMAN. May I make this inquiry of you? I suppose there is not an employer or employee in America, perhaps in the world, who would not subscribe and agree to the principles enunciated by the Pope in his encyclical?

Mr. WARD. I never saw one when they were explained; I never saw a man who would not agree to them when they were explained.

The CHAIRMAN. The difficulty is in transcribing those principles into a legislative act. Outside of your own efforts I have never heard of anybody who sought to try to draw a legislative act based solely and alone upon an effort to interpret those principles. Am I correct?

Mr. WARD. You are correct, Senator, to my knowledge.

The CHAIRMAN. And I suppose we could find hardly any two, even Catholic employers, or employees, who could agree at this time upon a legislative act that they believed would properly and effectively carry out those principles?

Mr. WARD. That is correct. Catholics do not know any more about that encyclical than Protestant industrialists?

Senator WAGNER. Is not one of the definite statements therein the right of labor to form its own union?

Mr. WARD. Yes, the duty of labor to organize completely.

Senator WAGNER. Do you mean to say that all employers agree to that?

Mr. WARD. Oh, no. I said the Catholic employer does not know any more about that principle than anyone else.

Senator WAGNER. I understood you to so answer Senator Walsh, that they would agree to the principles?

Mr. WARD. They would agree to the principles as soon as presented.

The CHAIRMAN. But as soon as you attempted to transcribe that into a legislative act they would all differ?

Senator WAGNER. Because we have actual cases before the Labor Board where the employer takes this position, "I will not recognize any union; I will not deal with any union." There are very few; I don't say there are very many of them, and it is not unanimous.

Mr. WARD. It is not unanimous, and a fundamental obstacle is human greed. They do not want this. They do not want your bill insofar as it goes, they do not want anything that will interfere with the continuous concentration of wealth into their hands. You are dealing with greed.

The CHAIRMAN. Thank you, Mr. Ward. We appreciate having your suggestions.

Mr. WARD. Thank you.

The CHAIRMAN. Mr. Harrington.

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STATEMENT OF GUY L. HARRINGTON

The CHAIRMAN. What is your full name?
Mr. HARRINGTON. Guy L. Harrington.
The CHAIRMAN. Whom do you represent here?
Mr. HARRINGTON. The National Publishers Association.
The CHAIRMAN. Where is your residence?
Mr. HARRINGTON. Summit, N.J.
The CHAIRMAN. The National Publishers Association is an organization of what?
Mr. HARRINGTON. Publishers of periodicals, commonly called magazines.
The CHAIRMAN. How large is that association?
Mr. HARRINGTON. About 200 members.
The CHAIRMAN. And they have a national office here in Washington?
Mr. HARRINGTON. Yes.
The CHAIRMAN. In the Investment Building?
Mr. HARRINGTON. Yes.
The CHAIRMAN. And you are in charge of that office?
Mr. HARRINGTON. I am not.
The CHAIRMAN. You are representing the officials of that office?
Mr. HARRINGTON. I am representing the officials of the home office in New York.
The CHAIRMAN. How much time do you want, Mr. Harrington?
Mr. HARRINGTON. I have prepared a statement which will take, by actual timing, about 15 minutes to read.
The CHAIRMAN. All right, we will let you have 15 minutes.
Mr. HARRINGTON. This testimony is presented to your committee by the authorized representative of the National Publishers Association, whose membership comprises individuals and corporations owning approximately 200 of the leading periodicals or magazines of the United States, the total combined circulation of which is approximately 50 millions of individual copies per month.

These publications vary widely in character, including general magazines, women's magazines, fashion publications, business periodicals, educational publications, farm publications, and religious publications. All of them have a national distribution or circulation. Their pages reflect to a remarkable degree the desires, tastes, and the social and economic status of a cross section of the entire population of the country. Experience has taught that they are very sensitive and react quickly to any social or economic changes that may take place. They are closely associated with the Nation's welfare and their owners in general are fully aware of the responsibilities which they must assume in accurately and conscientiously interpreting, reflecting, and at times guiding the thoughts and desires of their millions of readers. Whenever they fail in this respect their publications soon cease to exist.

Some of the members of the National Publishers Association own and operate the printing plants in which their magazines are produced and are consequently comparatively large direct employers of skilled labor. The remaining members of the association indirectly contribute to the employment of large forces of skilled labor in the sepa-

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rately owned or commercial printing plants in which their publications are printed under contract.

While some of the plants in which periodicals are printed are closed shops, an overwhelming majority of printing plants producing periodicals are either nonunion or open shops. Yet the periodical-printing industry, according to the best information available, pays a higher wage scale for skilled labor than any other industry.

The foregoing brief statement definitely establishes, I believe, our interest in the so-called "labor disputes act", which is now before this hearing and which would, in our opinion, if enacted into law, profoundly affect adversely the entire periodical-publishing industry.

Accordingly we, the members of the National Publishers Association, respectfully oppose the enactment into law of the bill S. 2926, dated February 28, 1934, for the following reasons:

Not an emergency measure: Although not stated in the bill itself one of the purposes of the labor disputes act, as recently announced by its sponsor, Senator Wagner, is the clarification of clause 7 (a) of the National Industrial Recovery Act, which still is an emergency act.

As a matter of principal, we are opposed to permanent legislation to meet an emergency condition or permanent legislation "tacked on" to time-limited emergency legislation.

Bill would increase labor disputes: Two of the stated purposes of this bill, namely, (a) to equalize the bargaining power of employees and employers, (b) to encourage the amicable settlement of disputes between employers and employees are, in our opinion, in contradiction with the provisions of the bill itself.

Senator WAGNER. In what respect?

Mr. HARRINGTON. That follows immediately.

Senator WAGNER. I beg your pardon.

Mr. HARRINGTON. Rather than equalizing bargaining power between employers and employees and promoting amicable settlements of disputes, provisions under section 4 and section 303 would permit employees to strike or engage in concerted activities of any character without restrictions, while on the other hand provisions under section 5 (1) to (6) would effectively prohibit employers from protecting themselves in any way, even to advising their employees, without being open to the suspicion of engaging in unfair practices.

Even the definition of employers in section 2 (a) excludes labor organizations, thus exempting them from possible punishment for unfair practices. While laying down specific rules of fair practice for employers, none are given for employees. This omission would permit employees to engage in practices of any character. Evidently, the sponsors of this bill feel that labor or labor representatives never indulge in unfair practices. If industry needs restraint, labor also needs restraint.

Senator WAGNER. I might say to you that that question was raised the other day that this provision with reference to intimidation and coercion, that it has a restricted application which is not generally understood, to the selection of representatives or the organization of a trade union, but somebody suggested that that ought to apply also to employees, that coercion and intimidation from whatever source ought to be prohibited, and I agreed absolutely to that.

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My theory was that already the employer goes into the court now—I was a judge for 8 years so I know something about labor injunctions—they are never issued against employers; they are issued against employees to prevent intimidation and coercion and things that ought to be prohibited, and so that there may be no question about it I myself stated that the bill ought to be amended so that coercion is prevented from whatever source. So, that would meet one objection that you have just asserted.

Mr. HARRINGTON. I am sorry if this covers any testimony already submitted.

Senator WAGNER. That is all right. I am very glad to hear your criticism.

The CHAIRMAN. As the bill was originally written his criticism is sound?

Senator WAGNER. Yes.

The CHAIRMAN. That is, not sound but well taken?

Senator WAGNER. Yes; well taken.

Mr. HARRINGTON. In our opinion it would be hard to conceive of a more inequitable proposal. Forced inequitable relations between employers and employees would unquestionably breed friction and labor disturbances——

Senator WAGNER. Are you still referring to that one instance that would breed friction?

Mr. HARRINGTON. Yes.

Senator WAGNER. We have agreed on that.

Mr. HARRINGTON. All right, then, I will let it go at that.

The matter of labor disturbances is of vital importance to periodical publishers. They must be assured of continuous operations. One issue of a magazine missed could mean ruin to a business that had perhaps taken years to build.

This bill enacted into law would, in our opinion, because of its unfair provisions increase labor disturbances rather than decrease them. On that basis we respectfully protest its enactment.

Unequal labor representation: The personnel of the board, as stipulated under title II, section 201, is similar to that of the present National Labor Board. According to accepted statistics, 90 percent of the labor of the country is not nationally organized, yet this overwhelming majority of labor is not represented on this board.

Senator WAGNER. I think you are mistaken. Father Haas is a representative designated as a representative of labor and is entirely detached from the labor movement altogether. Dr. Wolman is a member of the labor board who has no association with labor unions or labor organizations. Both of them have been appointed there to represent the unorganized laborers of the country.

I have heard that asserted before but it is because you have not analyzed altogether the labor representation on that board. They are both very distinguished men, you know, Father Haas and Dr. Wolman.

Mr. HARRINGTON. I understand that, but our reaction to that is based upon our own experience.

Senator WAGNER. Well, I know.

Mr. HARRINGTON. Representatives of 10 percent of labor have been passing on rules and regulations governing the wages and working

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conditions of all labor and attempting to impose upon all labor the rules of this minority class.

Senator WAGNER. You see, you make that assertion, but I just tried to tell you what the actual facts are. It may spoil your argument, but there is the truth of the situation. It is like the reporter who said an eyewitness ruined a good story.

Mr. HARRINGTON. Senator Wagner, I respect your opinion highly and am very glad to get it.

Senator WAGNER. I mean as to the personnel; I am not asking you to accept my opinion there; this is a fact.

Mr. HARRINGTON. Our argument is based entirely on our experience here in Washington in the negotiations leading up to the acceptance of our code.

The CHAIRMAN. Now you are speaking about a different board. Are you not speaking about the committee or group representing labor in the N.R.A., to whom all codes are submitted to be passed upon with respect to the labor provisions before they are adopted?

Mr. HARRINGTON. Yes.

The CHAIRMAN. And you claim that group is composed entirely of partisan representatives of the employees?

Mr. HARRINGTON. Yes.

Senator WAGNER. May I correct that, Senator? The code is originally drafted by the employers, and labor in the drafting of the code has no say at all. Then the code is submitted to the N.R.A. and the N.R.A. has a public hearing upon the question and then labor, for the first time, is permitted to come in and present its objections to the code. So, it is that feature of it which you—of course, I do not know what experience you had, but that has nothing to do with the Labor Board. We are detached from that altogether.

The CHAIRMAN. Does that group adjudicate the disputes between the employers and employees on matters in controversy relating to working conditions as they are set forth in the code?

Mr. HARRINGTON. They had a large influence in determining our labor rules and regulations in our codes. I mean that we found it impossible, unless we agreed to do certain things, to secure an approval of the code.

The CHAIRMAN. I had an impression, Senator Wagner, that that group in the N.R.A. representing labor had to O.K. the labor provisions before there was a signing up of the codes.

Mr. HARRINGTON. That is right.

Senator WAGNER. What group is that?

The CHAIRMAN. This representation of labor.

Senator WAGNER. Yes; the Labor Advisory Board, just as the Industrial Advisory Board approves on behalf of industry, but that is not a legal requirement, that is simply the organization of the N.R.A.

The CHAIRMAN. That is the practice?

Senator WAGNER. Yes; it is the practice.

The CHAIRMAN. I suppose when the code gets to the President he looks it over to see whether these various advisory boards have approved it and it is merely a formal matter if they have approved. But, if they have not, I suppose he adjudicates the difference.

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Senator WAGNER. Yes; and in a number of instances I am told the Labor Advisory Board has not approved a code but yet it has been enacted, so it is not——

Mr. HARRINGTON. Two or three months' delay was occasioned just because of disputes.

The CHAIRMAN. I know there have been such instances.

Mr. HARRINGTON. This matter is of paramount importance in view of the fact that the Board as constituted by the bill's provisions would be quasi judicial in character and under section 207 (a) would be given authority to "decide whether eligibility to participate in elections, shall be determined on the basis of employer unit, craft unit, plant unit or other appropriate grouping."

Under this arrangement, the representatives of a 10 percent minority class of labor, being the only labor representatives on the board, could easily impose the rules and regulations of their minority class upon all labor throughout all of the industrial plants of the country.

We most respectfully and at the same time most earnestly protest against the enactment of this bill because its provisions admit of this possibility.

Senator WAGNER. Have you suggested a change?

Mr. HARRINGTON. My following paragraph covers that.

Senator WAGNER. All right; pardon me.

Mr. HARRINGTON. We believe there is need for a national labor board for the arbitration of labor disputes and that such a board could contribute very greatly to the general welfare of the country, but it should be so constituted and safeguarded as to insure its absolute and complete invulnerability against industrial, political, and labor influences or its use by any of these groups for exploitation purposes.

Senator WAGNER. Your idea would be that it would be on a par with the United States Supreme Court or some such body?

Mr. HARRINGTON. Yes; I understand this has already been suggested but I did not know it at the time this was prepared.

Senator WAGNER. Yes.

Mr. HARRINGTON. The board would destroy confidence: The procedure outlined for the activities of the board in title II, sections 205 to 210, would, in our opinion, retard and destroy confidence.

By virtue of the authority to be granted under section 205 (a) and (b) the board on belief, information, or complaint justified or unjustified that any employer was engaging in unfair labor practice or practice that has led or tends to lead to labor disputes could summon such employer to a hearing.

Contemplation of the probable results that would follow the granting of such broad unlimited powers can lead to but one conclusion—disorganization of industry.

No matter how fairly employees are dealt with, there are and always will be, individual and groups of employees who are dissatisfied, disgruntled and antagonistic. Complaints from such employees would flood the office of the board. Disputes that could and in the past have been quickly settled between employers and employees would go direct to the board. All industrial plants would be open to attacks from any prejudiced classes of labor, and that is very important. Employers would be harassed by innumerable unnecessary, unjustified time-wasting examinations and hearings.

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Long delays and suspense in settling complaints would ensue. Proper contacts between employer and employee would be destroyed. Cooperation and teamwork between employer and employees, so necessary at this time would be impossible.

Such a deplorable situation must result in loss of confidence. From the viewpoint of operation, the bill is impractical—from the viewpoint of effect, it is destructive.

It is one of the important obligations of periodical publishers to create and foster confidence. Any efforts in that direction would be largely nullified by the activities of the organization proposed by this bill.

An all-powerful labor bureaucracy:

The terms that would be imposed by this bill are extremely drastic, to wit:

SEC. 6. It shall be the duty of the several district attorneys of the United States, but solely at the request of the National Labor Board to institute proceedings in equity to prevent and restrain any such unfair labor practices.

SEC. 205 (a). The Board is empowered to prevent any person from engaging in any unfair labor practices that has led or tends to lead to labor disputes.

SEC. 205 (b). Whenever any member of the Board shall have reason to believe that any person has engaged or is engaging in unfair labor practice, he shall in his discretion issue a complaint.

SEC. 205 (f). No court shall have any jurisdiction to enjoin the Board or an examiner from taking action or holding hearings under a complaint.

SEC. 304 (b). Any term of a contract or agreement of any kind which conflicts with the provisions of this Act is hereby abrogated.

Senator WAGNER. These are the labor practices?

Mr. HARRINGTON. Yes.

Senator WAGNER. Do you suggest a modification?

Mr. HARRINGTON. No.

Senator WAGNER. Yours is just criticism?

Mr. HARRINGTON. Mine is just criticism at this point.

These are but a few of the many provisions granting unusual authority to the Board, the cumulative effect of which would be to create a bureaucratic organization endowed with centralized powers greater than that of any other governmental agent or agency, with the exception of the Chief Executive himself.

It is extremely important to realize that to this Board would be transferred very largely all labor disputes now being handled by individual employers, that it would deal direct with millions of employees, and that it would act in both a judicial and executive capacity.

What motives or circumstances actuate the request for these extraordinary powers?

In our opinion, such a request is not in keeping with the fundamental principles of our Government and cannot be justified by conditions. On these premises, we protest against the enactment of this bill into law.

Would greatly increase printing costs:

The periodical printing industry now largely "open shop" would be quickly unionized under this act, in our opinion.

Senator WAGNER. Why?

Mr. HARRINGTON. Because it would give unions and prejudiced classes of labor the opportunity to report directly to the Board and complaints might be justified or unjustified, but it would give them

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an opportunity to step in in organizations in which they have at the present time no authority.

Senator WAGNER. Do you believe a worker ought to be free to join any labor organization of his own choosing?

Mr. HARRINGTON. Yes.

Senator WAGNER. What difference does that make in the legislation? I mean, we are trying to insure that right.

Mr. HARRINGTON. That is true, Senator Wagner. I believe thoroughly that you as sponsor of this bill are absolutely sincere in regard to that particular matter, but it is a fact that none of us, whether we are laborers, or whether we belong to some other class of people, none of us are ever satisfied as far as our incomes are concerned. It is an easy matter for organized labor through their organizers to arouse dissatisfaction in any industrial plant among the employees, whether the dissatisfaction is justified or not. That is the great danger.

Senator WAGNER. Well, they can do that today. This legislation does not affect that situation as far as I can see.

Mr. HARRINGTON. Yes, but if they can report to a labor board it makes it entirely different.

Senator WAGNER. A dispute?

Mr. HARRINGTON. The dispute may not be justified.

Senator WAGNER. Where shall labor go? What shall labor do about it? Strike? Do you think that is a better substitute than an effort amicably to adjust the differences when they do arise?

Mr. HARRINGTON. I would not outlaw strikes but I think they should be restrained.

Senator WAGNER. Then what is labor going to do unless they are able to organize and then collectively bargain? Then they get on a bargaining equality, and I am sure you do not contend for the proposition that the situation ought to be one-sided where it is one worker against one employer?

Mr. HARRINGTON. Senator Wagner, we are now operating under clause 7 (a).

Senator WAGNER. Yes.

Mr. HARRINGTON. If employers are not living up to the clasue 7 (a) there is a redress, unquestionably.

Senator WAGNER. What is it?

Mr. HARRINGTON. The district attorneys, the courts; bring them into court.

Senator WAGNER. As section 7 (a) reads now, the question ought to be tested; I admit that to you. The employers have taken the position before our labor board that while it gives the right to labor to collectively bargain, there is not anything there which says that the employer must bargain with him or reach a conclusion, so the result has been that labor has come in with its representatives, they are heard, the proposal has been made, and the employer says, "I reject it," and that is the end of it. He refuses to negotiate further and he contends there isn't any further redress or there isn't anything in the law that says he has to use any reasonable efforts to reach a conclusion, and thus you have stalemate causing continuing disputes.

The purpose of this act, whether we can agree on it or not, is to have some other form for the composing of these disputes rather than the

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strike, which is wasteful and engenders hatred and all that sort of thing, and does not solve any problem.

Mr. HARRINGTON. I think that can be done in another way.

Senator WAGNER. Well, all right.

Mr. HARRINGTON. Without the attendant objections to the bill as it presently stands.

Senator WAGNER. You do not want any forum in which a dispute can be adjusted?

Mr. HARRINGTON. Pardon me, I did not get that.

Senator WAGNER. You say you do not want any forum created where both sides may go to have their disputes composed?

Mr. HARRINGTON. No; I have not said that. I hope I have not inferred that.

Senator WAGNER. But you do not want this particular forum?

Mr. HARRINGTON. That is it.

Senator WAGNER. What forum do you want?

Mr. HARRINGTON. First, I would make it obligatory on employees to submit to arbitration any dispute before they strike.

Senator WAGNER. That is compulsory arbitration. You are for that?

Mr. HARRINGTON. Yes.

Senator WAGNER. We cannot agree on that. We will not go any further. I do not believe personally in compulsory arbitration.

Mr. HARRINGTON. The periodical publisher cannot, as in the case of other industries, pass increased costs along to consumers. A recent survey showed that an overwhelming percentage of periodicals were not showing profits. Contrary to the general opinion, periodical publishers are not in position to absorb increased costs.

The bill would not aid recovery:

After most careful study, analysis, and consideration, we fail to comprehend how the enactment of this bill into law could in any way contribute to industrial recovery.

One of the stated purposes of the bill, title I, section 2, is to remove "the obstacles which prevent the organization of labor for the purpose of cooperative action in maintaining standards of living." While the bill is ostensibly designed to enforce fair practices, there is no question in our minds that one of its objectives is to secure increased wages for labor.

Senator WAGNER. You think that that is objectionable, that anything which may tend to increase wages——

Mr. HARRINGTON. The next two paragraphs cover that, Senator Wagner.

It is a misconception and fallacious to assume that an increase in the wages of labor in itself, would increase the country's buying power.

Manufacturing workers or labor constitute from one fourth to one half of those gainfully employed in the United States. An increase in labor cost must, by necessity, increase prices of manufactured commodities which all wage earners buy. To increase the wages of labor only, would simply result in transferring purchasing power from one group of workers to another.

The grave danger at this time is that labor will make greater demands than the recovery program at its present point can stand.

On these premises, we are convinced the N. R. A. will either succeed or fail.

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This bill proposes to place in the hands of labor an almost unlimited power—a power so great as would enable it to attain almost any objective it desired, no matter how unreasonable——

Senator WAGNER. What is that unlimited power that we give them?

Mr. HARRINGTON. I have mentioned in one or two places that this means the unionization of all labor. This bill really means, back of it, the unionization of all labor.

Senator WAGNER. How and why? Have they not a right—you say you feel labor ought to have a right to organize if they wish? Am I right about that?

Mr. HARRINGTON. Yes.

Senator WAGNER. That is all that this bill does, so far as I can see, it leaves the worker a free man to organize or not to organize as he chooses, and that is all it does.

Mr. HARRINGTON. Senator Wagner, I would like to state that so far as we are concerned and our associates in this organization, we are not opposed to organized labor.

Senator WAGNER. I mean, this does not change the situation at all?

Mr. HARRINGTON. We are not opposed to union labor. It has done a great deal of good in the history of labor differences. There is no question about that and we admit it. But, to enact a bill which will permit or which can be used to tremendous advantage in building up a great labor organization of any particular group——

Senator WAGNER. But how? That is what is incomprehensible to me. By merely insuring to a worker the right to organize if he wishes, to make him a free man, how is that going to create all these labor organizations you speak of unless the men decide they had better organize?

Mr. HARRINGTON. You will admit that clause 7 (a) has done that, will you not? It has been used for exploitation purposes.

Senator WAGNER. Exploitation?

Mr. HARRINGTON. Yes.

Senator WAGNER. Maybe in some instances.

Mr. HARRINGTON. You know that union labor has increased its membership by 2,000,000 since that clause was enacted?

Senator WAGNER. You think that was an objectionable thing?

Mr. HARRINGTON. I think it is objectionable for any legislation to be enacted which can be used for exploitation purposes by any group, industrial or otherwise.

Senator WAGNER. I agree with you, but we merely give them the right to organize. That is why it is difficult for me to follow you. In one breath you say they ought to have the right to organize, and in the next breath you say when they do organize they only do it for the purpose of exploitation. It is difficult to follow that argument.

It has been asserted time and time again, and propaganda has been sent out by large corporations, letters to their stockholders—I saw one of those trade newspapers the other day filled with misrepresentations as to the purpose and also the text, saying that this simply means one great union, when all that I can see in this legislation—and if words do not bring about that objective I am not committed to any particular words—all it does is to make the worker a free man. Now, it is that that is incomprehensible to me.

Mr. HARRINGTON. Senator Wagner, I wish it were possible for me to explain the matter as we see it. We, however, are convinced that

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the passage of this bill as it now stands would mean the unionization of labor throughout the United States.

Senator WAGNER. I understand that you are convinced of that, but I would like to find out in what particular it does that. That is what I cannot grasp. By merely making a worker a free man, I do not see how it does that, unless you take the position that a worker ought not to be permitted to organize.

Mr. HARRINGTON. We do not take that position at all.

Senator WAGNER. Well, all right.

Mr. HARRINGTON. This bill proposes to place in the hands of labor an almost unlimited power—a power so great as would enable it to attain almost any objective it desired, no matter how unreasonable or out of harmony with the economic situation of other social groups, to the detriment and at the expense of from one half to three fourths the wage earners of the country, including the so-called "white collar" class who now receive much less than labor.

The exercise of such power by any one class, no matter which one, must certainly result disastrously to our entire population and could easily threaten the continued existence of the Government itself.

The CHAIRMAN. Thank you, sir.

Are those two young men from New York present? Are Mr. John J. Collins and Mr. Bernard Mulbey, of New York City, present?

Mr. COLLINS. Yes, sir.

The CHAIRMAN. You have made a special trip from New York to Washington in the hope you may be permitted to address the committee?

Mr. COLLINS. Yes, sir.

The CHAIRMAN. You are introduced by Representative Anthony J. Griffin, of New York?

Mr. COLLINS. Yes, sir.

The CHAIRMAN. Mr. Collins, I will call on you first.

STATEMENT OF JOHN J. COLLINS

The CHAIRMAN. By whom are you employed?

Mr. COLLINS. I am an employee representative of Sobol Bros., a subsidiary of the Standard Oil Co. in New York City.

The CHAIRMAN. What is your employment?

Mr. COLLINS. We are working in service stations, that is, filling stations.

The CHAIRMAN. And your companion, Mr. Mulvey?

Mr. COLLINS. He does the same; yes, sir.

The CHAIRMAN. Who sent you down here?

Mr. COLLINS. No one sent us down here. I read in the paper Saturday that the opponents of the Wagner bill would be heard. I did not know anything about it beforehand or else I would have made my application.

The CHAIRMAN. Are you appearing now in your own capacity or are you appearing for your companions who are employed by the subsidiary company of the Standard Oil Co.?

Mr. COLLINS. I will explain that. I am appearing to a certain extent in my own capacity, but we had a vote on whether we wished to continue our present employee-representation plan, which has been in existence for the past 6 months, we had a vote on that about a

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week ago, and the vote came out 10½ to 1 in favor of continuing this plan rather than any other plan, about 816 to 76, but the proportion is 10½ to 1, and I considered that a mandate to come down here.

The CHAIRMAN. How many members are there in your organization?

Mr. COLLINS. About a thousand.

The CHAIRMAN. And your organization is composed of the employees having in charge the service stations of what company?

Mr. COLLINS. Sobol Bros., a subisdiary of the Standard Oil Co.

The CHAIRMAN. Then you voted to continue your own organization?

Mr. COLLINS. Yes.

The CHAIRMAN. Was any vote taken about your appearing down here?

Mr. COLLINS. No, sir; there was not.

The CHAIRMAN. You both came down voluntarily to express to the committee the meaning as you understand it of that vote?

Mr. COLLINS. The meaning of the vote, or, rather, to say that the men, I know, do not want to change this particular company union, and yet I am under the impression that the Wagner bill—after all, Mr. Wagner is my Senator and I am quite proud of him—but I think the Wagner bill, if it is passed in its present form, would outlaw the particular organization that we are connected with.

Now, I think that this organization, I can prove that this organization, is not the general run of dominated company unions.

The CHAIRMAN. I think I can assure you, young man, that this committee, so far as I know the sentiment of it, does not intend to recommend any legislation that will outlaw any union that the employees themselves desire to set up for the purpose of engaging in collective bargaining with their employers, provided that union is independent of domination and control by the employers.

Mr. COLLINS. Yes, sir; but the bill itself says, even if the company should initiate it or participate in it, that that would be considered an unfair labor practice, and while the company does participate in it and has initiated it, nevertheless, we have substantially collective bargaining, and the others are just modes rather than the essence of collective bargaining.

The CHAIRMAN. How does the company participate? You ought to be a lawyer instead of a service-station man.

Mr. COLLINS. The company have their representatives and we have ours and we meet around a round table and discuss questions affecting the employees.

The CHAIRMAN. That is when you come down to what we call collective bargaining, but before you get to that stage you have independent meetings, separate from the employers, where you vote and elect your representatives?

Mr. COLLINS. Not necessarily. We are allowed to have our own separate meetings and I have data here to show you that our elections were conducted without any interference, without any connection with the company.

The CHAIRMAN. We want to know about that. How often do you meet to elect representatives?

Mr. COLLINS. We elected representatives for 1 year.

The CHAIRMAN. Where do you meet?

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Mr. COLLINS. We meet in the school of the Sobol Bros., the mobile lubrication school.

The CHAIRMAN. Are any employers present at the meetings?

Mr. COLLINS. The employers are present at the meetings.

The CHAIRMAN. Where you have your elections?

Mr. COLLINS. Where we have our meetings.

The CHAIRMAN. We are talking about the elections.

Mr. COLLINS. The election was conducted last October.

The CHAIRMAN. Were the employers present in the hall where you had your election?

Mr. COLLINS. No, sir, the election was by secret ballot.

The CHAIRMAN. The employees themselves alone conducted the election?

Mr. COLLINS. Yes, sir.

The CHAIRMAN. For their own representatives?

Mr. COLLINS. Yes, sir.

The CHAIRMAN. And do any of the foremen or division superintendents of the service stations participate?

Mr. COLLINS. No. sir.

The CHAIRMAN. Just the employees themselves?

Mr. COLLINS. Just the employees themselves.

The CHAIRMAN. You had your secret ballot and you elected your representatives?

Mr. COLLINS. Yes, sir.

The CHAIRMAN. And the employers had nothing to do with it?

Mr. COLLINS. No, sir.

The CHAIRMAN. Who called the meeting?

Mr. COLLINS. There are quarterly meetings that come about every quarter. Well, they just come about.

The CHAIRMAN. What do you call these people you elect?

Mr. COLLINS. Delegates or employee representatives.

The CHAIRMAN. They are delegates of the employees to confer with the employers about working conditions and other questions arising between the employees and employers?

Mr. COLLINS. Exactly.

The CHAIRMAN. After being elected they sit in with the employers and negotiate settlements of disputes?

Mr. COLLINS. Yes; exactly.

The CHAIRMAN. Outside of that, until you get to that stage, you have nothing to do with the employers, is that right?

Mr. COLLINS. Nothing.

The CHAIRMAN. So you are free and independent to elect whom you want as representatives and fix your own dues in your own organization?

Mr. COLLINS. Yes, sir.

The CHAIRMAN. And to carry on your business independent of any domination or control or influence by your employers?

Mr. COLLINS. Exactly.

The CHAIRMAN. I do not see as your employers initiate or influence you very much.

Mr. COLLINS. No, they do not; but there is another element to it. We have in our bylaws that if we find we cannot see eye to eye with our employers on a certain question, we have the right to go outside, after going through the ordinary channels of going to the board of

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directors of the Standard Oil Co., if such a question should arise, and if we are not satisfied with the solution of the case we have a right to go outside of the Standard Oil Co. to an arbitration board which is impartial and neutral. The neutral member, in fact, might be Senator Wagner himself if the case were of sufficient importance.

I think that that has all the elements of free and collective bargaining of any outside union, whether it be under the American Federation of Labor or any other type of organization, and it has all the advantages of working cooperatively within the company.

I heard Mr. Ward this morning, and my training in ethics prompted me, and my belief in an adherence to principles of equality, would not allow me to appear here as the proponent or the protagonist of the vested interests; far from it.

The CHAIRMAN. You dispute the assertion made by the previous witness that Catholics do not know the meaning of these encyclicals?

Mr. COLLINS. I think the general run of Catholics do not know them, unfortunately.

The CHAIRMAN. You seem to, however.

Mr. COLLINS. Even those who do know them, Catholic employers, are very loath to apply them. It is just all right, the Pope said it, but just forget about it.

The CHAIRMAN. You seem to know about them.

Mr. COLLINS. I should. However, that does not blind us to the fact that there should be a certain amount of fairness shown to the employer.

It is true that since the industrial revolution and the laissez faire and the competition that has taken place in the past, the conditions are the outcome of injustice on the part of employers, and now if we can meet collectively and cooperatively and bargain that way I do not see any reason why we should not be allowed to.

The CHAIRMAN. You need not go any further, young man. We thank you for appearing before us, and I what to say to Senator Wagner that he better look out for his laurels if there are many more young men like you aspiring for public office in New York State.

Senator WAGNER. What laurels?

The CHAIRMAN. Political laurels.

Senator WAGNER. I am proud of you, sir.

Mr. COLLINS. Not so much as I am of you, sir.

Senator WAGNER. I agree with you absolutely that if this is the kind of an organization that the employees want, that is what I am for 100 percent. All I am trying to do, and I think, you believe me when I say that, is to make the worker a free man to join any organization that he wishes to join and, at the same time, to have genuine collective bargaining. By the way, have you got a collective-bargaining agreement?

Mr. COLLINS. Yes, sir, I have our constitution here if you wish to see it [indicating]. And I have data of a meeting.

Senator WAGNER. In what way will this legislation interfere with your organization? Is it the initiation?

Mr. COLLINS. The initiation and participation of the employer with the employees.

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Senator WAGNER. Of course, this participation only relates to the organization of the union. Did your company participate in the organization of the union?

Mr. COLLINS. Naturally somebody had to start this company union.

Senator WAGNER. That is the initiation?

Mr. COLLINS. That is the initiation.

Senator WAGNER. You mean they provided a constitution for you?

Mr. COLLINS. The agenda; yes. Well, they provided it, but we changed it, modified it, added to it, and subtracted from it where we saw fit after our first meeting.

Senator WAGNER. Let me ask you this: Does your constitution limit your representation to men employed in the plant or can you, if you wish, elect somebody outside to represent you?

Mr. COLLINS. We could in the beginning, but we decided after we had our first meeting to limit the delegates of the union to the employees within the company.

Senator WAGNER. You did that yourself?

Mr. COLLINS. Yes, sir; we ourselves did that.

Senator WAGNER. Now, it is, then, the initiation and participation that you say will interfere with your kind of an organization?

Mr. COLLINS. That is the way it appears to me.

Senator WAGNER. Is there anything else in the bill that would interfere? As a general proposition do you agree that men ought to be permitted to organize themselves?

Mr. COLLINS. I certainly do.

Senator WAGNER. Outside of that objection you make, is there anything else?

Mr. COLLINS. I do not think there is, sir.

The CHAIRMAN. Thank you very much.

Senator WAGNER. I thank you.

(The Employees Representation Plan of Sobol Bros., Inc., Employees, as presented by Mr. Collins, is as follows:)

EMPLOYEE REPRESENTATION PLAN OF SOBOL BROS., INC., EMPLOYEES

1. *Purpose.*—This plan provides a means whereby elected representatives of the representatives of the employees and appointed representatives of the management shall meet in joint conference to discuss and settle all matters of mutual concern including wages, hours, and working conditions, subject to review when necessary, as provided in paragraph 6 below. The idea is not only the adjustment of grievances but their avoidance through better understanding, the development of cooperation, and the promotion of the common interests.

2. *Eligibility.*—All active regular employees are entitled to vote for representatives and are eligible for elections, excepting those identified with the management, such as officers, department heads, superintendents, supervisors, foremen, salesmen, and chief clerks.

3. *Election of representatives.*—Employees as described in paragraph 2 shall elect their representatives annually during October by secret ballot according to a numerical and group distribution to be determined in joint conference. Candidates thus elected shall be accredited representatives of all the employees in their respective voting groups at all joint conferences and in all matters of cooperation between the company and its employees and shall serve for the succeeding year or until their successors are elected. An employees' representative shall be deemed to have vacated office upon termination of his employment with the company, and upon permanent transfer from one voting group to another (unless otherwise decided by vote of the employees he represents) or upon his appointment to such an executive position as disqualifies him as an employees' representative. Vacancies among elected representatives occurring between regular elections shall be filled by alternates, elected at the regular election.

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4. *Joint conferences.*—Joint conferences of the employees' representatives thus elected in each voting group or operating unit and the management's representatives shall be held at any time at the call of either the employees' representatives or the management's representatives, but at least quarterly, one of which conferences will be the annual meeting following the annual election.

At each and every joint conference the number of management representatives shall not be greater than the number of employees' representatives.

Joint conferences do not in any way preclude separate meetings of employees' representatives.

5. *Adjustment of wages, hours, and conditions.*—All future general adjustments affecting wages, working hours, and working conditions shall be made in joint conference of employees' representatives in the voting group or operating unit affected and representatives of the management subject to the approval of the board of directors.

6. *Procedure.*—If such a conference fails to agree unanimously as to a fair adjustment of such matters in general or in individual cases, an appeal may be made to the higher officers of the company in their order including the board of directors.

Should a decision of the board of directors concerning any case referred to it as provided in this plan be unsatisfactory to one quarter or more of the members of a joint conference, at the request of either party, the question may be submitted for arbitration to a board composed of 3 members—1 chosen by the employees' representatives, 1 appointed by the management and a third to be selected by mutual agreement of these 2.

Any employee who feels that he, individually, has been unjustly treated or has been subjected to any unfair conditions has the right of appeal according to the procedure indicated above provided he shall first seek to have the matter adjusted in person or through his elected representatives, with his immediate superior.

7. *Nondiscrimination.*—No discrimination shall be made against any employee by the management or by the employees on account of membership nonmembership in any church, society, fraternity, labor union, or other organization or affiliation.

No representative shall be discriminated against by the management or by the employees because of any action taken by him in good faith in his company as representative.

The CHAIRMAN. This communication from the American Farm Bureau Federation, by Chester H. Gray, Washington representative, will be made a part of the transcript at this point.

(The communication referred to is as follows:)

AMERICAN FARM BUREAU FEDERATION,
Washington, D.C., March 27, 1934.

COMMITTEE ON EDUCATION AND LABOR,
Senate Office Building, Washington, D.C.

DEAR SIR: Inasmuch as other activities prevented me from making a personal appearance before the committee, will you be kind enough to insert into the record of the hearings on S. 2926, and, if possible, call to the attention of the members of the committee, the attached amendments offered in behalf of the American Farm Bureau Federation, together with a brief explanation.

Very truly yours,

CHESTER H. GRAY,
Washington Representative.

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION IN REGARD TO S. 2926 BY CHESTER H. GRAY, WASHINGTON REPRESENTATIVE, MARCH 27, 1934

Judging from the language of section 2, title I, of S. 2926, it is not intended that the provisions of the measure shall apply to farmers or to farm labor. The language in this section indicates quite directly that the intent of the law shall be in relation to what is now called union labor and industrial establishments. However, it must be recognized that the term "employer", which is used in section 2 of title I, unless accurately defined, could, in future years, subject to prospective court decisions, be interpreted to mean an employer engaged in farm activities.

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Since, however, it is obviously not the intent of the sponsors of this legislation to have it apply to farm laborers, or to farm employers, there should be no objection to clarifying the applicability of the measure as is proposed in the following amendments to paragraph 2, section 3, page 3, of the measure. The amendments, as proposed by the American Farm Bureau Federation, are two in number:

1. In line 6, paragraph 2, section 3, page 3, following the word "time," insert the words "or any farmer, or any farm organization."

2. In line 7, paragraph 2, section 3, page 3, strike out the words "labor organization" and insert in lieu thereof the word "organizations."

These amendments assist in the definition of the term "employer" by adding certain additional exceptions to the ones which are already named in paragraph 2 of section 3. If there is no intent in the measure as written, that the term "employer" should include any labor organization, likewise there should be no intent of its including any farm organization; and if the intent of the measure is not to include either a labor or a farm organization under the term "employer" it follows that any farmer should not be included in the term "employer."

These amendments are presented not in the least to obstruct favorable consideration of the measure, and have no purpose to delay its consideration. They are presented as clarifying amendments seeking to make more vivid the seeming intent of the measure as stated in section 2.

The CHAIRMAN. Mr. Albert J. Gifford?

STATEMENT OF ALBERT J. GIFFORD

The CHAIRMAN. Mr. Gifford, will you give your full name?

Mr. GIFFORD. Albert J. Gifford.

The CHAIRMAN. Your residence is Worcester, Mass.?

Mr. GIFFORD. Worcester, Mass.

The CHAIRMAN. You are representing here the Leland-Gifford Co.?

Mr. GIFFORD. Yes, sir.

The CHAIRMAN. What do they manufacture?

Mr. GIFFORD. They have two lines: one, machine tools, a durable goods product, and the other the machining of crank shafts used in automotive manufacture.

The CHAIRMAN. How many employees have you?

Mr. GIFFORD. Normally 500; at present about 150.

The CHAIRMAN. Has that been the number you have been reduced to through the depression?

Mr. GIFFORD. We were lower than that but since the Recovery Act and the shortening in hours we have been able to give still more work.

The CHAIRMAN. Is there a labor organization among your employees?

Mr. GIFFORD. None.

The CHAIRMAN. You appear in opposition to this bill?

Mr. GIFFORD. Yes, sir.

The CHAIRMAN. How much time do you want?

Mr. GIFFORD. I think 5 minutes will be sufficient outside of any questions.

The CHAIRMAN. You may proceed without interruption for 5 minutes.

Mr. GIFFORD. In appearing in protest against this bill I represent the company referred to, but I think the situation there, however, is common to a great many other small concerns. I mean by that that the relations between employer and employees are rather close.

I think that is particularly true of New England and Massachusetts. It may obtain to the same degree in other portions of the

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country, but my observations have been that it does not to quite the same extent. What I mean by that is, that we have a large number of employees who have been with us for a very long time.

I might add that the company has been in existence for 35 years. We do retain our employees even in times of stress for a very considerable length of time before we consider changes. We have a large number of men who have been through our apprentice course and now occupy positions with us, and our older employees have stayed with us through these years and are still with us.

If my contention is true, that perhaps it does not obtain in the same degree in other sections of the country, it simply makes for emphasis as to possible conditions in New England or Massachusetts for close relations between the employer and the employee.

We feel that we know our employees. I personally feel that way, and my associate in business assures me and shares with me that same feeling, that we know our employees and are very close to them. Personally, I am through the plant nearly every day and many times.

We feel that our employees have been satisfactorily taken care of and their ability to raise any point with us about which they may be in doubt or on which they want some assistance or help or some change is open to them, and we cannot see how that condition needs to be improved or has to be improved in order to give them a proper position of bargaining.

If they choose to bargain with us collectively, that would be quite satisfactory to us. So far, however, we seem to find that their individual bargaining has been satisfactory. We have no preference as to how they do that.

We feel that they should continue to be properly taken care of in any situation that may arise right within the circle of the plant. We cannot see how an outside organization can help them materially in this respect in the light of past experience, and I think I know the feelings of our employees, that they are quite happy at the present time.

They are being reemployed in increasing numbers, and as the increase in business comes to the company they feel it is reflected quickly in their pay envelops or their weekly wage.

The CHAIRMAN. Have you signed a code?

Mr. GIFFORD. Yes. We operated first under the President's reemployment agreement and then under the Machine Tool Builders' Code.

The CHAIRMAN. And are your employees receiving the same wages and working the same number of hours as the employees in other industries that you are in competition with?

Mr. GIFFORD. Yes.

Senator WAGNER. How many have you employed?

Mr. GIFFORD. About 150 at the time.

Senator WAGNER. And you say your workers never bargain collectively with you?

Mr. GIFFORD. No, sir.

Senator WAGNER. You have individual agreements?

Mr. GIFFORD. Yes, sir.

Senator WAGNER. In other words, you——

Mr. GIFFORD. We have no agreements except as they come and hire out with us.

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Senator WAGNER. I mean, if you wanted to discharge them tomorrow you discharge them, there is no concreted action on the part of the workers at all for conditions and wages and hours except as they are imposed upon you by law?

Mr. GIFFORD. That point has never been raised.

Senator WAGNER. But that is the situation?

Mr. GIFFORD. Yes, sir.

Senator WAGNER. You believe that workers ought to be permitted to organize if they wish to?

Mr. GIFFORD. Certainly.

Senator WAGNER. In what way does this bill compel organization? What condition that does not exist now will change the situation?

Mr. GIFFORD. We felt it intended to give impetus to the national organizations to come in.

Senator WAGNER. In what way?

Mr. GIFFORD. It seems to encourage that sort of thing.

Senator WAGNER. In what way? This statement that you make has been made broadcast, and I am anxious to find out in what way that happens, how you reach the conclusion, unless you take the position that you are against any kind of legislation that gives rights to workers. There are those in industry who want no interference at all, who want to go on and deal individually and alone with their employees. In what way does this legislation impose upon you an organization against the wishes of the workers?

Mr. GIFFORD. Well, the trend has been since the Recovery Act and the 7 (a) clause has come in for increased activity in membership in the American Federation of Labor, and we felt that the Wagner bill also intended to give impetus, perhaps wrongly interpreted, but it seems to have that effect, of very active participation on the part of labor unions to get increased membership and to come into plants where they have never represented those employees before. We have felt in the case of our company that our employees are not interested in it and do not seem to wish it and feel quite capable of handling their affairs with us either collectively or individually.

Senator WAGNER. There is nothing here that interferes with that situation. Were jou in favor of section 7 (a)?

Mr. GIFFORD. Yes.

Senator WAGNER. Then I don't understand why you should be opposed to this situation. The only complaint that has been made so far was from those who have so-called "company unions" who believe that certain provisions are too far-reaching or something of that kind.

Mr. GIFFORD. It may be apprehension on our part, but the feeling is real.

Senator WAGNER. I know it is the feeling but that is because of the propaganda which has been sent broadcast, absolute misrepresentations of the provisions of this act, but I thought it was propaganda among those who do not want any sort of legislation which insures any rights to the workers and that is why I was anxious, if you can tell me, to know in what particular this imposes upon you a union.

Mr. GIFFORD. It does not necessarily impose it, but I think it brings about a very great likelihood of action being taken to unionize our plant and other plants.

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Senator WAGNER. In what way?
Mr. GIFFORD. Because they feel——
Senator WAGNER. Because it gives the workers a right to organize?
Mr. GIFFORD. No, sir; they always had that right.
Senator WAGNER. Exactly, and that is all there is to this legislation as far as I can see.
I will not press the point because I can see you are relying upon impressions rather than facts.
The CHAIRMAN. Thank you. Mr. Roy F. Hall.
Mr. HALL. Present.
The CHAIRMAN. Mr. Torrey? Present?
Mr. TORREY. Yes, sir.
The CHAIRMAN. How much time do you want, Mr. Hall?
Mr. HALL. Perhaps 30 minutes.
The CHAIRMAN. Is Mr. Ryan present?
Mr. RYAN. Yes, sir.
The CHAIRMAN. You are living here in Washington?
Mr. RYAN. I am in Washington.
The CHAIRMAN. You may come at another time. Confer with the secretary. You are in opposition to this bill?
Mr. RYAN. I am with this bill.
The CHAIRMAN. Then you will have to come when we have heard all the men who are opposing it.
Mr. RYAN. There is some opposition in it. I want to submit some amendments.
The CHAIRMAN. Some amendments you want in the bill? Very well. Glad to have them, Mr. Ryan. Can you put them in writing?
Mr. RYAN. I can put them in writing; yes.
The CHAIRMAN. That will be a help.
Mr. RYAN. Will you hear me so that I will have a chance to get away and leave town Friday? I have a lot to do.
The CHAIRMAN. We have a lot to do, too.
Mr. RYAN. I will appreciate it. I won't take much of your time. We only have a few remarks.
The CHAIRMAN. We have to go to the floor of the Senate at 12 o'clock, and it is now half past 11, and we have two witnesses scheduled. We will put anything in the record you desire to put in the record.
Mr. RYAN. Tomorrow, then?
The CHAIRMAN. Yes. Now, Mr. Cush, will you be satisfied with 10 minutes?
Mr. CUSH. Well, if I can possibly finish in that time, but I wish you would extend the time if I do not finish in 10 minutes.
Senator DAVIS. Could you file your brief, and use your time to make extemporaneous remarks?
The CHAIRMAN. Mr. Hall, we can give you but 15 minutes, I am sorry to say. You can amplify your remarks. Is that too short a time?
Mr. HALL. It is too short, I fear, but it is not for me to say.
The CHAIRMAN. Well, now, of course, the difficulty we have, we have been sitting each day here until 1 o'clock, but we must be on the floor of the Senate at 12 o'clock because of an important legislative matter, of which you perhaps know through the press, and which is of supreme importance to the country and to the Senate—and to each Senator.

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Mr. HALL. Are you going to have a meeting tomorrow?

The CHAIRMAN. Yes, sir; we have one scheduled. Could you stay over till tomorrow?

Mr. HALL. I would very much prefer to do that, because, if we get started here, there may be something that will require more than a very limited time.

The CHAIRMAN. All right. Put him on the list for the first thing tomorrow morning, 10 o'clock. Thank you very much. Mr. Hall, you are general counsel for the National Lock Co.?

Mr. HALL. Yes, sir; of Rockford, Ill.

The CHAIRMAN. That means you represent the industry?

Mr. HALL. Yes, sir. It means we have had a very disastrous experience before the Labor Board, and we have to give you some ideas that we think will be helpful.

The CHAIRMAN. Mr. Torrey?

Mr. TORREY. My name is Arthur Morris Torrey.

The CHAIRMAN. I suppose, Mr. Hall, you especially desire the presence of Senator Wagner tomorrow.

Senator WAGNER. Well, I am sorry I cannot be here tomorrow. We have a meeting of the Pension Committee.

Mr. HALL. I never like to say anything behind a man's back that I would not say to his face. I have some criticism of the way the Labor Board is made up, and the way they do it, and I think this bill, if it is passed, ought to prevent such things in the future.

The CHAIRMAN. Very well.

Senator WAGNER. You have some amendments to propose, have you, Mr. Hall?

Mr. HALL. Well, they are more in the nature of "danger signals" to keep you away from certain things, than amendments.

Senator WAGNER. Of course, I know your general view.

Mr. HALL. Well, you will hear more of it tomorrow.

Senator WAGNER. I know, undoubtedly.

STATEMENT OF ARTHUR MORRIS TORREY, SECRETARY, EMPLOYERS' ASSOCIATION OF NORTH JERSEY, NEWARK, N.J.

The CHAIRMAN. Mr. Torrey, your full name?

Mr. TORREY. Arthur Morris Torrey.

The CHAIRMAN. This is Mr. Arthur Morris Torrey, Secretary of the Employers' Association of North Jersey. Your residence is 30 Central Avenue, Newark, N.J.? How large an association is the Employers' Association of North Jersey?

Mr. TORREY. 203 manufacturing industries I speak for.

The CHAIRMAN. Representing a wide variety?

Mr. TORREY. A wide variety, all manufacturing.

The CHAIRMAN. We will be pleased to have your views.

Mr. TORREY. I have prepared a paper. I will go through it as rapidly as possible.

The CHAIRMAN. Thank you.

Mr. TORREY. On behalf of the managements of 200 manufacturing businesses located in the vicinity of Newark, N.J., we are opposing the measure before this committee, because we believe it to be inequitable, economically unsound, pregnant with class antagonism, and therefore contrary to sound public policy. From our experience, we

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believe that this measure is aptly called the "Labor Disputes Act." We feel that its enactment would assure an unprecedented volume of labor disturbance; that it would not remove, but instead would create obstructions to the free flow of commerce. The immediate effect would be to retard business recovery in a serious degree. Experience furnishes a sound basis for judging the effect of this proposal.

In an earlier national emergency, there was created an agency "To encourage the amicable settlement of disputes between employers and employees." That agency, the National War Labor Board, was inaugurated in March 1918. It comprised representatives of labor, of employers, and the public. It publicly affirmed "The right of workers to organize in trade unions and to bargain collectively through chosen representatives"; it also warned employers not to discharge workers for membership in trade unions, or for legitimate trade union activities. The similarity of that 1918 agency, to the Labor Board proposed in this measure, is clear.

What happened at that time? In the following 8 months the number of labor disputes in manufacturing industries was greater than had ever occurred in a like period. Interference with the production of essential war supplies by reason of those strikes, had become a matter of serious concern to the Government, when the cessation of hostilities ended the need for supplies.

History repeats itself. When State and local N.R.A. committees last summer, and later the national and regional labor boards were publicized as agencies to which complaints of violation of the collec-bargaining provisions of the National Industrial Recovery Act could be taken there occurred a country-wide epidemic of labor disputes such as was experienced under the National War Labor Board of 1918.

The explanation of this, and the reason that the enactment of this measure, in our opinion, would have a similar effect, is simple. With few exceptions, strikes do not happen. They are caused. The setting up of a governmental bipartisan agency to mediate labor disputes, whether it be National War Labor Board, N.R.A. committee, or the proposed National Labor Board, naturally suggested to those trained in promoting labor organizations the possibility of advantages to be gained. To secure action by such an agency, there must be a dispute. Therefore, a strike must be promoted.

Supporting the accuracy of that reasoning, a study of labor cases involving unionization, brought before the N.R.A. committee in Newark, last summer and fall, shows that intimidation, coercion, and violence were generally practiced in efforts to persuade employees that they wanted to organize and bargain collectively through representatives of their own choosing. In some cases, employees were actually abducted, forced into waiting automobiles, and taken to a union meeting hall where they were persuaded to join the union. These are all matters of record.

Senator WAGNER. You think that most men that join labor organizations, join because somebody clubs them into joining a labor organization, and if it wasn't for that, you think men would much prefer, as employees, to deal individually, although they may be one in 10,000, with the employer? That is your idea, isn't it?

Mr. TORREY. That is my personal conviction.

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Senator WAGNER. Yes; I know that.

Mr. TORREY. Based on an experience of 15 years of very close contact with large numbers of industrial workers.

Senator WAGNER. In other words, workers would prefer not to have labor organizations, at all, but somebody just compels these five or six million people to organize together for the purpose of improving their conditions? These are all in involuntary servitude?

Mr. TORREY. On the relative figures, Senator, perhaps 80 to 90 out of every 100 of the industrial workers, have not joined unions, under the voluntary opportunity to do so. I refer to specific cases.

Senator WAGNER. Well, I am not always sure that they have the voluntary opportunity, but if they haven't it, it ought to be accorded them; don't you think so?

Mr. TORREY. They have that right, lawfully, unquestionably. They have always had it. It has been well established in the Supreme Court decisions I believe.

Senator WAGNER. Yes; but I am speaking about the attitude of many employers. You see that there is an economic advantage that an employer has that any employee hasn't got; and you know that there have been many employers that resist efforts of their workers to organize; isn't that true?

Mr. TORREY. There have been many; that is true.

Senator WAGNER. But your theory is that workers would prefer not to be in organizations?

Mr. TORREY. We make that specific statement in the next paragraph, sir.

Senator DAVIS. Have any of the concerns that you represent ever resisted the employees—that is, denied to them the right to organize?

Mr. TORREY. Yes, sir. There have been cases when they have done that. There are also in the membership of the association closed-shop industries.

Senator DAVIS. Has the association taken any steps to sort of correct that?

Mr. TORREY. I do not understand your question, sir.

Senator DAVIS. Well, I mean to say those that have denied the right of the men to organize. Has the association asked them to desist denying that right?

Mr. TORREY. The association has always taken the position that it does not attempt to dictate to any member of the association what its own policy shall be, or whether it be for closed shop or for open shop.

Senator DAVIS. Then your association is just a local or State association?

Mr. TORREY. No, sir. It is a local group in the Newark district.

Senator DAVIS. Well, what is the purpose of the organization?

Mr. TORREY. The purpose of the organization is to provide a common means for discussion, research and investigation; study of personnel practice, employment relations, all phases of industrial operation.

Senator DAVIS. Well, no company should have any employment relations that would deny the right of a man to join an association of any kind. I should think your organization would be most helpful if they would educate them on the principle of it, educating them not to deny the right of a man to join an organization.

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Mr. TORREY. The association has recommended against nonunion shops, sir. Its attitude is clearly expressed against nonunion shops and the forbidding of employees to join unions, and it has done so ever since its formation, 18 years ago.

Senator WAGNER. Well, why do you find it necessary to organize your manufacturers into one organization? Why didn't you act individually? Why don't you act individually?

Mr. TORREY. I did not organize them, sir.

Senator WAGNER. Well, they are organized.

Mr. TORREY. Why they decided to organize, I cannot tell you, except that they felt it advisable to have a common ground on which they could meet for discussion, interchange of opinion, information with regard to any common problems, affecting all of the industries involved.

Senator WAGNER. Don't you think workers have an equal interest?

Mr. TORREY. I think they have an equal right.

Senator WAGNER. And an equal interest in industry?

Mr. TORREY. That comes down to a definition of terms, sir, as to what you mean by an "equal interest in industry."

Senator WAGNER. Well, I am afraid you and I are two centuries apart. That is the trouble.

Mr. TORREY. Of course, it is. As I said in answer to the question, it is our firm conviction that the great majority of industrial employees remain independent of union affiliation, by their own free choice. We observe that this bill imposes no code of fair practice on trade unions, or restrictions on the labor politician. In fact, it specifically excepts them from any charge of unfair practices which it applies to employers, to management. In that particular, we feel the bill is inequitable, and contrary to sound public policy.

Senator WAGNER. Well, do you think those same unfair practices ought to apply to employees?

Mr. TORREY. Yes, sir; to organizations.

Senator WAGNER. To employers and employees?

Mr. TORREY. Organizations.

Senator WAGNER. Yes. If there were provided for in the legislation, would it satisfy you?

Mr. TORREY. We would still oppose other features of the bill, I think, which will be made clear as I continue.

Senator WAGNER. Did you favor 7 (a)?

Mr. TORREY. No, sir.

Senator WAGNER. You were against 7 (a)?

Mr. TORREY. Yes, sir.

Senator WAGNER. Well, that is what I thought.

Mr. TORREY. Efficient industrial operation, as a means to reasonable costs, is a matter of vital public interest. A factor in efficient operation is the practice of employment relations productive of mutual respect and confidence and of recognition of a mutuality of interest in the enterprise by employer and employee.

The fundamental theory of Senate No. 2926, on the other hand, is that of class antagonism. It starts with what we consider the erroneous statement (title I, sec. 2) that "integration and centralized control have rendered the individual unorganized worker helpless to exercise actual liberty of contract, to secure a just reward for his services, and to preserve a decent standard of living." All its pro-

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visions tend to array employees as a class against employers as a class. That is an essential characteristic of the bill. It is directly counter to the spirit of cooperation, toleration, and national unity.

Senator WAGNER. May I ask you there, the organization of employers into an association—does that have the effect of arraying class against class, or is it only the organization of the workers that causes this array of class against class?

Mr. TORREY. It depends.

Senator WAGNER. In other words, you think one side ought to be permitted to organize but not the other; isn't that it?

Mr. TORREY. Our reference, sir, is to the underlying spirit of the bill as set forth in the policy of balancing, of equalizing the bargaining power of employees, and throughout, the employees are set on one side, employers are set on the other side, and our experience in the industries, in the small-shop plants, such as that spoken of by one of the gentlemen here a few minutes ago, that is not the actual fact. There is a contact, a personal contact between the employees and the boss himself, who is in the shop all the time, which is entirely contrary to the apparent picture drawn by the phraseology of this bill.

Senator WAGNER. Well, of course, those are very general terms, but is there anything in this bill which interferes with that relationship of the workers in a particular plant, if they do not care to bargain collectively, but want to bargain individually? There is nothing in the legislation to prevent them. All I can see is that if they do, as workers, want to organize and bargain collectively, they may do so.

Mr. TORREY. The practical effect of the legislation would, I feel certain be an interference with that preference on the part of employees to bargain individually. I think it has been made quite clear, in the experience to which I referred, with regard to the disputes that have been brought before the local N.R.A. committee, in which employees were practically forcibly required to join labor unions. I speak of some of those matters from personal knowledge, and I happen to know the circumstances, and they are quite startling. They do not respect a desire on the part of those particular employees to join a union at all.

Senator WAGNER. I will ask you your personal opinion: Do you believe in labor unions?

Mr. TORREY. Yes, sir. I have never been opposed to labor organizations at all. I personally feel that it is not in the public interest. It is not in the interest of a majority of the employees, that the power of labor monopoly, as it is practiced under our present form of labor organization, should be continued. It is our opinion that an effect, practical effect—psychological effect, if you will, of the enactment of this bill, would be to extend to a very large extent the labor monopoly under the present American Federation of Labor Unions.

Senator WAGNER. Well, I hear that statement made, and I do not know where you get such a notion, when all that we are attempting to do is to make the worker a free man, so that he may be permitted to bargain collectively, even though he may encounter an employer, such as you have referred to, who does not believe in labor organizations and won't deal with any labor organizations, or any organization of workers, call it what you will. There isn't anything in here at all that does any more than give the worker freedom.

The CHAIRMAN. Well, there remain only 10 minutes.

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Senator WAGNER. Yes; I have got to go, too.

The CHAIRMAN. If you will, proceed.

Senator WAGNER. Excuse me, Mr. Torrey. I am not discourteous to you, but I have got to leave.

Mr. TORREY. The statement to which I referred, with regard to the "integration and centralized control" reflects a misconception of the economic structure. It envisions industry in large units, controlling immense financial resources, and with a single management employing a very large number of workers.

American industry actually is preponderantly a small plant industry. Only one half of 1 percent of all maufacturing establishments in the country employ over 1,000 workers, less than 1½ percent employ over 500, while 87 percent employ 100 workers or less. These small units, of 100 or fewer workers, provide employment for more wage earners than are found in the plants of 1,000 or more employees. This is a very different picture from that painted by proponents of the measure before you, who contrast the helpless individual workman with the powerful employer of thousands of men, surrounded by experts to advise him in labor relations policies. I am sorry Senator Wagner is gone.

In this overwhelming majority of small shops the head of the business is in constant, close contact with the workers.

It is a condition which makes for mutual understanding and respect. It engenders that mutuality of interest in the enterprise essential to the continuance of the small business which forms the backbone of American industry.

Senate No. 2926, promoting class antagonism between employee and employer, threatens small shop industrial harmony essential to the national welfare. In this it is contrary to sound public policy.

The plain purpose of the labor disputes bill is to encourage organization in labor unions. This is its declared policy in section 2; it has also been clearly indicated by proponents of the measure. In practical terms this means labor monopolies in each community, under the control of local union officers.

Newark understands the meaning of labor monopoly—and with good reason. For many years local building trades labor has possessed, to the *n*th degree, that equality of bargaining power with employers which Senate No. 2926 asks the Congress to enact as public policy.

Under that labor monopoly a small group of union officers, allied with political leaders, has indulged in practices which have made the construction industry of north Jersey a byword in the public press throughout the country. Coercion, conspiracy, extortion, collusion, violence, destruction of property and of human life, and exploitation of members of their organizations are charged to this group of union officials in sworn testimony in New Jersey courts. This is part of the price the public pays for a system of labor monopoly.

Senator DAVIS. Mr. Chairman, I just want to express myself and say that I am sure there isn't a member of this committee that would recommend legislation that would compel a worker to join a trade union or any association of any kind; and so far as I am concerned, I want to give the worker his freedom to join any organization that he so desires.

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Mr. TORREY. Thank you, sir. We are in agreement with that expression. Our viewpoint, with regard to this situation may be explained to some extent by the history that I have just recited with regard to the practical experience with the effect of the permitting of a labor monopoly controlled by a small group exercising a complete control of the supply of labor in given crafts, the outcome of the type of union organization which we have had, and which we believe will be encouraged as a result of the enactment of this measure. Shall I continue, sir?

The CHAIRMAN. If you please.

Mr. TORREY. Do you want me to discontinue?

The CHAIRMAN. If you could shorten it by placing your remarks in the record, we would appreciate it, as we must leave here at noon; or, possibly, you can cover orally what you have to say. It will all go in the record, anyway.

Senator MURPHY. It is very interesting to me.

Mr. TORREY. It will go in the record? I do not want to take up your time unnecessarily.

Senator MURPHY. We do not regard it as an unnecessary taking up of the time of the committee. It is just that there is a limitation upon our time.

Mr. TORREY. If I may, I will just sketchily run over.

The CHAIRMAN. Yes.

Mr. TORREY. We make further the point that there is an additional price paid by the public for this system of labor monopoly, which exists, and it is found in the jurisdictional strikes, in the practice of uneconomical trade practices, enforced under the rules of the various unions, of which I have cited a number of instances, with which you are doubtless familiar, where the Lockwood legislative committee's inquiry report was filed with them. They still exist.

Senator DAVIS. I have expressed myself, in as forcible a manner as I am able to do, on the jurisdictional strike.

Mr. TORREY. Yes, sir; I realize that, sir. I said that we were in agreement on that point.

Senator DAVIS. Most all of that is in the record, and I do not want to hurry you but I should think you would be perfectly safe in putting in the record the balance of your brief, and, for the remainder of your time make a few extemporaneous remarks, if you desire.

Mr. TORREY. I will simply submit for the record a copy of the brief, if I may, and merely wind up with the statement that it is our belief that the bill rests on erroneous premises; that it is provocative of class antagonism, that it is economically unsound, and contrary to sound public policy.

The CHAIRMAN. We thank you very much, and especially for your concession in curtailing your remarks.

Mr. TORREY. The remainder of my brief, which I now submit for the record, is as follows:

Added to that price is the huge burden of needless costs imposed upon the consuming public, the investing public, management and individual workers by economically unsound practices under this system.

As a principle of social and economic justice, we believe that—

Any trade practice of employers or employees, or of any combination of either or both, which unreasonably increases the cost of any essential product or service is against public policy.

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In such industries as are dominated by the labor monopoly under control of the American Federation of Labor, costs have been unreasonably increased by jurisdictional strikes, i.e., controversies between two craft unions over which one shall do a particular line of work. Construction of a new post-office building in Newark has been delayed with loss to the Government, the contractors, and the wage earners, because of a jurisdictional strike.

At a time when public relief costs, due to unemployment, are tremendous, 200 men are required by union officers to quit work on the new railroad station in Newark for several weeks. The reason: Men not members of a local union were employed on an adjacent bridge structure being built for the same railroad.

Working rules which require continuous attendance of a journeyman steamfitter during all time that steam heat is in temporary piping in a building under construction, which require a licensed engineer to be employed to tend automatically controlled electric pumps, which necessitate paying a skilled electrician for all time that electric current is used for temporary lighting on a construction job are typical of the unreasonable costs imposed under this system. The list could be extended indefinitely; a report of the Lockwood committee legislative inquiry in New York, issued some years ago, is replete with evidence of these uneconomic practices which still exist.

The practical effect of Senate No. 2926 would be to facilitate the expansion of the monopolistic labor control which is responsible for these unreasonably costly trade practices. It would be contrary to sound public policy.

Society would still be in the spinning-wheel stage if the false economic doctrines of organized labor had been permitted to become law in the past. The low standard of living in Russia today illustrates what could happen to a people without competent industrial direction, even when a government assumes control of all property and technical functions and affords organized labor the power to control industry.

The futility of the economics of this bill is indicated by the industrial experience of the Soviets. They sought to benefit the people by destroying the power of individual initiative on the false concept that labor produced all wealth, and that organized labor, with rules of its own, can progress faster than under trained management in production and distribution.

Russia has now abandoned that theory. Political idealism has been forced to recognize the economic reality of natural laws. The price they have paid to learn the folly of that experiment is such as to warn us against collectivism as the controlling factor in industrial operation.

The right and duty of experienced management to direct industry for which it is responsible to the public and the investor (subject to reasonable regulation) must not be restricted by legislation designed to promote a labor monopoly free from any regulation.

Because it rests on erroneous premises, is provocative of class antagonism, is economically unsound and therefore contrary to sound public policy, we urge you to disapprove the labor disputes bill.

The CHAIRMAN. Mr. George H. Powers?

Mr. POWERS. Yes, sir.

The CHAIRMAN. You are here with the delegation of steel workers from the Bethlehem Steel Co. at Sparrows Point, Md.?

Mr. POWERS. That is correct.

The CHAIRMAN. You would like to be heard before this committee?

Mr. POWERS. Yes, sir.

The CHAIRMAN. Can you remain until tomorrow morning?

Mr. POWERS. I cannot. I have to go back to work at 3 o'clock.

STATEMENT OF GEORGE H. POWERS ON BEHALF OF STEEL WORKERS, BETHLEHEM STEEL CO., SPARROWS POINT, MD.

The CHAIRMAN. What do you want to present to the committee?

Mr. POWERS. You see we had a meeting Sunday of the steel workers and we were elected to present certain points in regard to company unions.

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The CHAIRMAN. There is a company union at the Bethlehem Steel plant at Sparrows Point?

Mr. POWERS. Yes, sir.

The CHAIRMAN. How many members in that union?

Mr. POWERS. Well, we cannot say that. We do not know.

The CHAIRMAN. How many people are employed at Sparrows Point?

Mr. POWERS. About 12,000.

The CHAIRMAN. About 12,000?

Mr. POWERS. Yes, sir.

The CHAIRMAN. Why don't you know how many are in your union?

Mr. POWERS. Well, that is not our union. It is the company union.

The CHAIRMAN. Oh, the company union? All right. Now, what do you want to say to the committee?

Mr. POWERS. We would like to present the following problems in regard to the company union, itself.

The CHAIRMAN. Very well.

Mr. POWERS. The elections for company union were held about last week.

The CHAIRMAN. Yes.

Mr. POWERS. And the company announced last week that 85 percent of the employees voted for the company union.

The CHAIRMAN. Yes.

Mr. POWERS. Now, our delegation today is made up of members of the American Federation of Labor, and members of the Steel and Metal Workers Industry Union. The reason we came here is because we found that for example in the sheet mill, out of 1,500 workers, 76 voted for the company uuion, nevertheless the company announced that 83 percent in that particular mill voted for the company union. The way they worked it is shown by a sample ballot I have here, which was used in the nominations for the company union.

The CHAIRMAN. The ballot may be put in the record.

(The document referred to is as follows:)

PLAN OF EMPLOYEES' REPRESENTATION

NOMINATION BALLOT FOR EMPLOYEES' REPRESENTATIVES, MARYLAND PLANT, BETHLEHEM STEEL CO., MARCH 12, 13, AND 14, 1934

Direction to voters:

1. This ballot is issued to qualified voters to nominate candidates to be voted upon at the election for representatives of such voters.

2. The voter by using this ballot approves the holding of nominations and elections as stated in the posted notice issued by the employees' committee on rules under the plan of employees' representation at this plant, and expresses his desire that those elected shall represent him in collective bargaining and for the other purposes stated in the notice.

3. The qualified candidates who shall receive the highest number of votes are to be entered on the election ballots as the nominated candidates to be voted upon at the elections.

4. A qualified voter is entitled to write 2 names on this ballot for each representative to be elected. If more is written on this ballot it shall be void.

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TIN MILL—BH (BAR YARD, HOT MILL, MILLWRIGHTS)

Write names of candidates below: Vote for 14, no more.

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Do not sign your name.

The CHAIRMAN. Proceed.

Mr. POWERS. And many workers who simply took the ballot without marking it, were counted as voting in favor of the company union, and the point 2 on the ballot shows that even if you do not use the ballot, the minute you take it and throw it into the ballot box, and even if you do not mark it, you signify your approval of the company union idea. Now, as far as the Bethlehem Steel workers are concerned, we are opposed to the company union. I want to state, here——

The CHAIRMAN. How many are you representing, from this plant?

Mr. POWERS. Representing about 3,000.

The CHAIRMAN. Of the employees in this plant?

Mr. POWERS. Yes, sir. Now, in connection with the preparations for the company-union elections, I would like to state that 2 days before the election the company brought down over 25 agents of the Immigration Department and the Department of Labor, and they canvassed the workers in the plant, checking up on those who were noncitizens. Now, the real aim of this was to intimidate the workers. The fact is they found it necessary to carry through such a proposition, exactly 2 days before the company elections. Secondly, the foremen and company superintendents, themselves, went around from man to man, carrying the ballot box, telling them that, "If you don't vote, your job will be in danger." Thirdly, the people who refused to vote, those agents who carried the ballot box around, if you refused to vote, they took down your check number and name and marked you as declining to vote.

The CHAIRMAN. Who took the ballot box around?

Mr. POWERS. The "committee on rules", they called it.

The CHAIRMAN. Who selected them?

Mr. POWERS. Nobody. They were appointed by the company.

The CHAIRMAN. That is what I mean. The management selected them?

Mr. POWERS. Yes; but the men had nothing to say in the election of these men. Secondly, though the former company representatives who served last year, they had them off the job for 3 days, going around, campaigning in the different mills, and they got paid for it, too. Finally, I would like to state the following: That now, although in many departments the majority of the men refused to participate in the company-union elections, the company-union representatives are forced upon the men, and the elected committees, by the workers, which were elected in certain departments, were not recognized by the Bethlehem Steel Co. We also have information that the Bethlehem Steel Co. is compiling a list of those people that opposed the company union, and they are preparing to victimize these, so in this connection we considered the question of the Wagner bill last Sunday,

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and our position is that establishment of compulsory arbitration, which would be established if the Wagner bill is passed, would be against the interests of the workers. We feel that the workers, themselves, should have a right to determine all the differences and grievances between them and the company. Any compulsory system of arbitration would automatically be in favor of the company. This is clearly shown in the dispute between the automobile workers and the automobile magnates in Detroit. The automobile workers have been betrayed, and the Bethlehem Steel workers are realizing this, and we want to protest against any form of compulsory arbitration of labor disputes that may be established.

We would further like to state that at the present time, the workers in the Bethlehem Steel Co. would request that any discrimination in connection with this company-union election should be stopped, that it be discontinued, and we know that this discrimination is now being prepared and will be forced through during the coming week. I do not have anything more to say, only I would like to conclude that as far as the steel workers are concerned, they have learned that section 7 (a) has done very little to actually bring about the promises that it promised to bring. The company unions are growing tremendously. Never before did the Bethlehem Steel Co. so aggressively force through the company union as it did this year, and they did it with the protection or under the protection of section 7 (a). In fact, in the announcement of the posters throughout the mill, they said that they were holding these elections in order to establish collective bargaining, as provided in section 7 (a); so they actually use section 7 (a) to strengthen and build company unions, and we feel that the passage of the Wagner bill, although it claims differently, but in reality it would only strengthen the building and enforcement of company unions through compulsory arbitration. This is already evident in the automobile strike, and the automobile differences in Detroit, and automobile industry, where the men demand increase in wages, and an election, and did not get it. This is evident in the Weirton Steel case, and in the Budd Manufacturing Co. in Detroit, where the workers get a company union in spite of their wishes, and we feel that instead of passing the Wagner bill with the compulsory arbitration, which would strengthen company unions, that the workers should be given the right to strike, and to settle their own grievances between workers and capital as they may arise.

The CHAIRMAN. Thank you. Do you want to give the names of your companions and your delegates who are here?

Mr. POWERS. No. I think we had better not, because we do not think we are safe.

The CHAIRMAN. You think it is enough for you to take the chance of losing your job?

Mr. POWERS. That is correct.

The CHAIRMAN. All right; thanks.

Mr. POWERS. We had the experience, about 2 months ago, when we came to present a complaint to the N.R.A. board here, and about 2 weeks later, the names were in the company office.

The CHAIRMAN. If there is any trouble growing out of your appearance here, let us know.

Mr. POWERS. Yes, sir.

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The CHAIRMAN. Mr. Cush. Will you come forward, now, please, Mr. Cush? I do not want to appear to be preventing you from presenting any views you may have for the committee's consideration, but you appreciate the circumstances of the situation in which we are here. Can you not help us out by making a very brief statement, and by putting the rest of your statement in the record?

Mr. CUSH. Yes. I am not going to take up much of your time. I have some very important things to say, that must be said to you, verbally, though. That is, that we are wholly opposed to the entire bill, for many reasons, principally the arbitration, also the support of clause 7 (a).

The CHAIRMAN. Pardon me. I do not think we have your full name for the record. You are E. P. Cush?

Mr. CUSH. Emmett Patrick Cush.

The CHAIRMAN. Mr. Cush, whom do you represent?

Mr. CUSH. The Steel and Metal Workers Industrial Union.

The CHAIRMAN. And that is an organization composed of steel and metal workers?

Mr. CUSH. Composed of steel and metal workers, in foundries and steel mills.

The CHAIRMAN. All over America?

Mr. CUSH. All over America.

The CHAIRMAN. How many members?

Mr. CUSH. We are now down to about 12,000. When the N.R.A. went into effect we had approximately 20,000 members.

STATEMENT OF E. P. CUSH, NATIONAL PRESIDENT, STEEL AND METAL WORKERS INDUSTRIAL UNION

Mr. CUSH. Clause no. 7 of the N.R.A. created an illusion in the minds of the workers, and they got the impression from that clause that they had a right to organize, and with the right to organize, they got the impression that they would be protected in that right to organize; but what an illusion it was! Every place where we appeared, they administered the N.R.A. through the muzzle of a machine gun to us, in Amerage, Greensburg, Buffalo, and every place where we asserted our rights as workrs, this was done. We are opposed to the company union. We are opposed to the officialdom of the American Federation of Labor also, because they are standing for this bill, and Senator Murphy hit the nail on the head yesterday when he said, "This bill has been put up to shoot at, and they are shooting at it"; and I want to add to that statement that when it has been shot sufficiently full of holes by the employers, they will get behind the bill, and they will shoot the workers through those same holes.

These are the reasons why we are opposed to these bills. The worker has no right under this bill. In addition to this, we are opposed to the very principle of giving the employers the right to promulgate the codes. For the last three quarters of a century, the workers in the mills formulated and presented their own scale of wages, with an addenda attached. Here, at this late date, when we are supposed to be advancing at a more rapid rate than any other nation in the world, this inherent right that belonged to the workers, has been handed over, bag and baggage, to the employer, to the oppressor of labor.

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In 1865 the Sons of Vulcan, in the iron industry, promulgated the first scale of wages. From that time up until the early seventies they retained that right. Then the manufacturers tried to take the right away from them, by putting forth what they called an iron-clad agreement, that deprived the workers of the right to join unions of their own choosing, and it was defeated, and was defeated during the entire reign of the iron masters, and then the iron masters handed that same lookout over to the steel and political tyrants, known as the "Steel Emperor", and in 1880, up until 1889, they put forth and promulgated their same iron-clad agreement, in a different form; and now comes along the Iron and Steel Institute, representative of billions of dollars, promulgating a scale of wages, is all it is, and the scales of wages that were put forth by the workers are miniature codes, but this is a gigantic code that strangled the right of the workers.

The CHAIRMAN. You may put all that in the record, Mr. Cush.

Mr. CUSH. Very well.

The CHAIRMAN. You may put that in the record as your statement if you wish.

Mr. CUSH. I just want to use it.

The CHAIRMAN. You have been most considerate of us, and we appreciate it very much.

Mr. CUSH. Very well. I think that we men who have produced with the skill of our hands, and the strength of our arms, and the sweat that has been poured out of our bodies, and the blood that has been poured out of our wounds in these steel mills, are entitled to as much consideration as the representatives or the employers of labor who appeared here, also, and they have not been a bit considerate of your time. I hope you will have a little more patience with me.

Now, one particular point of the arbitration that we object to is where they say that "both sides" will be called upon. Who are these "both sides"? So far as the so-called "bona fide" labor unions are concerned, there are no "both sides" to this question; or, rather, in this struggle, there are no "both sides." General Johnson made that plain over the radio a few nights ago, when he spoke of the representatives of the American Federation of Labor; "their interests are your interests," he said to the employers. Then, this bill proposes to draw in two representatives of labor, no doubt from the officialdom of the American Federation of Labor, and also the representatives of the employers, and three others who will, no doubt, be under the influence of big business, and then they will hand down these decisions; and what has been our experience with these boards? What has been our experience with the labor boards everywhere?

They have representatives of labor on regional boards, in various places; for instance, in Pittsburgh, Secretary Leonard, of the Amalgamated Association of Iron, Steel, and Tin Workers, is a representative on the regional board in Pittsburgh. And what has happened there? Let me give you one concrete, brief example. A worker in the mills, who was a foreign-born worker, unable to talk English fluently or perfectly, was discharged, and told blatantly and brutally by the "little boss" to go to the union, and to the committees; and when he made an appeal to the regional labor board, upon which Mr. Leonard, the national secretary of the American Association of Iron, Steel, and Tin Workers, sits, he was told, "You are in the wrong. You are discharged, and that is all there is to it."

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Now, this is all we can expect from the labor boards.

Now, I want to call your attention to one more thing. Now down in Weirton, what happened in Weirton? Through the maneuvering of the Labor Board, they have "passed the buck" from themselves to the Department of Justice, and from the Department of Justice back to them; and now again, it has gone back to the Department of Justice. Of course, they were aided in this by the officialdom of the American Federation of Labor, and they come down there and blatantly state to the workers themselves, "This is a wildcat strike; go back to work; we are here to help you, but we cannot do much for you?

This is what the Labor Board has done for us.

The N.R.A., when it was first enacted as part of the Roosevelt "new deal", was analyzed by the nationl board of our union as inimical to the rights and interest of the steel and metal workers of this country. We pointed out that it was only a bill intended to carry out the policy of the employers and the Government to place the burden of the crisis on the backs of the workers; that it was drafted in demagogic language in order to fool the workers and create the illusion in the minds of the workers that the N.R.A. was enacted for their benefit, and that it would give to the workers a guarantee of increases in wages, shorter hours, more employment and the right to organize or, rather, protection from the onslaught of the employers while they were attempting to organize.

Our union fearless met this issue, despite the fact that a majority of the workers were laboring under the illusions that were created by these demagogic promises, pointing out the real character of the N.R.A., and showed that its real policy of compulsory arbitration of strikes was only another crafty maneuver on the part of the employers to wrest from the hands of the workers the only weapon they possess to combat to the bosses and improve their conditions. History and the disastrous results to the working class that have followed in the wake of the N.R.A. has proven that our attitude and opposition to the National Recovery Act was the correct stand; that the right to organize has become, as our union predicted, only a privilege to be extended to those who desired or were forced to join a company union; that the promise of increased employment meant a more intensified use of the stagger plan, speed up, forced labor camps, and all other ills that are the spawn of the greatest crisis in the world's history.

And, secondly, due to the energetic campaign on the part of our organization in conjunction with other working class organizations and the bitter experience that the working class in general has undergone, the true character of the N.R.A. has been revealed to the masses of the workers.

It is due to this very clear understanding which the workers are daily grasping more and more, that it becomes necessary for the employers and the Government to take further steps of a deceptive nature in their desperate attempts to bolster up the waning faith of the workers in the N.R.A.

They now come forward with the Wagner bill and a whole series of similar legislation in order to accomplish this, so again it is necessary for the Steel and Metal Workers' Industrial Union to sound a warning to the steel and metal workers throughout the country as to what are the exact objects and aims of this bill.

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We see today a lineup for forces similar to that which existed at the beginning of the N.R.A., and which was instrumental in adding to the confusion of the workers, which is having the same effect at the present time by its activities in the support and promulgation of the Wagner bill. We recall when the N.R.A. was first enacted that the leadership of the American Federation of Labor and other reformists hailed it as the vanguard of a peaceful revolution in the interests of the workers. We have also seen divisions in the camps of the big employers.

We saw some sections of the employers supporting the N.R.A., while we also saw the Fords and the Steel Trusts make a hypocritical pretense that they were opposed to it, but time has shown that all sections of the employing class have benefited through the N.R.A. by larger profits, inflation, and so forth, while simultaneously the standards of living of the working class has been materially lowered through the increased cost of living and the stagger plan of forcing the poor to help the poor while the employers increased their profits and amassed ever and ever greater wealth.

With the introduction of the Wagner bill, we see the same method of attack. The bill professes to accomplish the very things that the workers are contending for; abolition of the company unions, enforcement of the right to organize, strike, picket, and so forth. But suddenly we are apprised, though not surprised, by announcements in the press that Senator Wagner has "Lifted the ban on company unions." Of course, this is in harmony with other statements and the inevitable sequel to all previous actions of the Senator and other sponsors of the bill, especially when he says, "We will amend the bill so that the board shall arbitrate only when both sides agree to submit to arbitration." What will this mean to the rank and file and the majority of the American working class? Who are the "both sides" to be recognized by this bill? You will recall the recent speech of General Johnson to the employers in Washington, in which he stated to the employers that, "The A.F. of L. is the best bet with which they can entrust the organization of the workers." He also very clearly stated that the interests of the A.F. of L. officials are the interests of the employer. Under this national labor board they mean to set up a machine composed of leaders of industry and the A.F. of L. officials who, according tc General Johnson, are very agreeable "yes men."

One of the most important, if not the most important, additions that will be attached to this machine will be the three representatives from the public which will act as accurately as a well-regulated eccentric to swing every decision either directly or indirectly against the workers. The history of arbitration boards has recorded many bitter instances and experiences which prove this contention conclusively.

What do they mean when they say that arbitration is not compulsory?. It means that the A. F. or L. bureaucrats are always ready to submit to arbitration. It was been their slavish policy for years. When the employers feel it suits their interests to do so, they will submit to arbitration, and invariably when the decisions are handed down by the boards, the workers are betrayed.

When, however, the employers are encouraged by the maneuvers of the labor boards and A. F. of L. bureaucrats, as, for example, in Weirton, then they will not submit, but will openly and brazenly defy

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the Labor Board, which will probably pass the buck to some other governmental body, as it did in the Weirton case.

It must be clear to the workers that the interests of the employers are solely to accumulate more profits, and in order to accomplish this they must continually make worse the conditions of the workers, speed them up, cut their wages, and lengthen their hours to accomplish it. All their profits are made at the expense of the living standards and conditions of the workers.

Regardless of what language a bill designed for the arbitration of labor disputes is worded in, such a bill can never serve the interests of the working class, because in the struggle of labor against capital for better conditions these conditions can only be won when labor is able to organize its ranks strong enough to force concessions from the employers.

This arbitration bill only comes forward in a period when the determined and spontaneous movement of the workers toward organization and strike reached a high point. In an effort to check this movement, they brought forth the N.R.A. under such conditions, but workers have seen through the N.R.A. and now they bring forth the Wagner bill to bolster the N.R.A. and try to accomplish this same purpose, in an effort to try to stop the newly rising strike waves of the workers. And this particular bill is designed in an attempt to carry through the company unionization of the trade unions and Government regulation and control of the unions, thus robbing the workers of their most elementary rights, the right to organize and the right to strike, and are doing it under the pretense of giving them new and greater rights. The sell out of the present strike in the auto industry is a concrete example of Government interference and collaboration of reactionary A. F. of L. betrayal of the workers in their struggles for better conditions.

Why does Senator Wagner say he is opposed to "company-dominated company unions", when the commonest kind of common sense will tell us that the very name "company union" is a guarantee that such a union will be dominated by the company controlling any industry?

Senator Murphy of Iowa made a very truthful statement when he said that the "bill was put up there as something to shoot at", and there is no doubt in the minds of the workers that when there are enought holes shot through the bill, that the bosses will move their heavy artillery behind the law and use the same holes to fire through at the workers. Everything that has transpired to date since the N.R.A. was stablished, and since the introduction of the Wagner bill, confirms the charges our union has made against both, and must convince the workers that they must depend solely upon our own organized strength, organized into militant industrial class-conscious unions with a program of struggle for better conditions, utilizing the only weapons of the working class, organization and strike. Only such a course can lead to victory and better conditions for the working class.

The CHAIRMAN. Thank you very much. The meeting is adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 12:15 p.m., Wednesday, Mar. 28, 1934, the further hearings on said bill were adjourned until 10 a.m., Thursday, Mar. 29, 1934.)

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TO CREATE A NATIONAL LABOR BOARD

THURSDAY, MARCH 29, 1934

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The committee met, pursuant to adjournment, at 10 a.m., in room 318 Senate Office Building, Washington, D.C., Senator David I. Walsh, chairman, presiding.

Present: Senators Walsh (chairman), Murphy, Thomas, and Davis.

The CHAIRMAN. The committee will come to order, please.

STATEMENT OF HENRY I. HARRIMAN, PRESIDENT UNITED STATES CHAMBER OF COMMERCE

The CHAIRMAN. Mr. Harriman, your full name, please?

Mr. HARRIMAN. Henry I. Harriman.

The CHAIRMAN. Where do you reside?

Mr. HARRIMAN. I am a resident of Newton, Mass. I am appearing on behalf of the Chamber of Commerce of the United States, of which organization I am the president.

The CHAIRMAN. You were formerly president of the Boston Chamber of Commerce?

Mr. HARRIMAN. Yes, sir.

The CHAIRMAN. We will be pleased to hear you, Mr. Harriman.

Mr. HARRIMAN. Thank you, Senator.

Senator Walsh and gentlemen: I wanted to say at the outset that I am not actively engaged in business at this time, but am giving substantially all of my time to the Chamber of Commerce of the United States, for whom I am appearing.

The Chamber of Commerce of the United States is largely an organization of organizations. It has substantially 9,000 members, including a very large proportion of the local chambers of commerce and trade associations of the country, whose constituent membership is between 550,000 and 600,000 men, engaged in trade and commerce, transportation, business, and manufacture. Our membership is vitally interested in the labor disputes act, introduced by Senator Wagner, which bill you are now considering.

The act now before you is one of the most important measures that has been before Congress in many years.

The CHAIRMAN. Mr. Harriman, you will excuse me if I have to leave during part of your talk.

Mr. HARRIMAN. Certainly.

The CHAIRMAN. I will give special attention to it in the record.

Mr. HARRIMAN. Thank you, sir.

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The CHAIRMAN. I may be called away for a short time this morning.

Mr. HARRIMAN. If enacted in its present form, it will have far-reaching, and in my opinion, a very disastrous effect upon the economic life of the country.

I have great respect for Senator Wagner, and for his distinguished service in many lines, especially as one of the authors of the Industrial Recovery Act, and I regret exceedingly to differ from him on this important measure.

My own views, in favor of the essential principles of the National Recovery Act, are too well known to need repeating, and I am unalterably opposed to this bill, because I fear it will undo much of the good that has come from the Recovery Act. The three basic principles found in that act are:

First. Self-regulation of business, to establish fair rules under which it shall be carried on. This means the determination by each trade and industry of the fair principles which should govern it, such as the prohibition of selling below cost, the carrying on of unfair competition, the elimination of child labor and the sweatshop, and the reasonable balancing of supply to demand.

Second. Collective bargaining between employer and employee, the employees having the right to organize and bargain collectively through representatives of their own choosing, free from interference, restraint, or coercion of employers, and with complete freedom of employees to join or refrain from joining a labor organization of their own choosing.

Third. Government supervision of these provisions to see that they are reasonable, that monopoly is not created that the small industry is not oppressed, and that labor gets a square deal.

The words "fairness", "freedom", and "justice", are written throughout the act, and its intent is obviously to prevent oppression of business through unfair competition, and oppression of labor through unfair wages, hours, or conditions of work. It is basically an American act, based upon the principles of the fair deal to all parties.

It should further be noted that the Industrial Recovery Act is a temporary measure. It is admittedly experimental in its nature, and all of its provisions will expire within 14 months, if further action is not taken by Congress. Furthernore, the act designedly gave certain rights and privileges to industry, and certain other rights and privileges to labor, and was expressive of a partnership for the mutual benefit of those two great segments of our economic life, and of the public at large.

Senator DAVIS. Do you believe in continuing the National Recovery Act?

Mr. HARRIMAN. I think that many principles of the act should be continued.

Senator DAVIS. What particular principles?

Mr. HARRIMAN. I am not sure whether all of them should be continued or not, but the basic principles should be.

Senator DAVIS. Well, would you care to say which particular principle you would like to have extended in the act?

Mr. HARRIMAN. Well, I think the three basic principles that are outlined—creation of fair rules under which a trade shall progress, and the collective bargaining fairly carried out, and the Government supervision, to see that they are fairly carried out. Those seem to

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me to be the three essential elements, which I think should go on. I do not believe we want to return to the old days, the severe and ruthless competition, with its child labor and its sweatshop and all of the other conditions of selling below cost, that were evident then.

The labor disputes act, which you are now considering, deals only with one of the partners to the Industrial Recovery Act and, as I see it, is an attempt on the part of labor to very much broaden and make permanent the rights and privileges which they gained under the Recovery Act, without similarly making permanent those features of the act which affect business. If, then, any legislation is to be enacted, in my judgment, it should be in the form of amendment an to the Industrial Recovery Act itself, and such an amendment should primarily contain such provisions as the administrator of the act feels that the public welfare requires.

Thus far, I have not heard that General Johnson either approves this measure, or feels that any amendments to the Recovery Act are required. I want to emphasize that fact, that whatever legislation there is, it seems to me, in fairness, should be in the form of an amendment to the Recovery Act itself, and in accordance with recommendations which General Johnson, in his long experience with that act, thinks are necessary.

The provisions of section 5 of the pending bill defining unfair labor practices for employers are an obvious attempt to amplify the provisions of section 7 (a) of the Industrial Recovery Act. In view, however, of the very broad interpretation of that section, which was recently made by the President in his settlement of the threatened automobile strike, I see no reason for any further amplification of that section, except to carry out the thought of the President as expressed in the next to the last paragraph of his statement. That paragraph reads as follows:

> Industry's obligations are clearly set forth, and its responsibilities are established. It is not too much to expect organizations of employees to observe the same ethical and moral responsibilities, even though they are not specifically prescribed in the statute.

Under Section 7 (a) the employee is protected from interference, restraint, or coercion of the employer of labor, or his agent; but it is equally important, in my opinion, as the President pointed out, that the employee be protected from interference, restraint, or coercion on the part of labor organizations, or any other parties. And I would therefore suggest an amendment, to carry out that interpretation of the President, to section 7 (a), subdivision (1), and that would read:

> (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor or their agents.

That is the same as the present act, and I would add, "or of labor organizations, or of any other persons."

Senator MURPHY. Do you think, Mr. Harriman, that that would imply a requirement on the employer to deal with those organizations thus perfected, of employees?

Mr. HARRIMAN. As I shall try to point out further on, Senator, it seems to me that the President's interpretation of 7 (a) has set up very clear methods by which the committee of the employees is to be made up, practically on the method of proportional representation. If there

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are one, two, or three organizations of employees, he has clearly pointed out that it is unfair that a bare majority should disfranchise the minority, and has suggested, in that strike, a method of proportional representation.

Senator MURPHY. But that has your approvel?

Mr. HARRIMAN. Absolutely.

Senator DAVIS. That is, the President's interpretation of the automobile settlement?

Mr. HARRIMAN. Yes, and it is an interpretation of a fair method of carrying out section 7 (a), and it seems to me that method should be followed, and probably will be followed generally. It is because of those very wide interpretations, and fair interpretations, which he made, that it seems to me that much of this act is unnecessary.

The very broad and very fair interpretation of section 7 (a) given out by the President, in connection with the settlement of the threatened automobile strike, in my judgment, makes entirely unnecessary most of the provisions of the bill you are considering, and clearly points the way to the handling of labor disputes, through a regular enforcement machinery of the National Industrial Recovery Act.

One thing that I particularly object to in this act is that it is setting up independent machinery to enforce the provisions before General Johnson has requested that such machinery be set up.

The President's statement, in the first place, emphasizes the necessity for absolute freedom of choice of the employee in the choosing of his representatives for collective bargaining.

The President sets up a plan of proportional representation in the formation of the committee that is to deal with the employers. A bare majority, for shop organization, or for the outside union, is not to disfranchise the minority. Each group is to be given a representation on the employees' committee, in proportion to its numerical strength.

In the second place, the employee is to be free from coercion, from all sources; and I emphasize the words "all sources", including both employers and labor organizations, and, in the third place, a special arbitration board is made up under the National Recovery Act auspices, to hear complaints and to settle disputes. It is perfectly apparent that this manner of handling disputes will greatly reduce the work of the formal labor board. It will certainly be much more expeditious in action, and will avoid the delays of a crowded calendar. It will be less formal, and thus far, more potent.

I think we should permit General Johnson to work out the problems of the enforcement, with National Recovery Act machinery, and await his pleasure in asking for the creation of a formal and independent labor board.

It will, I believe, be interesting to examine the pending Labor Disputes Act, section by section, to see in what way it modifies or enlarges the provisions of 7 (a), and whether such changes are needed and are in the public welfare, and, taking it up section by section, section 1 names the act. Obviously, if the child is not to be born, it is not essential to search for a name.

Section 2 sets forth the reasons for the new act, which seem to me entirely superfluous, in the light of the President's interpretation of 7 (a). This act that you are considering is ostensibly for the purpose of balancing the bargaining power between the employer and employee

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and of avoiding industrial disputes; but in sanctioning the closed shop, in disfranchising minorities, in prohibiting any contract between the two great partners of industry, the employer and the employee, in my judgment, it will tend to increase rather than decrease the trouble, and to decrease the equality of bargaining power between the two groups.

In fact, gentlemen, I feel that the President's interpretation is of such great significance that possibly Senator Wagner himself would not have desired this act, if that interpretation had been made before the act was prepared.

Section 3 is made up of 8 definitions, which are obviously unnecessary if the act is unnecessary.

Section 4 is a partial repetition of 7 (a). It is evidently inserted in order to give the basis for this act, in the future, if the Industrial Recovery Act should not be continued in the statutes of the Nation. As long as that act continues, it adds nothing to that act. In fact, it is a much narrower definition than we find in the Industrial Recovery Act.

Section 5 is the guts of the act, and contains many of its faults, as I see them. In section 5, the attempt is made to broaden section 7 (a), and I will therefore discuss it in some detail.

In subsection 1 the important addition is the word "influence", which is added to the words in the Industrial Recovery Act, "interference, restraint, or coercion." It is my contention that industrial harmony and well being demands the employers and employees should frankly discuss their mutual problems, including the form of shop organization that should be set up. Each group should have the right and the duty to properly influence the other, by reasonable argument, but not by threat or coercion. To deny that right to the employer is to practically hand over employees of industry to the tender mercies of the paid representatives of labor organizations. Fairness and true Americanism demand that both employer and the Federation of Labor should have equal rights, without coercion, to influence the employees.

Subsection 2 provides not only for collective bargaining, but places upon the employer the duty of making every effort to make and maintain agreements with representatives of employees. On the face of it, this sounds fair. Examined critically, it means that an employer may be required to make every endeavor to make an agreement with a communist organization, espousing the overthrow of the American Government, sabotage, and the destruction of property.

The right of contract is one of the most sacred rights guaranteed by the Bill of Rights and the fifth amendment, to every American citizen. I believe thoroughly in collective bargaining and in a fair endeavor to reach an agreement, but I equally believe that the employee has the right to say that he will not work with certain other employees, and that the employer has the right, after full consideration, to say that he will demand the open shop.

And I mean by this, the real open shop, not what is often called the open shop. The really open shop is an open shop that discriminates neither in favor of a labor organization nor against it.

Subsections 3 and 4, again, prohibit the employer to influence his employees, even though the influence is without coercion.

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Subsection 4 likewise prohibits any financial contribution to a company-organized labor organization. Under a strict interpretation of subsection 4, the employer could not pay his employees their wages during working hours, when the employer and the employee were discussing the terms of an agreement. Mr. Dennison has fully explained to your committee the reasons why subsections 3 and 4 would prevent the continuation of any labor organizations, many of them of long standing, and of very great proved worth, both to industry and to labor. I do not need to amplify his excellent statement.

Subsection 5 provides for notice of action. Under subsection (b) of section 304, I understand that Senator Wagner has agreed that this latter subsection is unnecessary and undesirable, and therefore it is unnecessary to contain this subsection of section 5.

Subsection 6 prohibits discriminatory practices on the part of the employer. It is entirely unnecessary, as section 7–A of the Industrial Recovery Act fully covers this subject matter. If my analysis of section 5 is correct, the provisions are either undesirable in adding a prohibition against fair discussion, or unnecessary.

Turning now to section 6 of the act, this section invests district courts of the United States with jurisdiction to prevent and to restrain unfair labor practices. Such a power is given to district courts in the National Industrial Recovery Act. Let us now take up title II. Title II of the pending bill provides for the creation of a national labor board, distinct from the enforcement machinery of the National Recovery Act. If General Johnson feels that the present enforcement machinery is inadequate, I think industry will gladly support reasonable amendments to the Recovery Act, to correct that situation. Thus far General Johnson has not made such a request, and I think it would be most unfortunate to set up competitive enforcement machinery without his desire.

It is, nevertheless, interesting to examine the provisions of title II. This title sets up a labor board of 7 members, 2 to represent employers, 2 to represent employees, and 3 to represent the general public. To this form of labor board, industry strenuously objects, as the majority of the board would obviously be bias in their judgment and be representative of certain definite interests.

If a labor board is to be set up, it should be an impartial board, appointed by the President without industrial or labor members as a part thereof. Such appointments merely mean that certain members of the Board act both as attorney and judge.

I appreciate the difficulties which the President will have in selecting an entirely fair and unbiased board, but if such a board is to be created, any such amendment to the Recovery Act might well provide that, as a preliminary, the President should first appoint a fair nominating commission of, say, 20 men, representatives of all interests in the country, who would in turn suggest to him 25 impartial men, from whom he might, but not must, make his choice of five members of a labor board. And I would further provide that such suggestions of the nominating commission be by a vote of not less than 15 out of its 20 members. The ultimate responsibility for the appointment of a board must, of course, rest with the President, and he should not be forced to make his choice from among those named by the nominating commission; that such method of procedure

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would tend to assure fair play and nonpolitical and unbiased appointments.

Turning now from the composition of the labor board to its methods of activity, there is much to be criticized in the provisions of the pending act. It is provided that any member of the board or any person designated by the Board who has reason to believe that an employer is engaged in unfair labor practices, shall have the right, without consultation with the other members of the board, to summon such employer from Seattle or San Francisco or Portland, to Washington, to answer a charge which may be based on a mere "hunch."

A member of the board, representing labor, can, for instance, of his own volition, summon the president of any corporation to appear at a hearing within 24 hours. Such a provision is subversive of every principle of Anglo-Saxon justice. It is perfectly proper that one member of the board should investigate, but, before a summons is issued, the full labor board should hear the evidence and issue the summons.

Again, I note that under the provisions of the bill, testimony need not be taken in accordance with the rules of evidence, and that no Federal court may review the findings of fact of a labor board, if such facts have been sustained by the evidence. If we are to have a labor board, with judicial functions, I urge that it act in an impartial and judicial manner. Let appeals be taken in the same manner and with the same authority, through the courts, as is customary under judicial procedure.

I object to title II, because the need of a labor board, independent of the National Recovery Act, has not been established; because of biased composition of the board; and because of the unethical and unusual manner in which the board is authorized to act and do business.

As I further examine the provisions of this act which is before you, I find other features which seem to me unfair and unusual. In section 3 the term "employee" is defined as "an individual employed by an employer under a contract of hire, oral or written, express or implied, or any individual freely so employed, whose work has ceased in consequence of a strike."

I find further that the term does not include a man who has voluntarily entered the employment of an employer, in place of a striker. Apparently there is no limit to the time on which these provisions act. A man who has gone on strike may find work elsewhere, and still be an employee of the original employer; and an employee who has taken employment as a result of a strike is apparently forever barred from being considered as an employee with the right to bargain collectively.

Again, the strike is legalized, but the closing of a shop by an employer who cannot agree with his employees is prohibited.

Still again, the act legalizes the closed shop, but denies the employer the right to carry on a real open shop; that is, a shop which does not discriminate for or against a man because of his affiliation or lack of affiliation with a labor organization.

In my judgment, the pending act is unconstitutional, but I am not going to weary you with a long legal argument. I merely wish to point out that the pending bill may be challenged as unconstitutional

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on two grounds; first, that production is not a part of commerce, and that its regulation is not a function of the Federal Government, but a function of the State; and, second, that many features of the bill seem to contravene the right of contract, which is well established under the fifth amendment to the Constitution. With your permission, I should like to file a statement on the constitutional aspect of the act. My objection to the proposed labor disputes bill may be summarized as follows:

First. The bill seems entirely unnecessary, in view of the very broad interpretation given to section 7–A of the Recovery Act by the President, in his settlement of the threatened automobile strike. All that is needed is a short amendment to section 7–A of the Recovery Act, protecting the employee from coercion either within or without.

Second. The labor provisions of the Recovery Act should not be made permanent until the whole act is reconsidered, prior to its expiration in June of 1935.

Third. The bill will tend to separate rather than to bring together employer and employee, and would enlarge rather than diminish the possibilities of labor friction.

Fourth. If changes are required in the administrative features of the Recovery Act, they should be made as amendments to that act on the request of the Administrator.

Fifth. The composition of the proposed labor board is undesirable. It would be a partisan rather than a judicial body.

Sixth. The methods under which the proposed labor board would act are unusual and unethical.

Seventh. The act is probably unconstitutional in some of its features.

I appreciate this opportunity to express these views, which, after consultation with a great many different men throughout the country, are expressive of their views as to what is desirable, not only for business and industry, but for labor and the public at large; for it should be remembered that if the provisions of this act were held constitutional, that when the pendulum swings the other way in public sentiment we may get legislation that would prohibit labor organizations, or place them under the strictest surveillance, and I doubt if labor, on clear consideration, will consider that this act is really in their lasting benefit.

The CHAIRMAN. Mr. Harriman, we are very glad to have heard from you.

Mr. Philip R. Van Duyne.

STATEMENT OF PHILIP R. VAN DUYNE, REPRESENTING A NUMBER OF CHAMBERS OF COMMERCE OF NEW JERSEY

Senator BARBOUR. I would just like to say, if I may, although not a member of the committee, that Mr. Van Duyne is representative of a number of our leading chambers of commerce in New Jersey, and I am very grateful to the committee for giving him this speedy opportunity to present his case, and thank you very much for doing so.

The CHAIRMAN. Mr. Van Duyne, you will conclude in 30 minutes, will you?

Mr. VAN DUYNE. I will endeavor to do so.

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The CHAIRMAN. If you please. It will accommodate the committee very much.

Mr. VAN DUYNE. Mr. Chairman and gentlemen. I appear, representing seven different chamber of commerce of the State of New Jersey. They include the city of Newark, the city of Elizabeth, Oranges, Maplewood, city of Bayonne, West Hudson Chamber of Commerce, Paterson Chamber of Commerce, Camden Chamber of Commerce, and Trenton Chamber of Commerce. Each one of these organizations has held meetings of its members in protest to this Wagner Labor Disputes Act. In each meeting, as far as I have been able to learn, the opposition has been unanimous. I also appear as a so-called "small manufacturer", to represent this group.

I do not propose to examine every feature of the law because it would be needless repetition, nor do I propose to go over, or practically not at all, into the constitutionality of the act.

Senator DAVIS. Mr. Emery, of the National Manufacturers' Association, has presented the constitutional side of it, and has gone into it very thoroughly.

Mr. VAN DUYNE. For that very reason, especially in the presence of Mr. Emery, I certainly would not dare to attempt to cover that ground. Our groups are amazed that such unfair class legislation should receive any real consideration by Congress. I think the best way briefly to disclose the unfairness is to consider what this act really is. How are its purposes to be accomplished? How are its decrees to be carried out? We find under section 205, subdivision C, that the order may require such person to cease and desist from such unfair labor practice, to take affirmative action, to reinstate employees, or to perform any other act which will achieve substantial justice under the circumstances; also to require continuing reports to be made.

Now, I omitted one phrase from that clause, but each one that I named requires either a prohibitory or mandatory restraining order. This act is practically a labor injunction act, because all of its orders must be carried out either by mandatory or prohibitory injunctions. In view of that, the quickest way to compare the manifest unfairness of such legislation is to consider and weigh the different provisions of this Wagner Labor Disputes Act, on the one hand, and the so-called "Norris-LaGuardia Anti-injunction Law" of 1932. As a matter of fact, that is particularly germane to this subject, because the latter part of this act expressly states that wherever the provisions of the Norris-LaGuardia Act conflict with this act, this act shall prevail.

Of course, you understand that the Norris-LaGuardia Act is the injunction act, providing to what limitations employers shall be subjected in the pursuit of injunctions. This act is nothing more or less, or, it is a lot more, but it is principally an act giving favored-class position to employees in the pursuit of injunctions.

Now, as a brief comparison, there is no question that in the matter of jurisdiction the proposed National Labor Boards and regional labor boards will have full, ample, and complete jurisdiction. The Norris-LaGuardia Act very definitely limits the jurisdiction of the Federal courts in reference to labor disputes. In this act the institution of suit is encouraged, the institution of complaint. Any person designated by the board who has any reason to believe, from any source whatever, in the existence of an unfair labor practice, is to make a complaint. The party in interest does not have to make the com-

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plaint. Any person can make the complaint. Under the Federal courts, the rules as to complainants in labor injunction cases, employer injunction labor cases, are very strict. They must be on sworn complaint of the party injured, disclosing the party injured. This complaint, this suit is started under this act without any cost to the instigator, but if an employer desires to start a similar suit in a similar labor matter, he must not only obtain and pay counsel, but also pay court fees. The question of service is extremely interesting. I won't go into all the details of the facility of service under this act, but I think it is enough to say that any proceedings under this act may be started by a registered mail letter or by a telegram embodying the complaint, received by the defendant or defendants 24 hours before the hearing. In the Federal courts, the procedure is, of course, extremely different, suit being instituted by service of the United States marshal and notice of application for temporary injunction being given by notice, usually at least 5 or 4 days.

As far as the venue, these proceedings can be brought anywhere in the United States at any time, before not only the Labor Board, the regional boards, but any examiner. The employers' injunction suit must be brought in the district court where the defendants can be served with process.

One very unusual and unfair provision is that in these labor courts, the complaint means absolutely nothing. The board can proceed on any issue which it sees fit to inject into the hearing. In the Norris-LaGuardia Act, the issue is strictly limited to the complaint. The hearing: There is no requirement in this act, even that testimony shall be oral. The act does not directly say it shall be under oath, but the authority given to administer the oath to witnesses is a presumption that they will at least require testimony under oath. The Norris-LaGuardia Act requires oral evidence in open court.

Of course, the usual proceedings in normal injunctions are sworn affidavits, but that has all been changed, not in favor of the complainant. In this act there is no provision for cross-examination. In the Norris-LaGuardia Act, there must be cross-examination permitted.

The self-incrimination rule is very interesting, if we go to the bottom of the procedure. On reading hurriedly, probably you would not realize what it means, but the reprehensible acts defined in this proposed law are not crimes, they are not subject to prosecution for crimes. Most of the acts which must be proven, to entitle an employer to an injunction, are either crimes or misdemeanors.

The result is that while the self-incrimination rule is a protection under proceedings under the Norris-LaGuardia Act, and prevents defendants from being forced to incriminate themselves, in this act it means nothing, because no prosecution, anyway—you understand that in either case, they may be compelled to testify against themselves, but if they do, they are relieved from any criminal prosecution for acts referred to. In this case, it is not possible to have criminal prosecution for acts that they are compelled to testify to, so it necessarily results in a forced incrimination.

The question of parties: There is no doubt that in ordinary suits in equity, in the federal courts, the parties are those who start the suit, who control the production of evidence and the proceedings. In this case, the Board may be permitted to allow anyone to intervene, and to introduce any testimony that they see fit, even the

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confidential information residing in the various governmental departments, either by consent of the President or by his Executive order, is not sacred as a confidential communication in this court. Of course, in the Federal courts it is.

The proof necessary for an injunction under the Wagner bill is sufficient to give the Board an opinion on the subject. In other labor disputes, where the employer is the suitor, it is necessary to prove a number of things, one of which is that a substantial injury has resulted. Another, that greater injury has resulted to the complainant from each particular act complained of, than the relief will inflict on the defendants. Another, that there is no adequate remedy at law.

Another, that the police protection in the municipality is either inadequate or unwilling to afford protection. The chief officer in charge of the department of police or public safety must be made a party defendant, and given opportunity to justify his conduct of his own department.

There are not many more, but just a few of them. The National Labor Board can modify its decision in any way, until a transcript is filed in court. The appeal under this act does not act as a stay. Under the Norris-LaGuardia Act, it does. There is no appeal as to facts under this law. If at any time the Federal courts see fit to allow additional testimony, they must refer the entire matter back to the labor boards to take such testimony. The Federal courts have absolutely no jurisdiction to consider any testimony in any respect, except as it finds some support for the decision of the labor boards. The appeal is considerably more limited than in the district courts on labor-injunction proceedings. I won't take time to elaborate.

The whole theory of enforcement of these orders is through contempt proceedings, and here the labor boards, not being a court, would have no authority to punish for contempt, so the transcript is filed in the Federal court. Then the order of the labor board is made an order of the Federal court, subject to being punished by contempt. Now, in the Norris-LaGuardia Act, there has been considerable change of the ordinary procedure on contempt. I won't go into detail, but simply state that in a great majority of instances punishment, where the employees are the defendants, must be by trial by jury. This is, of course, not permissible in any case under the Wagner bill. Both acts have one thing in common. The Wagner Act abrogates all contracts contrary to the law. The Norris-LaGuardia Act abrogates all contracts prejudicial to labor.

This act is distinctive in that these boards, sitting as a subordinate body, are not subject to any injunction by Federal courts, based on constitutional rights or matters of law. It is also distinctive in that the National Labor Board has power to make rules to carry out the provisions of the act. I think that the comparison of these two acts clearly shows what unfair class legislation is embodied in the Wagner bill.

I think the other most vital provision of the act is that which requires employers not only—I am not objecting to negotiating with the representatives of the employees, but I am objecting to the statement of section 5, subdivision 2, to fail to exert every reasonable effort to make and maintain agreements with such representatives, concerning wages, hours, and other conditions of employment.

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Now, with respect to that provision, we must consider the decision of the existing labor board in the *Harriman Hosiery case*, where they take it on themselves to decide a matter of intent, and to decide that the employers are stalling in making agreements, or not using every endeavor, or not using good faith in agreeing to a proposal.

Senator DAVIS. Are you of the opinion that it is a violation of section 5 of this proposed act by Mr. Wagner, if a worker and employer get together to negotiate an agreement?

Mr. VAN DUYNE. No. No; what I am talking about is that there is continually this club over the heads of all of the employers of labor in this land, that if, from whatever reason, lack of financial ability, economic causes, you fail to reach an agreement with your employee, then a complaint will be made before a labor board and you will be held guilty of unfair labor practice; that if anything could amount to coercion in contract, that certainly is the worst type of coercion. "We will proceed against you, with the United States Government backing us up."

Senator DAVIS. Then you believe that if they fail to effect a settlement or to bring about an agreement, that it would be a violation of section 5, the Wagner bill?

Mr. VAN DUYNE. In view of the decision of the present labor board in the *Harriman Hosiery case*. My one suggestion in reference to citing any Supreme Court case is, in the case of *Hitchman Coal & Coke Co.* v. *Mitchell*, the statement is made, whatever may be the advantages of collective bargaining, it is not bargaining at all in any sense unless it is voluntary on both sides.

Now, there is no possibility of these collective bargainings being voluntary, in a large percentage of the cases, if the labor representatives, whoever they may be, say, "Sign these papers or we will start proceedings in the labor board to hold you guilty of an unfair labor practice."

All of these people that I represent here come from New Jersey, and there are about 30 of them here, manufacturers throughout the State, and it might be appropriate to refer briefly to a prominent New Jersey case of coercion.

An estimable husband, at one time, in the northern part of the State, delivered a deed to his wife with the remark, "Sign them papers, or get out of doors." I think the threat of this latter part of subdivision 2 of section 5 is about as drastic and as disruptive of fair mutual voluntary collective bargaining as anything that could be put into any statute; and, using that provision, there is absolutely no doubt that the result will be, of course, the increasing of hours, the decreasing of hours, the increasing of labor wages, the boosting up of costs; and what manufacturers fear or dislike more than anything else are regulations concerning the restriction of production. All of that will be fostered by this second paragraph of that subdivision. Of course, there are some people that have the point of view that these excessive restrictions or advancing costs make no difference, provided all their competitors are forced to do the same thing. I think, however, that they do not understand the question of purchasing power. They do not understand that there is such a thing as the stifling of purchasing power. They appear to think that purchasing power is represented by money wage. I think that purchasing power flows from the exchange of goods and services, that money

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is merely the medium, that the faster you can make that stream flow, exchanging goods and exchanging services, the greater will be the purchasing power of this Nation.

Now, who are the beneficairies of this act? At first, of course, the national organizations come in mind, but we believe that in view of the definitions, drawn in this act, favoring outside organizations, that the benefits which may accrue are just as great to the Communistic Workers' Party as to the American Federation of Labor, and may even be a benefit to the American Civil Liberties Union, the benefit even accruing to the members of those parties.

Of course, there is a distinct benefit accruing to the officers or respective business agents, or people in control of local organizations, but the benefits accruing to the members of those organizations depend entirely upon whether we increase the wage and increase restrictions on production; whether it will foster manufacturing; whether with those increasing wages, the cost of living can be kept down.

A recent example is before us all; during the post-war period, we had the greatest increase of wages of any recent time; but during that entire period the cost of living increased exactly proportionately. The main quarrel that employers have with organized labor, be it the American Federation of Labor or the Communist Workers' Party, is that they refuse to be guided by any economic laws, by any conditions affecting local plants, striving to continue in existence, by any requirements of competition or any ordinary business economics or economy. That is all the more emphasized when the workers are represented by someone without the plant, who has no direct knowledge of conditions existing in the plant, and that is our principal quarrel with any act that will tend to possibly try out some of the plans that have been tried in Russia, and which have now been abandoned; which were tried in Germany, but I understand that Der Feuhrer has reversed all the advanced labor laws that were passed since the war, or repealed them. Is it possible that if, as a result of what seems to be an underlying policy, adopted by the Congress, that labor monopolies could be reared in this country—is it possible to conceive that they would not be forced to assumed responsibility, to be charged with the making of a success of the industrial operations, and that, if not succeeding, that they would not be subjected to oblivion, as they have in other countries?

Certainly, with the large agrarian vote in this country, it is, I think, impossible to conceive in this country an actual domination of any strictly Communistic or Socialistic organization.

Senator DAVIS. Are you familiar with the Railway Labor Transportation Act?

Mr. VAN DUYNE. Not very, no. I am familiar with certain sections of it.

Senator DAVIS. Would you approve a similar law for industry?

Mr. VAN DUYNE. I would not, but I do not care to discuss it, because I do not know that I would be expressing the opinion of these seven different chambers of commerce.

Senator DAVIS. Well, I am asking for your private opinion, if you care to give it.

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Mr. VAN DUYNE. I believe that the Adamson law and the National Railway Act of 1926, in times of depresion, work as a hindrance to the operation of economic law.

Senator DAVIS. Would you approve an act similar to the interstate commerce law, for the regulation of industry?

Mr. VAN DUYNE. I am not prepared to answer that question. Recently, we have had considerable publicity directed to a letter of a Dr. Wirt. Of course, the whole letter has not been published. I do not know what it contains, but that which was published seems valuable in two respects, not as a question of ridicule, but it seems that it might be used first as a retrospect on the happenings of the last year, and second, it calls very vivid attention of the entire country to the tremendous power of propaganda, when directed to certain ends; and in that connection, it really is astounding to think that that propaganda has persuaded a large part of the country to believe in the theory of less work and more pay, of less production and more prosperity. I think, in the words of Senator Borah, it is a policy of destruction, of restraint on initiative, upon energy, upon production.

Now, the classes receiving detriment from this act: I firmly believe that the direct effect of the act will be to further advance prices, both on account of increased wages negotiated through this coercive collective bargaining and other restrictions on production. Of course, that is an opinion which we in the Newark area must be considered to have acquired largely from the result of the operation of union organization in the building trades in that city. Possibly that is the worst area in the country, as far as the fact of such regulations causing the costs of building to be higher there than they are in any other section of the country; but from that point of view I certainly believe that this act is likely to very greatly increase costs.

Now, there is still such a thing as competition of labor against machinery, that possibly only applies in small plants, but different plans of regementation attempting to bring everything to a normal or standard, pay no attention to efficiency or skill, giving reward to the inefficient as well as to the efficient, which certainly destroys not only the ability for this country to progress industrially, but it must, with its restrictions, tend to lessen the consumptive ability of the entire American people. In further support of that, it is I think conceded that one of the great objectives of the agricultural department was to increase the purchasing power of the farmers faster than urban population. Certainly, under this act, the organization of farm laborers will come much more slowly than the organization of manufacturing workmen.

The act applies equally to all employees, whether in industry or whether in agriculture, and with that coming slower in agriculture than in industry, it will further tend to throw out of balance the facility for the exchange of goods and services. I do not wish to take up too much time, but I just have a few more words.

The CHAIRMAN. You have had 40 minutes now.

Mr. VAN DUYNE. Well, just a moment. The effect on small business is greater than on large business, but on account of the lack of time I will omit that subject. I think that we business men, in coming down here, admit that we have taken too little interest in government. We have assumed that Congress was trained and expert, and understood how to make beneficial laws. We have two New Jersey Con-

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gressmen, who have been down here 20 years. Now, in examining the present status, we believe that there are certainly three classes of laws, governmental, sumptuary, and economic. As to the governmental laws, we have no complaint. As to the sumptuary laws, we believe that you have learned a lot more during the last 15 years. As to the economic laws, we do not believe that you understand their effect. We do not claim to understand their effect. We are simply endeavoring to learn, and we trust that you also are endeavoring to learn.

Apropos of the question of propaganda, this country program apparently proceeds upon the theory that the doctrine of laissez faire is abolished in this country, but that has simply been recognized under propaganda. The doctrine of laissez faire includes not only wages, hours, working conditions, but also prices. The opposite of laissez faire is monopoly.

To start out on a program of laws, with the intention of doing away with laissez faire, is really to start a program of monopoly—monopoly of labor, monopoly of government—that is, as applied to industry—monopoly of large corporations, monopoly of favorites, monopoly of someone. At the recent code authorities' hearing, March 5, a former member of the Federal Trade Commission stated that the trouble with the theory of some of these new laws was that they were fixing the costs of business by Government mandate, but permitting the income which would pay those costs to still be subject to the competive theory; that, as a result, necessarily, business was ground between the two systems; that if you are embarking on a policy of Government monopoly, either in favor of labor or in favor of Government controlling industry, that we think we should know the objectives. This question of price control, which seemed to be the most interesting to the code authorities, I am not going to talk on that. That is an economic doctrine that I am trying to learn more about, but I think that the entire scheme of this Wagner Act is subversive, not only of the best interests of employers but of the best interests of employees. It is subversive of the recovery program. It is very likely to cause a lessening in the pulse of industry, and a further decrease in unemployment in this country.

Thank you.

Senator MURPHY. Thank you, Mr. Van Duyne. I am sorry we could not give you a longer time.

Is Mr. Pickering here?

Mr. PICKERING. Yes.

Senator MURPHY. You can let us have what you have to offer in 10 minutes, Mr. Pickering?

Mr. PICKERING. Yes, sir.

Senator MURPHY. If you please.

STATEMENT OF N. W. PICKERING

Mr. PICKERING. I am speaking in behalf of the company of which I am president, the Farrell Birmingham Co., Inc., Ansonia, Conn., and also for the Lower Naugatuck Valley Industrial Association, which covers about 40 factories in our locality in Connecticut.

Mr. Chairman and gentlemen of the committee, I appear before you in opposition to Senate bill no. 2926, known as the "Wagner

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Labor Disputes Act", and which is claimed "to equalize the bargaining power of employers and employees, and to encourage the amicable settlement of disputes between employers and employees."

The bill, instead of accomplishing such meritorious objectives, takes all equity and bargaining power and removes the spirit of good feeling and confidence between employers and employees, without which there is no lubricant for the industrial machine.

A survey recently conducted by the National Industrial Conference Board shows that 45 percent prefer to make individual contracts with the employers; and that but 10 percent prefer to be represented in their bargaining by the standard or national unions.

The proposed act is exclusively class legislation which forces the large majority of now free and independent workers under the domination of a leadership that demands a monopolistic control of labor of the country.

The clear intention and the unquestionable effect is to force closed shop unionism upon the 90 percent of workers of this country, who have shown their preference for company unions or individual representation.

Section 7 (a) of the National Industrial Recovery Act clearly sets forth the right of labor to organize and bargain collectively or individually in such manner as it may desire, and gives to each worker the privilege of being represented as he may choose, irrespective of other groups within the same company. It gives legal protection to employees from coercion on the part of employers, but does not give protection to the independent worker and employer from coercion on the part of nationally organized labor. Any change in legislation should be toward correcting, rather than increasing this inequality.

Should those who do not desire to pay dues to, and be controlled by, a national union be forced by the United States Government into such subjugation? Furthermore, why should the United States Government place itself in the position of condemning a type of representation and union which satisfactorily serves 90 percent of labor and in place thereof create, or foster, unions which now represent the minority?

One section of the bill applies to balloting in order to determine representation. This has the disguise of fairness, but anyone acquainted with industrial conditions in a locality, which is unionized even to a small extent, knows the systems of intimidation employed.

Some years ago our company went through a strike. Many of our workmen involved insist that the votes taken were entirely ignored by the union agitators and the strike called, irrespective of a large majority registered against "going out". Such workmen are active in their resentment against any move which would force them again into an organization which would control their right to work. We operate what is called an "open shop", and employ both union and nonunion men. Our relations with our employees is excellent. A committee, elected by the workers without dictation or domination, either directly or indirectly, by the management, discusses matters of common interest with the company officers. The wages we pay are higher than those paid by others in the community. We want the opportunity to continue these friendly relations and maintain steady employment for our men uninterrupted by outside interference.

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In this connection, I take pleasure in stating that the committee of the workers in our company (represetning about 800), upon learning of the purpose and effect of this bill, voluntarily (and upon their own initiative) wrote me, asking that I express in their behalf their unanimous opposition to any such legislation. I have this which I shall present to your committee, should you so please. I will put it in the record, if you wish.

The CHAIRMAN. We would like to have the letter for the record.

(The letter presented by Mr. Pickering is as follows:)

MARCH 15, 1934.

Mr. N. W. PICKERING,
Ansonia, Conn.

DEAR MR. PICKERING: We, the undersigned, properly elected and duly authorized representatives of the workers of the Farrel-Birmingham Co., request that you express to the senatorial and congressional committees, holding hearings on the so-called Wagner "labor disputes bill," the fact that we, the committee, have expressed in behalf of all of the workers of the Farrell-Birmingham Co., unanimous opposition to the passage of this proposed act and that you urge upon the committees the fact that we, as free and independent workers, desire to remain in that status and not be subjected to what we consider the unfair features of this proposed bill.

Yours truly,

GEORGE BOYS.
J. D. MACLEAN.
J. FRANK NORTH.
HARRY T. KING.
ARTHUR PALMER.

Mr. PICKERING. This is an example of the feeling which exists in thousands of small plants throughout this country, and if such employees could appear, I feel your committee would be impressed by the earnest desire of the 90 percent of the workers to remain free and independent.

I shall not attempt to attack in detail the many undesirable features of the bill under discussion. These have unquestionably been brought to your attention. Suffice it to say, that "equalize" is used in the explanation of purpose of the proposed act. Can this word be substantiated when labor is allowed to "strike" but employers are not allowed to employ, in turn, the "lock-out"? That is not "equity." Is it fair to be faced by a charge, the source of which is undisclosed and to be "tried" before a board which, according to the wording of the bill, "shall not be bound by the rules of evidence prevailing in courts of law or equity", and whose findings of facts are deemed to be conclusive and binding upon the courts? Is it equity to forbid the employer to exclude union men, and, at the same time, to permit an agreement providing that a person seeking employment must join a labor union or, in other words, authorize the exclusion of nonunion men? Such an act is most un-American and a travesty on so-called "liberty."

I have been requested by the Industrial Association of the lower Naugatuck Valley, representing 40 factories and about 10,000 employees, in our section of Connecticut, to express their unamimous opposition to this proposed act.

We urge that you give industry an opportunity to recover by means of the strong medicine administered through the N.R.A. and not impose on it legislation which will cause the worst labor troubles yet known. Many employers and company unions have set standards which cultivate understanding and good feeling and result in actual

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benefits, which would be wiped out as a sacrifice to the closed union shop.

If the Government creates this monster, it must govern it, and you should be aware of the danger of creation of a labor monopoly which will tend to cause an industrial break-down which would be an overwhelming set-back to the recovery for which we are all earnestly working, and when this break-down occurs, both employers and employees will lay the responsibility at the door of the administration.

Thank you.

The CHAIRMAN. Thank you, sir. Did you state what your company manufactures?

Mr. PICKERING. We manufacture heavy machinery. We are the heaviest iron foundry in New England. We make sugar machinery, rubber machinery, and so on.

The CHAIRMAN. How many employees?

Mr. PICKERING. We have now 800. We have employed as high as 1,200.

The CHAIRMAN. Naugatuck Valley is south of New Haven?

Mr. PICKERING. It is northwest. It covers the towns of Seymour, Derby, Ansonia, and Shelton. It is between Waterbury and New Haven.

The CHAIRMAN. Thank you, sir. Mr. Bell.

STATEMENT OF WILLIAM B. BELL

The CHAIRMAN. Will you give your full name, Mr. Bell?

Mr. BELL. William B. Bell.

The CHAIRMAN. Your residence?

Mr. BELL. New York.

The CHAIRMAN. What is your private business?

Mr. BELL. President of the American Cyanamid Co., and I represent the Manufacturing Chemists Association, of which I am president.

The CHAIRMAN. Is your own company a chemical company?

Mr. BELL. Yes, sir.

The CHAIRMAN. Where is it established?

Mr. BELL. 535 Fifth Avenue, the principal offices.

The CHAIRMAN. How many concerns are incorporated in or connected with the Manufacturing Chemists' Association?

Mr. BELL. Approximately 200.

The CHAIRMAN. And located in various parts of the country?

Mr. BELL. Yes.

The CHAIRMAN. You may proceed, Mr. Bell, to give us your views.

Mr. BELL. I presume, Senator, that the total number of employees in those various companies might run to 70,000, or something like that.

I would like to say in the beginning that I shall not address myself to the details of this bill. I imagine they have been very thoroughly discussed, and even if some of the objectionable ones, or, in my opinion, the objectionable ones, were corrected, they would not go to the root of the matter, because I think the bill is based on a wrong theory.

Tho motive force behind the bill appears to be the statement in title 1, section 2, in which the bill states:

The tendency of modern economic life towards integration and centralized control has long since destroyed the balance of bargaining power between the

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individual employer and the individual employee, and has rendered the individual, unorganized worker, helpless to exercise actual liberty of contract, to secure a just reward for his services, and to preserve a decent standard of living, with consequent detriment to the general welfare and free flow of commerce.

Senator, whether the theory of this bill is correct or not, the statement that I have just read is wrong. It is not correct that the individual, unorganized worker, is helpless to exercise actual liberty of contract, and it is not true that he has no adequate reward, because, as a matter of fact, the reward in America, where there is a smaller percentage of union labor than in any other large industrial country in the world, is larger than it is in any other country.

Whatever ought to be done about the situation, that is the wrong reason for doing it, because the reason is not correct.

There are less than 10 percent, according to the statistics, of the workers of America who are in national unions. Notwithstanding that fact, American workers have a larger material reward than workers in any other industrialized nation on earth, and the two things together just do not support the statement in the bill.

The next thing that seems to me to be wrong in theory, is that this bill is evidently written with a background of feeling that does not exist in the average American industrial plant, namely, that the workers are under a lash, that the employer or the foreman, or whoever his representative may be, have the workers backed off and cowed in one corner, that the workers have nothing they can do or say, that they have no liberty of action.

That seems so grotesque to those of us who run plants that it is really difficult to characterize it. When you come into the office in the Senate Building in the morning, you do not pull a revolver out and lay it on the desk and then take a whip out of your clothes and begin threatening the people in your office. And, strange as it may seem to some people, we do not either. That is not the characteristic relationship in American industry.

The average plant is run in an atmosphere that is, no doubt, very similar to what you have in the relationship between yourselves and any employees that you may have. There is a feeling of mutual cooperation, there is a basis of mutual understanding, and there is usually good will. Of course, it would not be true to say that that is absolutely universal. The President of the United States some time ago, shortly after he was inaugurated, estimated that sweatshop methods and objectionable practices might exist in as much as 10 percent of the employment circles of the United States. I think myself that that was an extremely high percentage, and that was under the terms of the greatest stress and distress that any of us living have ever known in the United States. If he were reestimating, I presume that even he would put his figure very much lower.

There has been an increase in those conditions during the depression, you will agree, and he made his statement at the very height of the depression.

But, so far as that being the prevailing condition in American industry, the idea is certainly grotesque. It is not the fact. American factories and plants could not produce, as a practical proposition, they would not be able to turn out their product, if those conditions prevailed, and a moment's reflection on the subjects I think, will lead anyone to that judgment.

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The third thing that I think is probably in the back of the heads of the authors of this bill is that we have a situation where everything must be done to aid recovery, and perhaps this will aid recovery. I am not one of those, Mr. Chairman, who believes that everything should be tried. We have had various pills administered to us, a score or more, in an effort to bring about recovery, and I think it is beginning to dawn on a good many people that some of the pills not only are not adapted to the cure of the disease, but are a positive detriment and a retardant in our recovery.

The National Recovery Act, for example, started out on the theory that what was needed was a restoration of purchasing power, and the concentration of effort has been on the building up of purchasing power in the consuming industries.

I take it now that almost everybody is beginning to realize that the unemployment in the country comes from the construction industries which have been almost completely paralyzed. Our consuming industries at the worst were running at approximately 83 or 84 percent of normal while our construction industries, on the other hand, were reduced to the point where they were running at one time as low as 35 percent of normal, only absolutely necessary durable goods were being turned out, and the result of that has been that the bulk of the unemployment, as I say, came from the durable-goods industries. Yet, what did we do? What we have attempted to do was to force a stimulation of the consuming industries, because they were the ones most easily dealt with, so that we were doctoring the wrong patient. The next thing we did was to go further in the obstruction of the recovery program by hampering construction industries. What we did was with the most laudable object in the world. We set out to cure crooked practices in the issuance of new securities; the model that we set for ourselves was the English securities act, but if you have reread the English securities act as I have within the last 2 or 3 weeks, you will not fail to be impressed with the fact that instead of copying the English securities act, we have violated its most fundamental principle.

We are nowhere near the English securities act, which has been a model for the world, and which has prevented the very sort of practices which we have in mind to prevent.

What we have done is to violate the Anglo-Saxon principle that a man is always innocent until he is proven guilty, and we have made the issuer of securities guilty unless he can prove himself innocent, and we have made it impossible for prudent men to attempt to undertake the responsibility of issuing new securities by putting upon them a burden of foresight which it is impossible for anyone to possess.

The act introduces a factor which in the English act did not occur at all, that all material facts must be stated, and an omission of any material fact makes one guilty. Who, as he looks back on his survey of the situation in 1928, can fail to realize that we all overlooked a number of very material facts, and that probably if we were to attempt to state all the material facts in issuing a security today, our foresight would be equally faulty.

That being so, prudent men are unwilling to assume those obligations.

Now, in the English act, which we are supposed to be copying the word "material" occurs, but, curiously enough, it has no relation

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to our word "material." All it provides is that as a matter of good faith, officers and directors of the company issuing the securities, must state what material contracts they are personally interested in on the other side. So, what we have done is to take the English securities act and pervert it, and make it an utterly unworkable act, and we have violated the first principles of justice, in that you are innocent until you are proven guilty. We have tied up the whole securities market, and it is the long-term securities market which must be revived if we are to have a revival of the construction industry, and it is the construction industry, as I repeat again, which furnishes the unemployment in this situation.

This bill, if it is passed, will not aid recovery. As a matter of fact, it will still further promote unrest and industrial disturbance, and that is one of the factors which discourages new enterprises which would employ the construction industry, once long-term money was released.

So, I say that, so far as this program is concerned, it is based—and the authors of the bill in part prove the fact by the sentence I have just read—on a faulty diagnosis of the situation, and the whole subject should have further and careful study in order that nothing of that kind may lead to still further difficulties in the employment program.

Now, the next thing I want to bring to your attention, if I may, is the question of whether or not the situation calls for such a bill as this, which also bears on the question of what will this bill do to force us into national trade unions.

Senator Wagner, according to the newspaper reports, has himself volunteered a statement that there are a great many parts of this bill that should be revised. He wants it made clear, at least, that the employee representation plan, the so-called "company union", may under certain proper provisions, be permitted.

He also says that so far as unfair practices are concerned, he himself feels, according to the newspapers, that certain new definitions of unfair practices are in order.

But suppose that those are amended—and it is very difficult, naturally, to discuss them until he has them before us, so I lack the advantage of being able to definitely point out whether I think they are good, or whether I think they are bad—but, suppose he has them amended so that no coercion shall be used either by the labor union or by the employer, and suppose this word "influenced" which might mean anything from a cheerful "good morning" to I do not know what—suppose that is amended, and definitized so we know where we stand on that, as a matter of fact, that will not have corrected the fundamental fault of this bill, because in the interpretation of the definition of what is an unfair practice, the ruling authority will be the National Labor Board. Unless the National Labor Board proceeds according to the rules of evidence, and assumes a judicial character, which hitherto it has totally lacked, we will have as a practical proposition such rulings placed on unfair practices that the definition of an unfair practice will not make a whole lot of difference what it is.

What this bill does, as I see it, in that respect, is to attempt something which it need not even try to attempt. At present under section 7 (a) of the National Recovery Act, coercion is forbidden, collective bargaining is insured, and the question of whether or not fair practices are used, or whether unfair practices are used, is a matter which

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would eventually reach the courts of the United States, and be determined there according to the rules of evidence, and by a judicial body, which the National Labor Board is not.

That being so, under the present law, there is no occasion for those who desire a fair interpretation of the question of collective bargaining, and whether it is attempted with fair practices or not, to set up any such machinery as this. The courts are there, they are judicial bodies, they will determine whether or not coercion has been exercised; they will determine it according to the rules of evidence, and in the judicial spirit, and that is guarantee enough. When you propose a bill like the present one, you are endeavoring, whether consciously or not, to prejudice the case, and to turn it over to a tribunal whose findings as to fact, if supported by any evidence whatsoever, are conclusive on the court if a subsequent appeal is made to the court.

It seems to me, therefore, that from that angle also, this bill is all wrong, and should be withdrawn, and a proper study made of the whole situation.

I also want to state to you gentlemen very frankly that personally, I think there are a good many disadvantages to national labor unions. I would not like to be quoted as saying that national labor unions have not in some cases achieved objectives of real value. I think they have. But, consider the very nature of a national union. If the National Labor Board is allowed to determine what is a fair practice without regard for rules of evidence and without insuring its judicial character, it will inevitably force all labor into national unions. Consider where we will be then.

The difficulties about a national labor union, as I see them, are, first, that national labor unions are run by men whose chief object is the whole situation from a national standpoint, and they have to make a showing; otherwise, they will lose their positions as leaders of the national unions.

Consequently, a certain principle enters into their work which does not belong in the proper settlement of industrial disputes.

As a matter of practical working out, what has happened, and what continues to happen in America generally, is this: The men in your plant know perfectly well whether your plant is making money or not; they know what the cost of living is in that locality; they know the circumstances which affect the situation, and their relations are usually pleasant and personal with your superintendent and with the company. As a consequence, there enters into any settlement or any negotiation for settlement of a dispute, a degree of understanding which usually leads to a satisfactory conclusion.

As a matter of fact, there are relatively very few disputes which arise on the question of wages or hours at all, which are the subjects of interest to national labor unions and their representatives.

When the annual meeting takes place, what they like to do is to show that they have secured a reduction of so many hours—as a matter of fact, they are not so very keen on reduction of number of hours, because that means less aggregate pay for the week—but they are very keen on showing something in the way of an increase in wages which has been brought about through the intervention of the national union, and that may be or may not be, depending upon the economic situation with respect to any particular plant, a sound advance, but that is what they like to show.

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Now, as a matter of fact, the things which usually bother workmen are matters which, until you have had experience with workmen, seem rather ridiculous. What they are interested in is whether there is an ice-water cooler on such-and-such a floor in such-and-such a part of the plant, whether the dust is killed so they can work comfortably at a given machine. I remember a year or so ago in the Steel Corporation that the principal source of dispute, which was adjusted rapidly in plant after plant, was whether men could warm their lunch pails at open-hearth furnaces, which seems perfectly absurd, yet it was a real grievance, and needed adjustment, and should have been adjusted, and, as a matter of fact, it was adjusted.

What kind of a showing would it make in an annual convention of a labor union that they secured that right? That is not of the slightest interest to national labor-union leaders.

The point about the situation is that facts enter into national labor unions which have nothing to do with the real difficulties of plant operation.

Then, after awhile, the national labor union gets into politics, and then you have a situation where new factors are introduced which also have no bearing whatever on the economic situation, and the result is that difficulties go off at angles which ought to be, if possible, excluded.

Further than that, you also have a situation which does not appeal to the ordinary, average workman, and that is that there must be dues paid to the union. The question of the amount of those dues seems to be surrounded as a whole with some mystery, but the lowest anuual dues that I have heard of are $18 a year, and I have heard them estimated in various cases, or reported rather, as high as $36 a year.

The ambition of the American Federation of Labor, I am told, is to have some 20,000,000 of industrial workers as members of that union. That will produce an annual revenue of $360,000,000 a year, and even if they succeed in attaining only 50 percent of their ambition, one must realize that we would have introduced into this picture a very serious and disturbing factor. If anyone is going to spend any such sum of money as that on any side of any question, it is a serious thing.

Is there any accounting for that? Does this bill, which endeavors to lay down such strict rules for the guidance of employers, make any provision about some developments, or some disclosures as to the operation and the financing and the expenditures of labor unions? Not at all.

It would seem to me that in that respect, also, this bill has not received the degree of study and intelligent care and consideration that ought to characterize any bill dealing with a subject of this magnitude.

Senator DAVIS. A very large amount of the money collected by national labor unions is paid out for general relief, insurance, pensions, and matters of that kind.

Mr. BELL. And once that is disclosed, Senator, I do not see how anyone could quarrel with it, but I have an idea that it ought to be accounted for just like insurance premiums.

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Senator DAVIS. While I was Secretary of Labor, I know I used to get the annual reports from the constituent unions, and all their transactions and expenditures were published. If I remember correctly, the per capita tax of the American Federation of Labor on the general membership, was 1 cent a member per month.

Mr. BELL. I hesitate to differ with you, because I realize your long observation of the subject, but I understand not.

Senator DAVIS. The Federation of Labor per capita tax used to be 2 cents a member, but I understand now it is 1 cent. I may be mistaken. I gathered that information from a member of the Federation of Labor, who was at the hearing when the proponents of the bill were heard.

Mr. BELL. I think that ought to be put in as sworn, testimony. I understand it is quite the contrary. However, I frankly do not know, but I think the public really ought to know. I think that thing ought to be covered by regulation.

Now, I come to still another difficulty with reference to national labor unions, and that is that if they really work out in the way in which they have worked out in certain other countries, you have a divided responsibility in the management of the corporation that is very serious.

For instance, some of our chemical companies—I am not referring to my own, except in one plant—have had laid before them a contract to be signed, and a demand that it be signed, and in the contract it is provided that we can select only men who have been nominated by the labor union of the district, and we cannot discharge them without the approval of the labor union.

Now, bad as it is, and you can see at a glance how difficult that makes the management of a great industrial plant—bad as that is, in the chemical industry, it is simply terrible. If we cannot run our plants in a proper state of efficiency, we will blow you gentlemen clear out of the country, we will poison you, we will do all kinds of things if we cannot have the proper kind of men that ought to administer our operations.

Our operations are very intricate, many of them are continuous, they are delicate, and any mistake is liable to be fatal. It is no kindness to the workmen themselves to let anybody preside over the operations of many of these chemical plants who is not thoroughly qualified and absolutely dependable for those operations. We have, for instance, in my company a plant which procures various kinds of biological serums. If we make a mistake on that, the results are just too ghastly to contemplate. There must be no mistake, and we cannot take somebody who is nominated by a labor union unless he happens to be all right, and turn him loose to experiment. It just will not work.

As far as explosives go, needless to say, if we permitted anyone of that kind in an explosives factory, the results require no description. Anybody can imagine what will happen in a dynamite plant or a nitrocellulose plant, if any mistakes occur. The same thing is true of insecticides. We have a plant where we manufacture the most deadly of poisons. We never have had an accident in it, and I trust we never will, but to let somebody else dictate the operations of that plant, particularly somebody who, from the very nature we of things,

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would not be capable of taking the responsibility, just cannot be done.

The CHAIRMAN. How much more time do you desire, sir?

Mr. BELL. I would like to go on for about 10 or 12 minutes more, Senator.

The CHAIRMAN. All right. The committee stands adjourned until 2:30 this afternoon. Any other witnesses who have not been heard will be heard at 2:30 o'clock this afternoon. We must go to the floor of the Senate.

(Whereupon, at 12 noon, a recess was taken until 2:30 p.m.)

AFTERNOON SESSION

(The hearing was resumed at 2:30 p.m., pursuant to noon recess.)

Senator DAVIS (temporarily presiding). You may proceed, Mr. Bell. I would like, with your consent, to have a letter from the Federation of Labor put in the record. I called up the Federation of Labor and asked them whether or not the statement I made in the forenoon was correct, and they said it was, and that they would send over a letter, I would ask, with your consent, to have it inserted in the record.

STATEMENT OF WILLIAM B. BELL—Resumed

Mr. BELL. That would be agreeable with me, Senator. I have not checked this up recently, but some months ago I had our people go over to the Library in New York, and look up the records on the subject. The Public Library has a pretty complete reference library on all economic subjects in New York, and I obtained certain figures which I believe to be correct. They were very scattered, and very sketchy, and they did not indicate any such small amount as you evidently have in mind.

Senator DAVIS. I know this, that a man of your standing does not want to make even a half statement, and you want the full facts.

Mr. BELL. That is true. In fact, what I would suggest would be what I had in mind this morning, that these figures ought to be systematically collected and published. It is a matter of public interest, it seems to me, and nobody wants any injustice done about it, and the thing really ought to be put in such shape that it is turned out annually just like a lot of other important statistics.

Senator DAVIS. I have heard a great many criticisms in my day against the Chamber of Commerce and the National Manufacturers Association, as what do they do with the money they collect? They inform me that they collect tremendous sums, and I would like to know what do they do with it? People say they should publish a report. As to the details of the expenditure of those funds, I do not know; I do not have time to even think about examining the vouchers of the organizations.

Mr. BELL. Well, we made a long advance, for instance, in the management of campaign funds and publicity connected with them, and some of these other things, it seems to me, partake very much of the public interest, and it ought to be regularly collected and displayed.

Senator DAVIS. I know there are complaints about the expenditure of funds in all organizations, but most all of the organizations give a

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full account in their financial reports. They have to do that because of the different factions that are in the organizations that are always challenging what is referred to as the admininistration, or the way they manage the affairs of the organization.

Mr. BELL. Yes. It would be quite agreeable to me to have that done.

Senator DAVIS. I know one society that I was a member of used to take no. 1 warrant that was issued at the beginning of the year to pay the operating expenses of the organization, and read every one of them to the representatives in attendance at the convention.

Mr. BELL. I see. That will be very agreeable to me.

Senator DAVIS. There is always terrific opposition in these organizations about the expenditures of money, and the financial report is scrutinized more so than the report on recommendations.

Mr. BELL. Yes, sir. Senator, what I had in mind to say during the few minutes that I would like to detain you, is—if it is agreeable, would be to refer possibly to some of the——

Senator DAVIS. May I say this, too, just before we go on with it?

Mr. BELL. Certainly.

Senator DAVIS. I know a number of the so-called company unions, that filed a statement of their expenditures. They sent them to the Labor Department. I talked to a representative (after the morning's session adjourned) of one of the so-called company unions, and I asked him if they publish a financial report, and he said that they do, and it shows the expenditure of every dollar. I believe many of the so-called company unions, together with the American Federation of Labor, print a financial statement of their income and outgo.

Mr. BELL. What I had in mind to go on and say next was with respect to the situation in regard to labor unions of a national character in various other countries. Of course, any attempted detail of that would be hopeless in 10 or 12 minutes, but I would think that before the committee would wish to report out any bill which might tend to force labor into national unions, if indeed this bill would do so, as I think——

Senator DAVIS. I do not believe it does. I said yesterday, that the law did not force labor into national unions. Senator Wagner made a statement of the same kind, and so has the chairman of the committee, as well as other members of the committee said that it is not the purpose of this legislation to compel workers to join a trades union. It is only to give the workers the right to join an organization of their own choosing not dominated by the company. I think there have been several of these so-called company unions, especially one of them, that was here, that was as far away from company domination as the Federation of Labor is. The company played no part in it whatever.

It is just a question of permitting the worker to belong to the organization that they want to.

Mr. BELL. I do not question for a moment that that is your attitude, and that that may be the attitude of the members of the committee. In fact, coming up on the train from the south on Tuesday, I noticed that Senator Wagner had made the statement that he was willing that this bill, so far as he was concenred, should be amended so as to specifically permit company unions.

But, what I had in mind when I said that this morning was that regardless of what might be the thought of the committee the actual

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tendency of the bill, administered by the National Labor Board, as we now have it before us in this text, would be, in my judgment, ultimately to bring about a nationalization of the various labor units in the country.

Senator DAVIS. I think, after all, it is up to those who administer the law, they are the ones who are going to play an important part.

Now, this morning you said—I cannot express myself in these chemical terms such as you can—the union controlling—that they would put somebody on who was inefficient; in my day when I worked at my trade we refused to work with anybody who just could not do his work as well as the rest, and a worker had to be competent in every way if he was to get at the top of his trade. That is the way with the brotherhoods; no man can get to be a railroad engineer unless he is competent, and no man can be a fireman, or conductor. They watch them very carefully. They work by rule of seniority so that when they go up they are thoroughly competent.

No worker in the steel mill could be a smelter; no one could be a puddler, or roller, or any one of the technical jobs, unless he was competent to do it, because usually they are paid by the ton, and they want to be paid for the product they produce.

Mr. BELL. Certainly, nobody in the chemical industry will consent to working with anybody else unless he is sure.

Senator DAVIS. That is just about the same industry; I know it is in my trade.

Mr. BELL. It is so in a great many trades.

Senator DAVIS. I have seen men who have been promoted, and had to be demoted because they could not keep up, not because of speed, but they could not do their work right. Every man's pay on a crew of tin and sheet mill depends upon the tonnage that he produces.

Mr. BELL. Senator, I am sure that the committee have the thought that this will——

(Chairman returns.)

Senator DAVIS. Mr. Chairman, I took the opportunity of opening up the session.

The CHAIRMAN. I am very glad you did. I appreciate it very much. Proceed.

Mr. BELL. If the committee feels as I do, that the tendency of this bill might be otherwise, these principles that I was discussing, and which you so aptly illustrated just now, would certainly lead the committee to either withhold the bill, or to amend it radically, if you agree with me that the tendency exists that underlies the bill.

Senator DAVIS. I might say this for Senator Wagner, that I really believe Senator Wagner is anxious to get a bill that will be helpful to industry and to settle these disputes and avoid strikes.

Mr. BELL. Now, Senator——

Senator DAVIS. May I just say this? This is the letter that I spoke to you about [indicating], and I would ask that it be inserted in the record at this point.

Mr. BELL. It is quite agreeable, of course, to me.

Senator DAVIS. It is a letter addressed to the chairman of this committee.

The CHAIRMAN. The letter should not be inserted in the middle of Mr. Bell's speech. It can be inserted following his speech.

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Senator DAVIS. I would ask that this letter from the council of the American Federation of Labor, explaining these things, be inserted, and also this page from the report of the executive council.

The CHAIRMAN. Let me see it, please. (Examining.) You are just introducing the introduction?

Senator DAVIS. Yes.

The CHAIRMAN. It is the "Report of Executive Council" of the American Federation of Labor, the commencement of the report.

Senator DAVIS. That is right.

The CHAIRMAN. Both that and the letter may follow Mr. Bell's statement to the committee.

Senator DAVIS. I just put it in because Mr. Bell requested it.

The CHAIRMAN. Yes; I know he did.

Mr. BELL. I am not quite clear about that letter, Senator Davis, whether or not the 1 cent is in addition to the 35 cents. What do you make of that?

Senator DAVIS. As I understand it, when a group of workers want to join the affiliated groups of the Federation of Labor, and there is no national union to take them in the Federation will issue a charter to them. The Federation of Labor issues a direct charter, and from that particular group it gets the 35 cents per capita tax. The 1 cent per month per member group comprises those who are under the national union.

Mr. BELL. I trust that the full report will also be printed.

Senator DAVIS. You may have the report. Take it for yourself. Let the stenographer take out the first page, and you have the rest of it. It would clutter up the record too much to insert the full report.

The CHAIRMAN. Now, Mr. Bell, will you try to bring your statement to a close as quickly as possible?

Mr. BELL. I just want to ask one other question, whether that is the amount paid by the employee or only the amount paid to the national union. I suppose that will all appear in here.

Senator DAVIS. I do not quite understand your question.

Mr. BELL. Is this 35 cents the amount paid by the employee, or is it the amount paid only to the national union?

Senator DAVIS. As I understand it, the employee or the member of the union pays his dues to the union, out of which 35 cents is sent in to the federation by the secretary of the local union.

Mr. BELL. I see. Now, it would seem to me that there are certain other matters about which the committee might wish to be informed, and that, therefore, it would be in order to repeat my suggestion that this whole subject calls for further investigation.

One of my friends, who is in Washington, twits me a little bit on the ground that I am not altogether cheerful about some of the experiments that the Government has tried. I don't know why he should twit a chemical manufacturer about an unwillingness to try experiments, for if we do not try experiments, the chemical industry that we run disappears. I do not know any industry where you have got to experiment more consistently or else you are wiped out.

I do think, however, that something in the way we run our experiments might be helpful here. We begin with experiments in test tubes; then we move on to what we call the bucket stage, and we try it on a bucket scale. Then we move into the pilot plant, and so

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we move on. Frequently, we do not move on. We find the experiment ought to be cut off when we get through with the test tubes stage, the bucket case, or the pilot plant stage. If we deem it advisable, eventually we go into one unit on a commercial scale, because it seems to us so foolish to jeopardize so many things on a large scale until we are reasonably sure what can be done on a small scale.

There is one thing more. If there is anything more foolish than not to try an experiment, it is to try every experiment. Take the labor situation in Australia; I suppose the national labor-union movement in Australia today has been carried further than almost anywhere else in the world. Everybody is nationalized in unions. The servant girls are nationalized. Friends of mine from Australia tell me that if they do not get home to dinner and finish up by 8 o'clock, the girl goes off, not because she is not willing to stay and would not like to stay, but it would constitute a violation of the union rules, and, therefore, she must stop and they can cook their own dinner after that. That is not bad; there is a good deal to be said in favor of it; why should not people run their meals on such a basis that they are through at 8 o'clock, so the servant girls can have the evenings to themselves. But, I offer it as an illustration of how thoroughly unionized Australia is.

Senator DAVIS. Do you know Mr. Higgins, who was chairman of that industrial commission?

Mr. BELL. The one who came over to America and studied American plants, and brought a delegation?

Senator DAVIS. No; to my knowledge he has never been here.

Mr. BELL. Then I do not know him.

Senator DAVIS. He was at the head of that commission, and as I understand passed away recently. I had a very intimate acquaintance with him and I discussed the whole Australian system with him. We were in South America together for about 6 weeks.

Mr. BELL. How long ago was this that you discussed it with him?

Senator DAVIS. It was in the fall of 1924, and the beginning of 1925.

Mr. BELL. Well, now there are several very interesting things, it seems to me, that are worthy of study in the Australian situation. First of all, this delegation that I refer to came to this country to investigate the American plants. In one of those plants the head of the delegation made the remark that it was a mystery to him to see the cordial relations which existed in those plants which they had visited in America. He said that in Australia there was nothing comparable to it, and nothing comparable to it in England.

The reason for that is that we have in America a different type of management and labor. Our better men, all of them, look forward to the day when they may be heads of companies, or superintendents of plants, or secure some advancement. There is a total lack of the sort of relationship which is one group on one side, and the other group on the other side, which you find in those countries, where national unions have been carried to their full extent. I think this is largely because of the existence of the national unions, that that division exists.

In American factories, there is nothing like that, we do not have it in our plants; people generally do not have it in America. The men all realize that they are going to be on a basis of merit, that they are going to be advanced on a basis of merit, and their sole interest is production.

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It would be, in my judgment, most unfortunate if that situation were altered in America. There are some altercations in such industries as the construction industry, and so on, where highly unionized conditions exist, but even of those it is tempered by this general situation which exists in 90 percent of the rest of the industry of America.

Senator, I think we have made extraordinary progress even in the short time that I have been able to sit up and take notice in the adjustment of relations between capital and labor. There is not the hostility, there is not even the hostility that used to exist in America . let alone the hostility that exists in other countries. American industrialists, broadly speaking, have taken the view that they wanted to see their men with more money to spend. Perhaps there was an ultimate selfish viewpoint in that, because they would like to see the population built up so they could consume their products, but, in addition to that, there is a sincere wish to improve conditions.

Now, if we should duplicate the situation as it exists in Australia, I think we will to a considerable extent slow that up. At present, it is a more or less unorganized movement; in some industries, it has gone much further than in others; in some parts of the country it has gone much further than in others, but the fact remains that for that reason, as well as for other reasons—and it is probably a combination of reasons—we have a better situation in America than in any other country on the face of the globe.

You have had a wide observation of that, and would you not—you are not testifying, and I should not ask you questions, but it does seem to me that that stands out as I travel around and talk to people in other countries, which I do to some extent.

In Australia, the situation finally got to the point where it produced an unsound economic result. The viewpoint in Australia finally worked out somewhat like this, that they not only advanced their labor compensation, but they advanced it ultimately to a point where the economic foundation would not hold it. Some time ago, and it was one of the contributing factors in Australia, the situation got to the point where industry was no longer living on its income, but it was borrowing on the future, and utilizing the capital resources of the country, and it became evident that that was seriously impairing the whole situation. In fact that, combined with extravagant government expenditures generally, many of which were for these purposes, the old-age pension scheme, which they carried very far in Australia, and the veterans' bonus, and so on, brought about a situation where Australia was about to default.

Indeed, New South Wales did default on its bonds, and all this was very much aggravated, of course, by the general depression.

Finally, under Stanley Bruce, High Commissioner in London, a very extraordinary and very far-sighted man, and Premier Lyons of the Commonwealth, they have firmly set their faces toward reform, and they cut out everything but the veterans' bonus. I do not mean they cut it out, but they reduced all these things, and their conciliation boards, which are set up for the purpose of measuring the extent of the cost of living, deliberately reduced that cost of living scale to actually compare with the facts, and they put the finances of Australia in order.

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Meanwhile, the Australian Commonwealth, rather than see New South Wales defaulting on its bond and impairing the credit of the whole crowd down there, came forward and made good their deficit.

They did such a heroic job that the Commonwealth's budget was balanced last year, and apparently will be in balance this year.

We are very much interested in Australia. We sell a lot of stuff down there, and that is the reason I happen to know about it.

They also reduced the expenses of the other States of the Commonwealth to a point where most of them balanced their budgets.

They went through extensive refunding operations in London, under the auspices of Mr. Stanley Bruce, and, as a result of that, the credit of Australia very greatly improved. As a result of the refunding operations, they reduced the interest rate paid, and the thing is now in very much better shape.

The CHAIRMAN. I must absent myself from the committee. For your information, there are 5 or 6 other witnesses to be heard this afternoon, who must take trains out of town.

Mr. BELL. I will try to shorten it up. What they found in Australia was this, that you cannot divide more than you produce.

Senator DAVIS. You cannot pay out more than you take in?

Mr. BELL. If you do, you are borrowing capital, and you are impairing the whole situation, and sooner or later you have got to come to a stop. That is one of the ways in which the trade union situation in Australia got out of control, finally.

In England the thing took a different form. There the trade unions became so strong that in 1926 you will remember they had a terrific strike that tied up the coal mines, and the railroads joined in sympathetically, and they had everything so tied up that men left their desks and went out and fired locomotives, and so on, to keep the country going.

In that case it resulted in more or less what you would expect of the English temperament, a very drastic law, called the English Trade Union Dispute Act, which undertook to make illegal trade unions in certain lines, which would involve the very life of the country, and so on.

In Germany, the situation went very far. The scale of social benefits, as they were called, became completely beyond the capacity of industry to bear. The trade unions in that case threw their lot in with the Communist Party, and that proved a very great mistake, because what happened was that finally, the country roused up and supported Hitler, and, as a result of that, Hitler has abolished all trade unions. There are no trade unions any more in Germany, and, as you know, there isn't very much else in the way of self-government left in Germany.

Senator DAVIS. What would you think would happen in America if what we would term the "extremists" got control of the labor unions?

Mr. BELL. Let me say what a friend of mine in Italy told me only about three and a half weeks ago. I just got back from the other side. He is a very intelligent Italian gentleman, who knows something of America, and knows a great deal of Italy.

I said to him, "We have in America a situation now in which we are proposing to set up a national labor board which will endeavor to reconcile the differences between capitalism and management on the one hand, and labor on the other." And I said, "As I understand it,

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this new cooperative system that you are about to install in Italy proposes to do just that."

He said, "We already have got that. We have capitalism on one side, and labor on the other, but there are no labor unions."

"Well", I said, "who settles it when they cannot agree?"

He said, "We have a Government representative."

I said, "Are his judgments satisfactory?"

He said, "Ordinarily, the two sides get together and work it out, but, if they do not, then he does settle it, and the decisions are——" well, he said, "If they are not satisfactory, at any rate, we have to be satisfied with them, but generally, I think it is pretty good."

I said, "Is there any appeal?"

He said, "No; there is no appeal. He is appointed by Mussolini, and he is generally a pretty good man."

"Well", I said, "what would happen if something went wrong altogether, and his decision bankrupted the employer, or would eventually bankrupt him?"

"Oh", he said, "I suppose somebody would finally get it to the attention of the chief authority, and perhaps something would be done about it, but, at any rate, that is a risk we run." And then he added, "As long as the dictator is a good dictator, it is all right."

I said, "Well, suppose he is a bad dictator", and he shrugged his shoulders.

Then I said to him, "Well, now, apply it to America; you have actually lived in America; how do you think it would work there?" He said, "My God, it would never work in America." I said, "Why not?" And he said, "You have votes in America."

Senator DAVIS. So, then, you believe that if the extremists were to get control of labor in America, we probably would go to fascism?

Mr. BELL. I do not know, Senator. Here we have the Australian system which took one course; here we have the English system, which took another course; here we have the situation in Germany and in Italy, which to some slight extent paralleled each other, or, at any rate, took a different turn from the other two. What we would have would be a situation which would possibly take one of those three courses. Possibly something else would happen, I do not know. I am frank to say I do not know.

I should think anybody considering this bill would give the most careful thought to what had happened in all the countries which could throw any light on this situation whatsoever.

In the case of Italy, if you will recall, before Mussolini, the labor unions took control, simply ran wild, they not only unionized everything, but they could not control themselves after they were unionized. As a consequence, you could start on a train from Milan without any assurance that you would ever get to Rome, but you could not be quite sure at which point the train would quit altogether. That was before Mussolini began his march to Rome. It was a perfect state of chaos and anarchy, and the result was that when he stepped in, all the conservative elements—after all, most of us are conservative—realized that the choice lay between chaos and anarchy on the one side, and dictatorial power on the other, and the human race is so constituted that, broadly speaking, when they realize that that is the choice they always let liberty go and take order.

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Senator DAVIS. I have watched 50 years of American industry and I do not think we will ever have a dictator here. I think we had better be going on, or else we will not get through here this afternoon.

Mr. BELL. Don't you think it is a good idea for Congress to do as they did with Senator Wagner's earlier proposal some years ago for unemployment insurance, decide that a thorough investigation is in order. You will remember that in that particular case what they finally did, if my memory serves me correctly, was to bring in a report that they had not as thorough a study of it as was needed in order to pass legislation on it, and, in the meantime, let us continue to work out the experiment under section 7 (a) of the National Recovery Act, and see where that gets us? Is that not enough?

Senator DAVIS. I am satisfied the committee will give consideration to your recommendations.

Mr. BELL. You have been very patient, and unless there are some other questions you have to ask of me, I think I had better withdraw.

Senator DAVIS. Thank you.

(The letter from the executive council of the American Federation of Labor, presented by Senator Davis, is as follows:)

AMERICAN FEDERATION OF LABOR,
EXECUTIVE COUNCIL,
Washington, D.C., March 29, 1934.

Hon. DAVID I. WALSH,
Chairman Committee on Education and Labor,
United States Senate, Washington, D.C.

MY DEAR SENATOR: Because of certain testimony given to your committee by Mr. Bell, representing certain chemical interests, I ask that the following facts and information be accepted by your committee and incorporated in the record.

National and international unions affiliated with the American Federation of Labor receive dues from their membership and the money thus received is used in paying the administrative expenses of national unions and in paying out-of-work, pension, sick, and old-age benefits.

The financial reports of these national and international unions are printed and available for public study and examination. The receipts and expenditures of all these national and international unions are itemized in their financial reports.

Each national and international union affiliated with the American Federation of Labor is clothed with autonomous authority to administer its own affairs. Reports of convention proceedings, as well as financial reports, are given publicity and are available for examination and study.

The American Federation of Labor receives as financial income a per-capita tax of 1 cent per member per month from the membership of national and international unions affiliated with it. It receives per-capita tax amounting to 35 cents per member per month from the membership of Federal labor unions directly chartered and administered by the American Federation of Labor.

A financial report of the income and expenditures of the American Federation of Labor is transmitted to each annual convention of the American Federation of Labor. These financial reports are public property and are open for inspection and analysis. As evidence of this fact, I am sending herewith a copy of the last financial report submitted to the convention of the American Federation of Labor which was held in Washington, D.C., last October.

Very truly yours,

AMERICAN FEDERATION OF LABOR,
FRANK MORRISON, *Secretary.*

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(The introduction to the report of executive council, American Federation of Labor, dated Oct. 2, 1933, presented by Senator Davis, is as follows:)

REPORT OF EXECUTIVE COUNCIL

WASHINGTON, D.C., *October 2, 1933.*

To the Officers and Delegates of the Fifty-third Annual Convention of the American Federation of Labor, Greetings:

INTRODUCTION

The fifty-third convention of the American Federation of Labor comes at a time when our industrial life is shifting from the practices of individualism under which it has developed thus far, to group control in the interests of all concerned. The adjustments now in the making require a shift in controlling motives from the spirit of selfishness and conflict to decision based upon scientific data indicating industrial and public welfare. We are trying to work out a revolutionary shift of concepts in a practical way, a shift from the idea that any one group can prosper at the expense of others, to an understanding that permanent progress for any group is interdependent upon progress for all other groups, that there must be balanced progress.

The creation of machinery and the initiation of undertakings to save economic institutions and to start a concerted drive for recovery, have made most compelling demands upon the executives of the American Federation of Labor and upon all union organizations as well as upon responsible representatives of employers and the Government. Our efforts to care for the interests of labor so that wage earners might do their share in the forward movement have been unremitting. So busy have we been with the work at Washington as well as with organizing work in the field, that it has been most difficult to find time for normal duties, including the preparation of annual reports and the usual work preparatory to our annual convention. For these reasons our report this year is brief and is directly toward the more immediate and urgent problems.

It is especially fitting that our convention for this year should be held in Washington, for it has become the economic as well as the political capital of the nation, and labor representatives from all parts of the country can have personal knowledge of labor's new problems and opportunities arising out of our national endeavor. The reason for our choice of Washington for our convention city this year constitutes an historic link in the continuity of union development—the dedication of a memorial to one of the founders of the American Federation of Labor—Samuel Gampers. The memory and the record of the man who served as the chief executive of the Federation for more than 40 years are an inspiration to us in this period of re-birth. In the founding of the American trade-union movement, devotion, sacrifice, and passion for human welfare made possible the union institutions of which we are the present trustees. The life of Samuel Gampers was devoted unreservedly to the labor movement and the quality of his leadership brought respect and standing to our movement. As in this convention we plan the future of our labor movement in the new era we have entered, it is most fitting we should be mindful of the record of the past and the principles evolved under the leadership of our first president.

As we turn our thoughts from the present to the leader who in a very real sense typifies a definite epoch in development of labor institutions, we are helped to distinguish the things of permanent value. Though many of the men and the women who were the pioneers in our movement are gone, the spirit of Labor goes on—love of fellow men, concern for their problems and services, the will to get them justice in daily living, to help steadily and surely move upward and onward—these are the things that have given the labor movement continuity and purpose and endurance. These are the qualities we must carry from the past into the present and the future. That we may hand on these qualities is the obligation by which future generations shall judge our statemanship.

Senator DAVIS. Mr. Foster.

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STATEMENT OF RALPH F. FOSTER

Senator DAVIS. Will you give your name for the record?

Mr. FOSTER. Ralph F. Foster.

Senator DAVIS. You are the factory manager of the American Laundry Machinery Co., Cincinnati, Ohio?

Mr. FOSTER. That is correct, sir.

Senator DAVIS. You may proceed.

Mr. FOSTER. I want to state first that I have had experience as a worker as well as an employer of labor. The company which I represent is in the durable goods' industry, that industry which knows a lot about unemployment.

Our product is laundry and dry cleaning machines, that is, those machines for the power laundries and dry cleaning plants.

In 1929 we employed 1,600 people; today, we have 725, and those men are working on an average of only 23 hours a week, although our code permits 36. We wish we had work for 36, but we have spread employment as much as possible.

We were among the first to sign the President's Reemployment Agreement, and among the first of the industries to get together a code, and to get it approved. We have done everything we could to cooperate with this recovery program.

We have been operating at a loss for the last 2 years, and we still are. We have cut salaries 40 percent, but we have made no general reduction in wage rates. Our average wage rate today is higher than it was in 1929.

I am simply reciting these facts, because I want you to understand our appreciation of the labor problem and the fact that we are sympathetic with labor, and have had the welfare of labor at heart.

Now, undoubtedly, the author of this bill was also sympathetic with labor, and the intention was, no doubt, to be of assistance to labor, but I think our company, which is not a large one, which is representative, I believe, of a large number of American concerns of perhaps what we might call an average size; I think it is a very representative-sized company—I think that there are many other companies that are in the similar situation and are just as appreciative of the labor problem as we are.

The relationships with our employees have been satisfactory. We appreciate the importance of satisfactory relationships with our employees. The quality of our product depends upon our employees, and the quality of our product determines sales.

Senator DAVIS. Is your factory in Cincinnati?

Mr. FOSTER. We have a factory in Cincinnati, and one in Chicago, and one in Rochester, N.Y. I have given you the total figures.

Senator DAVIS. Is the factory just on the outskirts of Cincinnati, in one of the suburban towns?

Mr. FOSTER. Located in Norwood, just outside of Cincinnati.

So, we have appreciated the importance of satisfactory labor relationships, and we appreciate that industrial relations are a very delicate matter, and that proper relationships can only be built up over a considerable period of years, although they can be destroyed very easily.

Now, in section 2 of this bill, we find the statement that certain tendencies in modern economic life have rendered the individual,

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unorganized worker, helpless to exercise actual liberty of contract, to secure a just reward for his services. In other words, if this bill were to be passed, it would seem to me that the Congress would be telling our workers that they were helpless to secure a just reward for their services.

Now, I do not believe that to have that statement made by the Congress of this country would add to cordial relationships between employer and employee, and I think it forms a sort of a false assumption on which this bill is based.

At any rate, I feel it would be so regarded by many workers, and that is one of the objectionable items in the bill to us.

In that same section there is the statement that it will be the policy of Congress to encourage the establishment of uniform labor standards. I do not want to spend a lot of time on that, but I just question what uniform labor standards are. That is, are they standards of output, standards of quality, standards of wage rates, or hours, or methods of payment for work, such as piecework, bonus, and so on? The term, I think, leaves room for some doubt, and I also just wondered how in our concentrated American industry that establishment of such standards could be accomplished by a central body.

Now, the main objections that we have are perhaps those with reference to the list of unfair trade practices. We feel that they are incomplete in that they do not list unfair trade practices which might be permitted by labor. We understand that there has been talk of making some change in that, and it is our feeling that labor should be held responsible and accountable to the same extent that employers are, and prevented from exercising any coercion to the same extent that employers are. That has been covered so fully that I will not spend any time on it.

There is also another point in regard to these unfair trade practices, and that has to do with the jurisdictional and sympathetic type of strike. No one who has lived in a large city can be unaware of that type of strike, and its effect on the progress of things, and its effect on the workers, and the interference with their work.

Senator DAVIS. Most of those jurisdictional strikes are in the building trades?

Mr. FOSTER. They are certainly more prominent in the building trades than anywhere else that I know of; yes, sir. We think that the unfair trade practices should include some way of prohibiting strikes of that nature which injure so many innocent people who have nothing to do with the trouble at all.

Then I wish to speak on paragraph 3 of section 5. That is the one that starts, "To initiate, participate in, supervise, or influence."

There are 4 verbs in that sentence, and 7 objects, or 28 things prohibited in that one sentence. It is the word "influence" that is the one that bothers me. I do not see how it is possible to have collective bargaining unless the labor organization, no matter what it may do, influences the employer, and the employer influences the labor organization.

It seems to me that that is the very essence of collective bargaining, and that is the way that peaceful settlements are made, by influence. It seems to me that even in dealings with the so-called

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outside labor organizations, this word "influence" does not belong in there.

It would certainly, as I interpret it, outlaw any type of company organization, and we believe that the company type of organization has a great many things which can be said in favor of it. Some of those have been discussed, I know, before this committee, and I am not going to go into that particular discussion.

Our own attitude is that we believe in 7 (a), we believe that any type of labor organization should be permitted, and that there should be no coercion on either side. We are just as opposed to a company dominated association as to any other type, because it cannot accomplish any good. It must be a really, truly, representative—employee representative plan, because the only value, or perhaps one of the greatest values, of the employee association as compared to an outside union is that the employees do see the particular employers' problems and they do have a mutual interest that does not exist when the employer is dealing with, say, the heads of a dozen outside craft unions, each of which may represent only one group in his plant.

But, we believe that the workers should be free to select their own type. We believe that the bill as now written with this paragraph 3 of section 5 would outlaw the company union, and that is our objection to that feature.

Senator DAVIS. Senator Wagner says that in his opinion it would not outlaw any form of association unless that form were dominated by the company that organized it.

Mr. FOSTER. Well, might I ask, how do you explain—how would he explain away the influence on operations and policies, which is what the section says?

Now, it seems to me very clear—I am not a lawyer, and I cannot argue the thing technically; I am a factory operator—but, if a man says to me, that I am not to influence this organization in any way, that means I cannot talk to them. How can I bargain collectively with them if I cannot talk to them or influence them? It seems to me that it is a definite outlawing of a company association of any sort.

Technically, I would say it might be carried even further, and even get you into trouble in dealing with the outside organization. For instance, the policies of the outside union might have certain rules about seniority, they might have certain rules in connection with discharging and employing or in connection with apprentices, the number allowed, or the way in which a dispute would be settled by arbitration, which I might not like, and if I would talk to them with the idea of having those changes made, it seems to me that I would certainly be influencing that labor organization. At least, that is what I would be trying to do. I do not see how this paragraph, to a plain factory man, and not a lawyer, could be interpreted in any other way.

I am skipping the most of this.

Senator DAVIS. You may put all of it in the record if you wish.

Mr. FOSTER. It is not prepared for insertion completely. I only have a few rough notes.

Senator DAVIS. All right.

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Mr. FOSTER. Paragraph 6 of the same section 5 is another that we believe to be objectionable because we think that it is unfair to require membership or nonmembership in any organization as a condition of employment, and if we do not believe that because a majority of the employees vote for a certain organization the employers should be permitted by law to make an exclusive contract with that organization.

Then the other factor comes in, if you have a vote today, you may have 53 percent for a certain union, while a vote next week, or some other time may show a different condition. It seems to me that that would be a constant source of trouble, and would never be sstisfactory, and I am completely opposed to the principle that membership in any organization should be a condition of employment.

It think it is a very objectionable thing, and I do not believe that minority groups which might be as high as 49 percent should have their rights nullified by a majority vote.

Section 207 is another one to which we object, because it speaks of the secret ballot, but permits the Board to utilize any other appropriate method. We think that the secret ballot is the only fair method and is the only method which is free from coercion; that the Board should be limited to the use of the secret ballot in the conduct of elections.

The powers given to this Board are certainly tremendous. We do not feel that a member of the Board or anyone whom he might delegate should have the right to call anyone to a hearing on evidence from any source whatever. We think that is too broad. I just want to record an objection to it.

To briefly summarize the points we have in reference to this bill, it is, first of all, that we believe that the bill is worked upon a false assumption, that all employees have been abused and that it will give that impression, and will tend to create strife instead of peace; that the lack of confidence, because of the labor troubles, will tend to injure business instead of to help recovery; and we are in one of those industries that is certainly anxious to see a recovery.

It permits the making of a contract which could include the making of membership in a labor organization a condition of employment. It fails to specify and define the practices which, if committed by labor, should be regarded as unfair. It fails to provide for any control or regulation of labor organizations, jurisdictional strikes, and so forth.

It would tend, in our opinion, to create a labor monopoly, without providing for the assumption of any responsibility on the part of labor. It would not protect the individual worker from coercion on the part of a labor group. It deprives a minority of their right to freely select their own representatives. It paves the way for complete destruction of hundreds of sound industrial relation plans of proven value, without offering an adequate substitute. It forbids making use of the most desirable type of direct contacts, and frequent interchange of opinion between employer and employee, or in any matters of mutual interest, as well as in collective bargaining. We do not believe the bill, as now written, is in accordance with the spirit and the principles established by President Roosevelt in the settling of the automobile strike. We think that it will invite industrial unrest. In our

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opinion, what is needed is a better understanding between employer and employee, and a greater recognition of their mutual interests.

We need more contacts and more cordial relationships, and above all, more jobs. We think that the bill, as now written, will cause disturbances, which will cause further lack of confidence and interfere with our recovery program.

The CHAIRMAN. We thank you. Mr. Richard LeBlond. Mr. LeBlond, will you give your name to the secretary?

STATEMENT OF RICHARD LeBLOND ON BEHALF OF THE R. K LeBLOND MACHINE TOOL CO., OF CINCINNATI, OHIO

Mr. LEBLOND. My name is Richard LeBlond. I am associated with the R. K. LeBlond Machine Tool Co. at Cincinnati, in the capacity of factory manager. I have been associated with the company for 12 years. Our company is engaged in the manufacture of machine tools, having been founded about 40 years ago, in a very small way. We have enjoyed a state of healthy growth. In 1929, we employed approximately 582 factory workers. This number was reduced during the 4 years of the depression, until we averaged 106, working part time in 1932. I am cutting this all short.

Since 1933, we have steadily increased our working force, until we reached 241 employees, employed in February of this year. Now, we have come to a point where we must again reduce our force, due to a lack of business, which has been generally felt throughout our particular industry.

To operate a factory under the conditions existing these last 4 years has been a very difficult problem. It has been very hard on our employees, as well as on the company itself. During these trying times, we have had no difficulty with our employees. Our relations have been very satisfactory. We have done everything that the company could do for them, and I believe that the employees appreciate our efforts.

With the advent of the National Recovery Act, we went right along with the President's reemployment agreement, adjusted our wages, hours of employment, although we were working very much below the limits.

We have since signed the code of our industry and have lived up to it in every respect. To date, we have had no demands from our employees, and we have suggested no organization whatsoever to them. Our employment records, which had their beginning in 1916, show that we have never based employment on membership or nonmembership in any organization.

Now, as far as this Labor Disputes Act is concerned, I believe that our relationships of the past will be definitely upset by this act. In the first place, section 2 assumes that our relationships are actually wrong, and I would disagree with this, because our employees actually know the management intimately, and they do not hestitate to bring up matters of wages and hours and working conditions to the management. This, in my mind, is a condition of perfect understanding. All of our foremen, without exception, our assistant superintendent, the superintendent, chief engineer, and sales manager, started with us as workmen, and through their individual merit and ability attained their respective positions. These men all know the employees, and

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the employees know them, and I do not see how this relationship should be called all wrong.

Senator DAVIS. How many employees have you?

Mr. LEBLOND. I say, in February we had 241. Section 5, paragraph 6, actually provides a means of compelling employees who do not want to bargain collectively, to join a union, if their employer and the union make such an agreement. I do not believe that this is just. I do not think an employer has any right to make a man join a union, any more than a union has.

Senator DAVIS. Do you have any form of collective bargaining in your company?

Mr. LEBLOND. Never have; no, sir.

Senator DAVIS. If any of the workers wanted to join an organization, you wouldn't have any objection to them doing so?

Mr. LEBLOND. As I say, Senator, we have so far had no demands whatever about any organization.

Senator DAVIS. I know, but if one of the employees should want to join an organization, you would not discharge him for doing so?

Mr. LEBLOND. Absolutely not. The whole of section 5, as I see it, sets up unfair labor practices for employers, and there is nothing in the bill that sets up unfair practices for the employee or union groups. In my mind if there are to be fines arranged for an employer, where he can be classed as practicing unfairly with his employees, and fined for such, I believe that a labor organization should be in such a position to also pay a fine. In other words, if it would be necessary to organize them as a corporation or something, they ought to be able to reach that group, so that if they actually do some unfair practices, they could be reached, too.

In conclusion, I believe that our business has been affected by pending legislation. It is true of our industry, I know. The whole industry has been dropping off in sales, since about the first of February, at a faster rate than we dropped in 1929. I believe that what the business needs more than anything else is encouragement and not uncertainty of the pending legislation. I believe that the labor provisions of the National Industrial Recovery Act, as interpreted by General Johnson, are ample control legislation for the purposes of recovery.

Thank you.

The CHAIRMAN. Mr. Walter H. Wuerdeman. Will you give your name?

Mr. WUERDEMAN. Walter H. Wuerdeman.

The CHAIRMAN. How much time would you take?

Mr. WUERDEMAN. About 6 minutes.

STATEMENT OF WALTER H. WUERDEMAN OF THE FENTON CLEANING & DYEING CO., CINCINNATI AND COLUMBUS, OHIO

Mr. WUERDEMAN. Mr. Chairman, and members of the Senate Committee on Labor and Education. I am president of the Fenton United Cleaning & Dyeing Co. in Cincinnati, and I am speaking for no group or no association, but I do believe that, as I understand the situation, I reflect the sentiments of our stockholders, our employees, and our customers. I know very little law, and this is not going to be a brief, and if this humble presentation lacks any accurate

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references or includes any improprieties, I hope you will forgive me and overlook them. We employ about 450 people in greater Cincinnati and greater Columbus, Ohio.

For 22 years I have occupied the role of employer. Our business has been in continuous existence for 48 years. Not once in all that time did we have any so-called "labor disturbances" in our business or, to the best of my knowledge, in the cleaning-and-dyeing industry in Cincinnati until last year.

Last summer so-called organizers began to molest our people with the false argument that since the N.R.A. had gone into effect that the Government wanted them to join a union; that they would have to join a union; that it was compulsory and that soon all workers that did not belong to a union would not be allowed to work. Some of our people came to us and asked how they might protect themselves from this coercion and intimidation. We called our people together in groups and told them that the law did not compel them to join any union; that they were free to join if they wished, but that also as free American citizens they had a right to work wherever they wished and that their jobs could not be taken away from them for failure to join a union. Some persisted in their importunities for defense against the agitators, but accordnig to General Johnson's interpretation of the N.R.A. law, we were practically helpless to advise them.

The organizer or business agent of the union was a man who had worked in almost every plant in Cincinnati and had never succeeded in holding a steady job. About February 1, this so-called "union" called a strike in one of the other dry-cleaning plants in Cincinnati. A few days later, on Feburary 8, a committee of about 15 of our employees brought a petition and statement to my desk signed by 304 of our 371 employees in the Cincinnati plant, which started out as follows:

> We, the following employees of the Fenton United Cleaning & Dyeing Co., do not belong to any union connected with this industry, and we do not wish to belong to any one of them. We believe the company has always tried to treat us fairly and will continue to do so.

Surely such an experience proves that many employees do not want to join these so-called "outside" unions, and that they are being unlawfully molested and interfered with in their pursuit of life, liberty, and happiness. It would also indicate that certain labor agitators were misinterpreting the law in order to further their own ends. One hundred and eighty-one of our people have been with us more than 5 years; 20 of them, more than 20 years. If the Wagner labor-disputes bill is enacted, it will merely add to the confusion that exists. It will feed the fires of mad ambition among all labor leaders. Its passage will be a signal for a wholesale onslaught of every peaceful factory and plant where relations have been mutually satisfactory for years. Our firm does not want the Federal Government to step in and interfere with and disrupt our industrial relations. They have been peaceful for two generations. Our people are happy. We try to treat them fairly, and we succeed. The last 4 years of operation have been unprofitable. We have spread employment during the entire depression. We have kept more employees in the stores and plants than were warranted, to take care of operation. Our wage rates today are equal, on the average, to 1929.

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We have abided by the P.R.A. and the Code of the Dry Cleaning Industry since it went into effect last November.

We have labored and sweated day and night to keep our institution afloat and we believe the country is about ready to face the future hopefully if confidence can be restored. The greatest obstacle to confidence today is a set of conditions which would be augmented and aggravated by this bill. This bill is predicated on grievances and will surely invite them. It will invite and encourage and incite more strife and disorder than we have ever had before.

The most important thing for peace and harmony is good relations and good relations mean free relations. A one-sided contract in which one party does not bargain, but is forced, is not a contract. This bill seeks to insure freedom for labor to organize and bargain collectively free from coercion, yet it denies this very thing—free bargaining with his own employees—to the employer. It lists many restrictions and penalties for the employer but not one for the employee.

In America we demand fair play. Any bill that starts out with such obvious partiality should be immediately remanded to limbo. Hasty action may imply purposes and cause effects which may not now be foreseen. If sufficient time is taken for conscientious deliberation, this bill will never leave this committee.

The measure presumes and presupposes that all employees wish to belong to an outside union which the experience of the employees of our company and many others in the country contradict. Before the recent propaganda based on alleged government encouragement, not over 10 percent of our nation's workers belonged to outside unions.

Since the American Federation of Labor is the largest and strongest body, and since Mr. William Green, the president of the American Federation of Labor, has stated that there is no room in this country for any other labor movement than the American Federation of Labor, our citizens have the right to assume that eventually, under present practices and policies, and under the practical application of the proposed law, "outside union" will mean the American Federation of Labor, or some other nationalized form.

This in effect gives one group a monopoly of labor with opportunity to exploit employees as well as employers and through its connections with the Government in the Labor Board and on N.R.A. advisory boards would gradually open the opportunity for the entire movement to be used as a political machine, thereby setting up with Government sponsorship one more strong organized minority to enforce its will upon the public.

As said before, this bill is not fair. Just as the right to work implies the right to hire, so the right to resign implies the right to discharge. The provisions against lock-outs could so be construed eventually to prohibit the right to discharge. It permits unrestricted strikes with all their lawlessness such as the recent taxi strike in New York and others with which I am familiar.

It establishes a cleavage. It separates employer from employee into two classes—when just the opposite is what we need and which is the only way successful businesses, which are really social assets, ever have been run, ever can be run, or ever will be run.

This bill gives the proposed Board more power than any court, by permitting it to determine its own evidence, by permitting it to cite alleged violators on any cause, by allowing it to change its charges

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at any time, by giving it power to delegate its authority to anyone at any place, by limiting the reviewing court. It also fails to specify unfair practices, and does not include regulations controlling labor.

The bill guarantees the right to strike, but does not guarantee the right to work. It deprives the minority of representation. It destroys present plans and relations that are honest, successful, fair, and just. It even forbids normal contacts between employees and employers that come as an inherent natural social right—merely conversation. It fails to insist on secret balloting, and may leave the methods and modes of elections to delegated people who may not be impartial or disinterested.

This bill assumes that most employers are unfair. I refuse to believe that this is true.

We do not believe that this fair country of ours needs any more restrictive laws or any more boards. Perhaps one of our major troubles may be a glut (or, to use the more recently popular economic term) a "surplus" of laws and boards; laws which demand for their administration, boards and bureaus, all of which cost the taxpayer more and more and add to the already well-nigh unbearable burden.

Laws are one thing. Their interpretation is another. If section 7–A of the Recovery Act is fairly, honestly, and fearlessly interpreted, according to the Administrator's rulings, it will accomplish everything this Wagner labor-disputes bill comprises and seeks to control. No additional laws are necessary.

Business is waiting to go ahead; ready to try to employ more people. Why hamper it further? Why not begin a period of wise and sane leadership, full of educational example and spiritual inspiration? Stop this process of compulsion, and give the American people and the nation a chance.

The Wagner bill will tend to restrict employment. Its defeat, or better yet, the refusal of this committee to report it out, will encourage every entrepreneur, and will do more to inspire confidence and to add to employment than any other single thing that can be done at present.

That is all of my testimony.

The CHAIRMAN. Mr. George A. Seyler. How much time would you like to have?

Mr. SEYLER. I am going to finish within our code time. I must, and if I don't, I will violate our agreement. That is, about 6 minutes—and I mean it. He took about 12, and he said 6. I mean 6.

The CHAIRMAN. All right, Mr. Seyler.

STATEMENT OF GEORGE A. SEYLER, WORKS MANAGER OF THE LUNKENHEIMER CO., CINCINNATI

The CHAIRMAN. Go right ahead.

Mr. SEYLER. Our company has been established since 1862, and during the entire history of the company we have had cordial relations with our employees, with the exception of a period starting May 3, 1920, when there was a strike in all the machine-tool plants, and the strike lasted until September 15, almost 5 months.

The strike was called by the International Association of Machinists because Cincinnati is known as the machine tool center of the world.

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Before the strike was called, the shops affected had 16,736 men at work in 105 of these shops.

We are not in the machine tool business, but nevertheless, our shop was struck with the rest of the plants and shops in town. During this strike, our own experience, approximately a half a million hours were lost, and well over $300,000 in wages, by our employees.

Since this strike, our relations with our employees have been very satisfactory. During the trying period of the last 4 years, we have worked with our employees to help them through the depression, at, of course, a considerable sacrifice to our company funds, and we know positively that our men appreciate our efforts. We are of the firm opinion that a good relation with our employees is just as essential as a good relation with our customers.

When the National Recovery Act was established last July, we entered into the spirit of the law, in order to do our part to bring back the recovery. We have always maintained a shop where men could work, regardless of their affiliations, and this is understood by all of our men today. We have no employees' representation plan in effect, and we have never been approached by the men about collective bargaining.

Each employee has always been entitled to bargain for himself, and can choose the person with whom he wishes to confer, from the president of the company, down.

When the Valves and Fittings Industry Code was adopted—we are in this code—we posted this on many of our posting boards. To date, we have had but two workmen ask a single question about the labor clause of that code.

In July 1933, we had 698 men at work on our weekly payroll. At the present time we have 901. I am sorry to report that business is now falling off to the point that this week we are beginning to shorten our schedules.

We attribute this decline to a lack of confidence our customers have in the future development of our proposed labor laws, because most of our customers are manufacturers.

I am opposed to the labor disputes act, because it assumes that the bargaining power between the individual employer and the individual employee has rendered the individual helpless to exercise actual liberty of contract. This is not true. I myself have come up from the ranks in our company. I was an individual worker, and through many promotions I was finally given responsibility as works manager of the plants.

Our general manager came up through the ranks, and our secretary came up through the ranks. I could take up a lot of time, but I promised to hurry.

We are not opposed to our men joining any organization. They choose from their own free will, and our men realize this, but the labor disputes act, to my understanding, further assumes that the only way to arrive at a decent and respectful and peaceful working relation is through a labor organization.

We would flatly bargain with our men on a collective basis, should they so desire, but I can assure you that our men now prefer to do their own individual bargaining.

I further note in this labor disputes act, that all of the unfair practices are defined against the employers, and under section 5, a

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number of these unfair practices are listed; but I fail to find where there are listed unfair practices that may be engaged in by labor organizations.

I know that industrial peace is based upon actual respect and understanding between employer and employee, and further, that if we assume that business is one continuous grievance after another, we are only inviting trouble.

If industry is given the opportunity to operate under N.I.R.A. codes, without disturbing legislation being constantly proposed, I believe we will make rapid progress toward recovery. I cannot conceive any benefits to be derived from enacting into law the proposed labor disputes act.

I thank you.

Might I have just one more word?

The CHAIRMAN. Yes.

Mr. SEYLER. Dr. Grier, of the Cincinnati Milling Machine Co., who had asked to have some time before the committee, had a serious accident in his family. His brother died, and we just had to put him on the train. Could he have time, if he would write for it, in the period coming? I would like to take him that message, if I could.

The CHAIRMAN. Has he prepared a paper?

Mr. SEYLER. He has, I believe.

The CHAIRMAN. Why not put it in the record, following your remarks?

Mr. SEYLER. Shall I tell him? I haven't his paper with me. Can I send that on?

The CHAIRMAN. You just send it on, to the chairman, and we will put it into the record for him.

Mr. James J. Ryan, how much time to you want, Mr. Ryan?

Mr. RYAN. I will get it off just as quick as I can. I have been 4 days here. It won't take very long.

The CHAIRMAN. Just give your name.

Mr. RYAN. I represent a number of independent organizations, national organizations, and local organizations throughout the United States, and also have the pleasure of representing the Veterans' Voters League of America, which, in their labor matters, amounts to a couple million men.

The CHAIRMAN. You are president of the Amalgamated Association of Bridge, Structural, Ornamental, Iron, and Bronze Erectors, and Affiliated Trades of America?

Mr. RYAN. Yes, sir. We are combined into that council.

The CHAIRMAN. You live at 551 West Fourteenth Street, New York City?

Mr. RYAN. No; 51 West Fourteenth Street, is one office, New York City. We are in a "Red" district, but we are not "Red", sir. I have heard a great deal of discussion in regard to——

The CHAIRMAN. May I ask, are you for or against this bill?

Mr. RYAN. Well, I am against some parts of the bill.

The CHAIRMAN. All right.

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STATEMENT OF JAMES J. RYAN, PRESIDENT OF THE AMALGAMATED ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL, IRON, AND BRONZE ERECTORS, AND AFFILIATED TRADES OF AMERICA, 51 WEST FOURTEENTH STREET, NEW YORK CITY

Mr. RYAN. I have a small brief here, stating in detail a few things, and I am not much of a lawyer. I was, one time, a pretty good iron worker, but necessity has caused a condition where our economic and social condition of this country needs some real support, and I have been instrumental in going out to see if we can organize, to the extent of bringing the country back to where it righteously belongs.

I am not a student of law, but I am one of Christ's children, and the knowledge and experience in the labor movement He has given me gives me a great pleasure to inform you gentlemen that the sooner the people in this country realize the teachings and rulings of Christ, and that Christ comes first, the sooner we will have prospertiy, liberty, harmony, among the people of this great country. I must say that I differ with Mr. Emery and the opponents of the Wagner bill, as we have a situation and a solution for the different things, which have never been brought before this committee. The opponents of this legislation are of the opinion that there is only one kind of organization, namely, the American Federation of Labor; but there are others, that will solve this depression, and they are not "Red", radical organizations, either, but progressive.

I believe that if industrial corporations in a great country would be willing to allow their employees to run their own organization, to bargain collectively with the employer, if the proper kind of organization were to be applied, a union run by the men for the men, and the men of their own choosing, as representatives, and not by a gang of racketeers and leaders of organizations, like we have now. The system and principles and policies of the type of organization are out of date. Let us get something new and up-to-date. We have an organization, and also have a program for the relief of the entire depression. I have a program here that has been submitted to the President, and written by one of our secretary-treasurers, which was the man that wrote a national recovery program. This is an entire solution to it, rewritten by order of Mr. Kuehne, Franklin D. Roosevelt's secretary.

The CHAIRMAN. Do you want to put that in the record?

Mr. RYAN. I will put it in the record, and I will explain it in detail, just a little of it.

The CHAIRMAN. It is not necessary to explain it, if you will just put it in the record. We will read it all. We have to read all of it, anyway.

Mr. RYAN. Well, that is something very interesting.

The CHAIRMAN. We would be very glad to read it, so let it go into the record.

JAMAICA, LONG ISLAND, *March 22, 1934.*

Hon. FRANKLIN D. ROOSEVELT,
White House, Washington, D.C.

Re plan for recovery program.

DEAR MR. PRESIDENT: On March 8, 1934, Mr. Kennee suggested that I rewrite my plan for the recovery from the depression, as submitted to you under date of April 7, 1933.

Under date of March 10 the same suggestion was repeated in writing from the White House, and it was stated that it should be done in as brief a form as possible.

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But a program of such gigantic importance cannot be stated in just a few words.

A basis for this plan must be found and propounded, as I have done on the first three pages of this brief.

The plan proper begins with page 4 and continues through to page 13, double spaced, and very little reading matter per page.

Special explanations are given in an appendix, numbering eight pages.

I know that your excellency's time is crowded full of action and that not much time for reading unimportant matters is at your disposal. This document, however, is of the utmost importance for you as well as the whole country, I trust, therefore, that you will bear with me and give this plan the consideration it deserves.

As far as I know, it is the only feasible thing and the only plan promising success.

Very sincerely yours,

WILLIAM KUEHNE.

FEDERATION OF BUILDING TRADES WORKMEN OF AMERICA

FOR REAL PROSPERITY

"Ye shall know the truth and the truth shall make you free."

The truth is—

(1) That God is Good, Life, Love, Truth, Charity. Seek (in the Scripture) and ye shall find.

(2) That God is Spirit, Soul, Intelligence, Mind—All Mind.

(3) That all of the attributes of God (good) are invisible (to most of us intangible) but real and substantial; in fact, the only Substance.

(4) That God is one—the only Mind, the only Creator, and that by this very Nature, all things created by him are good.

(5) That God (Good) has created all things, including man.

(6) That God (Good) has created man in his own image and likeness.

(7) That, therefore, man of necessity must have and has the same attributes as God.

(8) That man, being the image and likeness of God (Good) has the power of intelligence and reason, mind.

(9) That these attributes will lead man into knowing God. Knowing God will cause man to love God (Good) and his Neighbor as himself, for he will realize as there is only One water but many drops, so is there but One man in many persons and he will understand that God (Good) and Man are one.

(10) That physical man is the reflection and visible expression of the real, the spiritual man; the same as the house which is built, is only the reflection and expression of the real house, which was seen by the Architect's real eyes—His mind's eyes.

(11) That being without expression and reflection is unthinkable; nothingness. "Let the dead bury their dead but follow thou Me" by this Christ said: Man, without consciousness of his real self; without knowledge of the truth is dead, although he seems to be living.

(12) That, therefore, all that which is created expresses God (Good), love, truth, charity, spirit, soul, intelligence, reason, mind.

(13) That all things so create—expressing God—are created for man's comfort and well-being.

(14) That man has the power of seeing and knowing the truth but has neglected to use his mind-power, reason—wherefore man has forgotten and lost the consciousness of reality and has become the victim of error insofar as he looks upon the material reflections of God's true ideas as the real; and upon the true, real, substantial, everlasting, indestructible realities—as intangible phantasies.

(15) That man has lost his conscious connection with God (Good). Has and still is living in error and confusion and therefore in mental and physical misery.

(16) That Christ came to seek and save that which was lost (15), told us about our real selves; told us that whatsoever applied to Him applied also to us: He said: "Whosoever doeth the will of my Father is my brother, sister, and mother," and "All things are given to me by my Father which is in Heaven"; and "I am come to do the will of my Father, which is in Heaven"; and "It is the will of my Father that of all that He has given Me, I should lose nothing."

(17) That error is discord and disharmony in all things, mental and physical. Error causes disharmony in mathematics, music, domestic relations, production, distribution, economical conditions of individuals, nations, the world.

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(18) That in order to live in harmony and happiness, we must know the truth and the truth shall make us free from error.

(19) That in error is confusion, ignorance, or omission of truth, darkness, nothingness, and causes suffering.

(20) That truth is light and causes happiness.

After these truths I mention the following concerning economic conditions—

(21) The earth is created for man to live on; not for some men and women.

(22) Man, by himself, can do nothing; it is the Father who doeth the works:

He endowed the earth with fertility for all.

He waters the fields free of charge for all.

He gave us air to breathe and carry airships for all.

He made the oceans for all.

He deposited minerals, and so forth, in the ground for all.

All of these things are for the use and benefit of all (go to the ant, thou sluggard, and learn of him).

(23) Originally man had the power and ability to avail himself freely of the everlasting creations of God to sustain his physical body (reflection), the same as Christ demonstrated this power when he fed the 4,000, or when he made the water into wine. Likewise as the barrel of meal did not waste, nor the cruse of oil fail at the prophet's command by the widow of Zarephath; or as the flow of one pot of oil was not stayed until there was not a vessel to receive it.

This power was lost in the same measure as man lost his consiousness of the real, and was engulfed by the error of looking at the unreal, the reflection, as the true and essential things:

But: By losing his conscious contact with God, man retained his power of reason and understanding.

(24) By using reason and understanding, man can free himself from mental and physical suffering, if he plans his progress intelligently; not for the profit of some, but for the benefit of all and in order to eliminate suffering in the midst of plenty. I do submit and resubmit the following suggestions:

SUGGESTIONS FOR REAL PROSPERITY, AS SUBMITTED BY WILHELM KUEHNE

Under date of November 25, 1930, to Col. Arthur Woods; May 24, 1932, to President Hoover; August 23, 1932, to Mrs. Hoover; April 7, 1933, to President Roosevelt, Secretary Wallace, Secretary Perkins, Secretary Roper, Senator Wagner, Senator Long, Representative Bacon, Representative Brunner, Oliver Owen Kuhn, of the Evening and Sunday Star, Washington, D.C.

"I am the Truth; if ye love me, keep my commandments. I am come that they might have life and that they might have it more abundantly."—St. John, 14:6, 15–10; 10.

We must:

(1) Realize the truth that the riches on material things in a given country are the common good of all persons living in that country. That, therefore, all are entitled to food of all sorts; manufactured goods of all sorts; coal to warm them in winter; coal and gas to cook their food and light their rooms; electric current for the same purpose.

All of the above-named commodities do not cost one penny; they exist by the grace of God in abundance; they are made available by mental and physical work only, but all are public utilities and must be used for the public benefit and therefore managed by public agencies, and not by private individuals for profit.

(2) That transportation, as railroads, trolley lines, waterways, air lines, and shipping, is essential for the distribution and transportation of commodities and persons, and, therefore, public utilities, must be managed for the benefit of all and not by private individuals for profit.

(3) That communication lines, as postal, telegraph, telephone and wireless service, are in the same category and must be taken care of accordingly. For more detailed explanation see page 1; explanations under Public Utilities.

(4) That work is twofold, consisting of mental and physical exertion.

(5) That the mental worker, seeing God's own ideas and creations, produces images of what he sees with his mind's eyes, for man's comfort and these things, being the product of the one mind, are for the benefit of man, not for the benefit of him that has it and others who monopolize these God-given things, withhold them from the physical worker and the general public, selling them for profit out of pure selfishness.

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(6) That the physical worker, who has always and at all times, sustained mankind by his efforts, who has not kept for his own use and profit that which he produced, is entitled to have his burden lightened by giving him the benefit of mind's production as he always has shared his production, in the form of less working time; more time for relaxation and thought; more of the comforts of the earth which he has produced and is willing to share.

For detailed explanation see page 2, under Mind and Brawn, and Money Dominated Mind and Brawn.

(7) That there is only a certain amount of physical work to be done in any country and that, in order to reflect intelligence, we must plan this work and divide it equitably so that all can partake of it. For more detailed explanation see page 3, under Division of Work.

(8) That business is the production and distribution of all goods for man's comfort.

It is therefore obvious that every man, woman, and child is vitally interested in all business and that business is not of individual but of national concern and that for this reason it is the supreme duty of the National Government, responsible for the collective and individual welfare of the population, to be in business and to regulate the production and distribution so that all children of the Nation are adequately provided for. Business for profit must be abolished and business for use must be established.

(9) That agriculture is the most important branch of physical production; must therefore be regulated so as to provide the means for physical sustenance in sufficient quantity and to stop the cruel, idiotic, ignorant waste of human effort.

Secretary Wallace has accomplished these things to a certain extent. For more detailed explanation see page 4, under Agriculture.

(10) That industry must be regulated in the same way and manner. For more detailed explanation see page 5–6 of explanations under Industry and Foreign Trade.

(11) That foreign trade has taken the form of barter, as it should be and as the balance sheet will show. See above cited explanation.

(12) That money, being an imaginary measure of value for work performed and such value being created by concerned action of all, is therefore, the property of all. Money being also a medium for the facilitation of exchange of goods between persons, groups of persons, political and geographical subdivisions of the earth, it cannot be regarded as individual property but must be looked upon as public and national property—the lifeblood of the Nation, which, of necessity, must be kept in circulation in order to give life to all parts of the Nation.

For more detailed explanation see pages 7–8 of explanations, under the heading Money, Its Value, and Traits and the Law Under Which It Works.

(13) That we must stop lying to ourselves and to the public of the Nation about our national income.

We must admit:

(1) That the only income of the Nation consists of the balance from foreign-trade, plus gold and silver output of the Nation.

(2) That what is termed income is not income but turnover of money from one hand to another, in an endless chain or circle, so that the same money is expended and taken in continuously.

(3) That, if the turnover stops, business as we have conducted it, stops also. Where nothing comes in, nothing can be spent.

(4) That improvements within the Nation cause no expense whatsoever, but represent turnover of money within the Nation; working for your own family, as it were; and improving your own property.

(5) That the only expense of the Nation is money spent in foreign countries, by travel; money exportation and importation of foreign goods, which can be and is balanced by the same activity of other in relation to our country.

(6) That the profit system invites hoarding and withholding money from circulation; diminishing the turnover and producing stagnation.

(7) That the interest system withholds money from circulation if no profitable field of investment can be found, and so produces the same result—depression.

Proof no. 1:

Our national turn-over of money during 1925–29 was at an average of $83,031,000,000. Our national turn-over of money in 1933 was $36,533,000,000, a decrease of 50 percent. But the money is not lost, it is still in existence, although not moving.

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Our imports were in 1925–29, 9 percent of our national production, our imports were about the same. Our export income was in 1925–29, 6.18 percent of the national turn-over. Our import expense was about the same. This shows that our prosperity consisted only in national turn-over. Turning over only about 44 percent of the money used in 1925–29 has produced partially the results which we have experienced since that time.

Federation of Building Trades Workmen of America

PLAN FOR REAL PROSPERITY—EXPLANATIONS—PUBLIC UTILITIES

As under 1–2–3, page 425, if managed by private business and interests, are a constant drain on the Nations blood, Money, because they take more out of circulation than they put back.

Under these circumstances it is inevitable that a time must come where they find it hard to make both ends meet, because—

(1) They think that public service is a private business and that they who are engaged in such private business have a sacred right to derive as much profit out of it as the traffic will bear. For this reason they pay high salaries to those who know best to defraud the public and enrich their own clique by earning as much dividend for their stockholders as possible. They have forgotten that there is only one stockholder in any public utility and that this stockholder is the "people" and that this stockholder only is entitled to all consideration.

(2) They have lost sight of the fact that by taking more out of circulation as is put back, the circulating medium of exchange is naturally thinned out. Such thinning out process results in:

More conservative spending of money; less employment of labor; less money in circulation; fewer payers of taxes; greater taxation for the few; foreclosure of private property for nonpayment of interest and taxes; wage cuts for employees; more reduced circulation of money; closing down of factories—and so it goes on in an ever-widening circle, unless we realize that real prosperity can only be had by applying reason; by keeping the lifeblood of the Nation in circulation rather than in bank vaults; by realizing that as the blood of the body does not belong to the foot which carries the body, nor to the hands which perform the work of the body, nor the head which plans the work for the hands to do, but to the whole body; so does the money, the blood of the Nation, belong to the Nation and not to a part thereof.

WILHELM KUEHNE.

Federation of Building Trades Workmen of America

EXPLANATIONS—MIND AND BRAWN

God has endowed man with mind and brawn. Brawn to do physical work not only for him who engages in mind work. Mind is the only and exclusive power in man.

But they who engage in physical work have little time to engage in mind work; it is required of them to produce the life-sustaining things for all the mind and the physical worker.

It is obvious, therefore, that as the physical worker shares his product with the mind worker, so must the mind worker share his produce with the physical worker in order to lighten his burden.

MONEY DOMINATED MIND AND BRAWN

The mind worker was under the dominance of money and money has changed from the beneficial medium of exchange for the fruits of all labor, mental and physical, to the visible and physical embodiment of the exact counterpart of charity—selfishness.

For this reason the physical worker has gained every fairer share of his labor by force and collective bargaining but of its own volition money has given him nothing.

Is that fair? Considering that all, the mental worker, the physical worker, and them who have taken possession of the fruit of both, are brothers? Belonging to the same human family?

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Many of the third variety of human brotherhood has said, "We had depressions in the past"; but they do not mention the fact that every so-called unemployment period was nothing but an oversupply of labor and that every depression abated only after a subsequent redistribution of labor in the form of shorter hours and working time (in most cases affected by the activities of the workers against the resistance of the money power) until we arrived from 14 hours per day and 6 days per week in 1850 to 8 hours per day and 5½ days per week in 1907, and that every time the working time was shortened the wages were raised.

From 1906 to the present day no redistribution of working time has taken place. We still have the 44 and in many cases the 48-hour week, notwithstanding the fact that more time- and labor-saving devices have been invented, perfected, and put into operation, the product of mental work, than in all the time before; of which the physical worker has not received his fair share, neither in economical blood money nor in easement of effort, shorter working time.

WILHELM KUEHNE.

(Written in April 1932.)

FEDERATION OF BUILDING TRADES WORKMEN OF AMERICA

EXPLANATIONS—DIVISION OF WORK

We know that the population of the United States of America is roughly 126,000,000.

We subtract from this sum the children up to 20 years of age and those that are over 60 years of age, three-sevenths of the population, 51,000,000.

Then we have in productive age, 75,000,000; of these we say not more than one quarter are housewives, 17,000,000.

Then the population available for prduction is 58,000,000.

From this sum we deduct bankers, business executives, storekeepers, teachers, public officeholders (Government, police, mail, fire), Army, Navy, lawyers, and doctors, approximately 9,000,000.

Then we have human material for production, 49,000.000.

At the present time there are unemployed about 15,000,000, which leaves in production and merchandising about 33,000,000, which are working, when they work, per week, 44 hours, 44 hours.

In this time the nation's work is done. There is no more work and consequently no jobs.

It is obvious, therefore, that it is necessary to distribute the work now done by 33,000,000, between these and the idle workers which is 48,000,000 in order to give employment to all. Therefore the working time must be reduced by the agency which is empowered by the people to govern its affairs, the Government, is necessary by law.

The Government has the power in war, it must have the power in peace in order to act for the benefit of its subjects; so that the whole situation can be solved by a very simple mathematical problem, namely, 30 hours.

$$\frac{33{,}000{,}000 \times 44}{48{,}000{,}000} = 30 \text{ hours}$$

At the same time the wages must be raised for the shorter time, so that workers will receive the pay formerly received for the longer time plus additional pay equal to the time taken off of the longer work periods, but in no case should the weekly earning be below $30 per week.

WILHELM KUEHNE.

From the submittal under date of April 7, 1933, and May 24, 1932.

EXPLANATIONS—AGRICULTURE

Due to the profits obtainable in agriculture unchecked and unregulated human self-interest has promoted more and more men to take up farm lands.

More and more people produced eatables but only a certain amount thereof could be consumed.

We can buy more clothes and automobiles than we need but we cannot eat more than we need, and even our cotton is not consumed by the clothes we wear.

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Greed of man and work for gain instead of work for human comforts and happiness, caused overproduction in agriculture quite early.

We established a Farm Board to help the farmer, but the Farm Board has failed to increase the eating and clothes-wearing capacity of our and foreign nations; has therefore accomplished absolutely nothing in the line of help to the farmer.

Even the drought of some time ago with its devastating result to some farmers and banks has not diminished our agricultural supplies. If the produce would not have been dried up it would have been wasted otherwise, which is demonstrated by the fact that we got well along without it and therefore did not need it. Prices did not rise higher.

From this it must be apparent, even to our learned experts, that under our present methods of production not only produce but also labor, human endeavor is wasted.

And now we ask the question:

Is it sensible for God's creatures, endowed with a reasoning mind, to torture their bodies with manual labor beyond the point of necessity decreed by God and the welfare of mankind?

We have a Farm Board and a Department of Agriculture. We know that every other country produces enough to feed its own population or very nearly so. We know that for this reason it is futile to look for foreign markets for our farm products. We also know that for the same reason our farm products is needed.

Is it therefore not reasonable to assume that our Department of Agriculture can ascertain how much farm land is available for the supply of our people?

Is it not plain that this should be done and also, that the Department of Agriculture should not ask but command that only enough farm products be cultivated each year to supply the necessities of the Nation and about 25 percent more to provide for emergencies?

And is it not reasonable to assume that by such measures the farmer should be enabled to provide all he needs for himself; receive a fair price for his products; would save a great amount of unnecessary labor and expense and would again be on a self-sustaining basis?

And that the God-given blessings to mankind would not be wasted any more?

I believe the answer to every thinking mind.

The same question and answer applies to industry.

WILHELM KUEHNE.

APRIL 1932.

FEDERATION OF BUILDING TRADES WORKMEN OF AMERICA

EXPLANATIONS—INDUSTRY AND FOREIGN TRADE

Within the last hundred years industry has sprung up; factories were built; work was created for all kinds of trades.

With the advent of the steam engine steamships were built, railroads were built to unlock foreign and remote countries in order to make money out of trading with them. Premiums were offered to them who raised the biggest families, for workmen were needed.

New fields of trade were sought to dispose of the surplus—new countries unlocked; the world was discovered, until then today there is hardly a square mile which is not known to the President, merchants, and the governments.

The rugged individualism was the law by which great fortunes were accumulated. Rugged individualism, which only sought it's own, enslaved the world without regard to anyone. Rugged individualism, which had countries to conquer and to bring into touch with the so-called "civilization", may have had a semblance of right to exist in those days, but today, where conquest has ceased and normal supply of the known demand by the people of any country in the rule, rugged individualism must be supplanted by collective action of all for all; in other words, production for the use of the home market; the supply with the necessities of life to all; work for the benefit of the country instead of for the profit of individuals must be the rule. But back to the subject:

First, firm competed against firm, but gradually nation competed against nation for the custom of foreign countries. Duty was charged and tariff walls were erected by nations to safeguard their own industry.

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Now let it be remembered that industry countries were few. They had the whole world for a market and still competition became so keen between these few countries that it caused the World War.

Under the profit system of production, merchandising, and transportation the whole world with little or no industry had become tributary to those parts of the world whose industry and production was highly developed. As the tributary countries could pay with goods of their own production only to such an extent as their goods were needed by them who supplied them with goods of industrial protection, the tributary countries could and had to pay the balance in cash—hard metal, which has been a constant drain on the life blood of these countries.

The war lasted a little longer than contemplated and something else happened.

Unindustrial countries developed an industry of their own. Our rugged individualism helped them in doing it.

They figured that the goods which they formerly sold to foreign countries could be cheaper manufactured over there and so a good amount of labor and transportation could be saved and they could make greater profits. They took billions of dollars—crystalized American labor—invested them in foreign countries and so set this crystalized American labor to compete with the still uncrystalized American endeavor.

This act by rugged individualism has necessarily caused a great decrease in work in our home country, work, which we will never be able to regain.

For this reaon, the railroads are idle to a great extent as freight carriers; ships also are laying up for lack of freight.

In other words, business expansion in industrial countries has come to a stage where we must realize that expansion is at an end and that therefore we must settle down to supply the needs of our own country on a basis of need and not for profit.

In this connection it may be well to mention that rugged individualism is also guilty of robbing the people of this nation of thousands of millions of dollars by inciting the general public to do the same as rugged individualism always has done—to profiteering.

They have taken the public's money by promising them big interest and profit from investments in their industries enterprises without considering that no enterprise can possibly earn legally and honestly a fair return on twice its worth. If they have been ignorant of the fact that this cannot be done then they are unfit to manage such enterprises and if they knew this fact then they are guilty of plain theft and robbery.

I cite here only one item which may serve to illustrate the viciousness of financial piracy or rugged individualism:

"Niagara-Hudson to issue new shares 1 for 3 to cut present 45,000,000 to 15,000,000—Reduce capital to $225,000,000 from $450,000,000." (New York American, Mar. 20, 1932, p. RE 4.)

Draw your own conclusions.

Trade intercourse between nations will always be, it must be, but it will go back to barter (as ours already has) as originally intended, not for profit but for the just exchange of goods for the benefit of man.

Each nation will endeavor to make itself independent from other nations with the exceptions of such goods and products which it cannot supply by reason of ground deposits or geographical location.

Therefore, industry must be managed by the Government. It must be ascertained what and how much of all industry is needed in the country and the work must be products allotted to the existing factories to produce them. In short, our industrial activities must be carried out according to a program of production, supplying the needs of the Nation.

Written in April 1932.

WILHELM KUEHNE.

MONEY—ITS VALUE TRAITS AND THE LAW UNDER WHICH IT WORKS

The only real value, besides mineral deposits, products of the ground's fertility, sunshine and rain is the mental and physical working power of man.

Proof: If all men and women engaged in production, all employed in one way or another, would stop to produce for 1 week, a million dollars would not be able to buy a loaf of bread.

Money pays no debts. Proof: A, B, and C owe each other $10, $100 or $1,000, or any amount of money. A finds a dollar and pays it to B on account; B pays it to C, and C pays it to A on account, then $3 is paid.

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Now continue the circle 10, 100, or 1,000 times and the debt is paid. Then let D, who lost the dollar, meet A and A pays D his dollar back, then what has happened?

The debt is paid, although neither of the three had nor has now any money but, by the physical handling of that dollar, the illusion of being in debt has been obliterated, wiped out.

Taking it in exchange for goods does not give it any value. Proof: One quarter will buy two tins of tobacco. The one who sold the tobacco can exchange it for two more tins; so can the third, the fourth, and so forth. Hundreds, yes, thousands, and millions of tins of tobacco can be bought for that same quarter. It may change hands as often as it pleases but it will never satisfy any of the desires of man, which shows that it has no value, except as an article of exchange for something which has value, as the tobacco, which satisfies a desire of man.

Money was originally intended to serve as a medium to better facilitate the exchange of products of work.

Money was the medium and the just distribution of goods the desired effect.

This state of affairs has been totally changed.

Today the distribution of goods of all sorts, from the working power of man to industrial and agricultural products of man's work is the medium by which the desired effect, the acquisition of money is obtained.

What a change from the original, intended, to the present unnatural state.

EXPLANATIONS

Money has no value but under the profit-and-interest system it has some vicious traits. It acts like a magnet, but not in the same order or under the same laws as an electromagnet.

The electromagnetic law is: Like poles repell each other, unlike poles attract each other.

Under this natural electromagnetic law the dynamo, generator, or motor work efficient and well.

The money-magnetic law is: Like poles attract, unlike poles repell each other.

The exact counterpart of the natural law; because, the money-magnetic law is man-made inspired by greed and selfishness; acts against nature and has therefore caused grief and strife ever since its conception.

The economic generator has three poles: Money, employer, and worker. Money and employer are negatively charged and worker positively.

For this reason money and employer attract each other and worker or producer is repelled by both.

Besides this result money has another effect, self-attraction. Through this peculiar force, which is an induction caused by selfishness as exemplified by profit and interest, money has attracted money to a few places, forming the most huge economic blood accumulations in the world.

By attracting and amassing money (economic blood) in a few places, other places must naturally be drained of blood, so that while certain parts of the economic body are in danger of a hemorrhage, due to high blood pressure, other parts are in danger of starvation due to the absence of the life-giving economic fluid.

If now money is the lifeblood of the Nation and blood carries the particles of nourishment to all parts of the body then it must by necessity reach all parts of the body. If it does not, then those parts of the body who are cut off from the blood supply must be affected by undernourishment.

Undernourishment causes decay and decay causes the next lying portions of the body to be affected and finally, if not a preventive operation is performed, the whole body is affected and the result is, death.

If a human body is affected in this way, a blood transfusion is resorted to; an analogous process must also take place in the body of a nation.

But what did our national doctors do?

Instead of injecting, they extracted blood out of the body (the Nation) by cutting the wages of their employees.

Instead of bringing more money into circulation, they took hundreds of millions of dollars out of circulation; prevented their employees from spending money. Made the patient more ill and if this goes on, will finally cut their own throats quite efficient and effectively.

Proof no. 2, steam heating plant: As water is transformed into steam by fire; so is human intelligence and effort transformed into money by work.

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As steam circulates through the pipes and radiators, giving warmth to the rooms in which they stand, so money must circulate through all hands in order to bring comfort to the Nation.

As steam condenses and returns to the source of its supply after it has done its work; so must money return to the source of its supply in order to start its circle anew.

As leaks in the steam system prevent all of the steam to return, so do profit, interest, private and bank ownership prevent money from returning and circulating.

As steam is lost by leaks, forming pools of water (wasted energy) to form where the leaks are, so does the present ownership of money form pools of crystallized human efforts, wasted by interrupted circulation.

As the waste in the steam plant requires fresh water to be added to the boiler, only to be wasted again, so is human energy applied again and again only to be heaped up in crystallized form by someone who had no part in the crystallization process.

As more coal is required to heat the added water in the boiler, so is more work, unnecessary work, needed to produce more wealth, only to escape through the "leaks," but if the leaks in the steam system are not stopped, the steam plant will finally fail. So has our economic system failed and cannot be made to function properly and beneficially for the people and the Nation until the leaks are stopped.

In order to do this, all money must be nationalized and all banks must be Government owned, so that the money will circulate, will end the strife caused by taxation and will put the peoples' Government in a position to use its own at all times, without borrowing it and pay interest on its own crystallized intelligence and past endeavor—money.

FEDERATION OF BUILDING TRADES WORKMEN OF AMERICA—SUGGESTIONS FOR REAL PROSPERITY

"I am the Truth; if ye love me, keep my commandments. I am come that they might have life and that they might have it more abundantly."—St. John, 14:6, 15-10:10.

That we must know the answer to the question: What is prosperity?

We have the materials necessary to build a house for every child of this Nation, provide all known comforts for every house, build an automobile for every family, give the best of clothes to every one, provide the best of food for everyone.

All of this can be done with planning, proper management, and a small amount of physical exertion. If an army of more than 4,000,000 can do these things collectively in war for the destruction of man, then why should it be impossible for an army of 126,000,000 to do these things, also collectively, in peace, for the happiness of man?

We cannot do more than eat, sleep, wear clothes, have a roof over our head, partake of the bounty of our land, have recreation, enjoy the things which God has given us, develop our land, work, love each other, and devote the rest of our time to seek more of the Truth.

We are living right now in the greatest prosperity and are ignorate of the fact. With seeing eyes they see not.

We are looking for something without value and are overlooking the greatest of all value: The bounty which God has given us to enjoy.

We do deserve a good kick in the backside and we ought to ask the question, What shall it profit a man if he shall gain the whole world and lose his soul? Are we civilized?

That our educational system is radically wrong because we have neglected to seek the truth, not knowing the truth, we have not been taught the truth nor have we taught our children the truth.

Instead we have been taught to seek and serve money; that money is power; that money is the only thing worth while having; that the esteem for man is not measured by his moral possessions but by the amount of money he has accumulated; that it matters not how you acquire money but how much you have of it.

In consequence of such teaching we have made places of training out of our schools. We have trained ourselves and our children to earn, borrow, or steal money, so that we might have power over them who revere money and are

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willing to serve in order to obtain it, and in turn exercise the same power over other men.

We are, and our children are, trained like circus animals performing tricks. Some perform them out of fear of the whip, others because they know that after the performance they eat. Education we have none.

The ministers and pastors of churches are ministers and pastors in name only, trained animals, like us.

Christ said: "Preach the gospel and heal the sick. The works which I do, ye shall do also." But do they?

They too, are servants of money. None has raised his voice against the money worshippers, except Charles E. Coughlin.

Being ignorant of the truth and trained to make money, mankind is also ignorant of the causes for the downfall of our economic system based on money-worship, expressed in profit, interest, selfishness.

Being ignorant of the causes, General Johnson, his N.R.A. staff, the farmers, industrialists, merchants, and working men struggle in vain to emancipate themselves from something they are afraid of, which they cannot understand and therefore not master.

Their teachers, ministers, and pastors, professors, and economic experts are as perplexed, as confused as they are. Strikes are increasing and if no change takes place, revolt and upheaval will be the result.

God said: "Come now, let us reason together." And "Damned is the man who maketh flesh his arm."

Christ said: "No man can serve two masters; either he will love the one and hate the other; or he will hold to the one and despise the other. You cannot serve God and mammon."

WHOM ARE WE SERVING?

In order to save the country and the people from themselves and from chaos, education is necessary. The truth must be made known to the whole Nation.

Ministers, pastors, teachers, professors, and newspapers should be called upon to do their duty for once. For once to tell the truth to the people, after they themselves have learned the truth.

To get back onto the right track the cooperation of all is required but in order to gain the cooperation of all, they must know that it is for their own good to change their way of looking at things; and before they can do that they must know the reason for our economic conditions.

They must know the truth and the truth shall make them free.

They have been asked to cooperate but no plausible reason has been given them why they should.

Let us educate the public; let us tell them the truth. They must come to realize that the old order of things is rotted away; that the new order must be acknowledged; that suffering, caused by wrong thinking and application must cease; that selfishness must be shunned like poison so that love and happiness may take their place. That we may have life and have it more abundantly.

Respectfully submitted.

WILLIAM KUEHNE.

JAMAICA, LONG ISLAND, N.Y.

Mr. RYAN. Consequently you have, with that program and the solution I have in my hand, two ways out. Craft unionism is out of date. We have to use a different method, where the employer and the employee will agree and arbitrate and settle their differences at a table and not in the streets. We propose to organize the people of this industry for small dues. A dollar a month dues is plenty and sufficient to run any organization, if properly applied. We have a constitution that is racketeer-proof, where the rank and file vote direct by a referendum vote, and we have a recall in there that will eliminate one officer or all officers at any time. I have evidence of the extremes that racketeering in the various organizations have gone to, and it has caused the condition that is beyond recall. That type of organization will have to be eliminated if we ever expect to bring this country back to where she belongs.

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Our organizations are communistic, socialistic, I.W.W., or any radical basis. We are for our taxpayers and voters and citizens of the great States we do business in. I have read this Wagner bill over very carefully and have a few suggestions and remarks to make in regard to the legislation in this bill.

I would like to know if a provision could not be inserted in this bill whereby at least one man from an independent organization would be appointed on the board of seven members. This is a question of vital importance, and it should have serious consideration. You men have only started to make legislation for the working man of this country. The Wagner bill is one of the finest pieces of legislation in history, and I hope to God that no man will vote against it.

It defines very clearly what a union constitutes, and what union people should have, in regard to their American rights. It gives us an opportunity to settle jurisdictional disputes, which are the greatest menace to organized labor in this country.

Franklin D. Roosevelt, our President, has given the citizens of this great land tools to work with, and we are going to use these instruments and cooperate with the President 100 percent, and pull this country out of the hole and do so fast. There has been legislation passed to control industry, and legislation will have to be passed to control labor. Racketeering in labor organizations has caused a condition that will have to be rectified and done so very quickly. The destiny of this country is in the racketeers' hands, and I can prove it. I have evidence in abundance, where bricklayers have been working in New York for $13.20 a day and using the mails to send $8.20 a day into New Jersey, to the bosses and delegates. I have it for plasterers, "kicking back" $4 a day; painters $6.10 a day; plasterers' helpers $2.50 a day; and all kinds of it. It is a disgrace to unionism; men with American Federation cards paid up to date, so-called "union men", no fines put on them, not thrown out of the organization, not even brought up on charges or anything else.

We have legislation passed whereby men have the right to belong to a union of their own choosing, and we, as American citizens should not have to pay any 4, 5, or 8 dollars a month dues, high initiation fees, to have a gang of racketeers take our money away from us for the privilege of trying to make enough money to feed and clothe our wives and little ones.

My God, do these men have any consideration for the starving people?

If jobs were plentiful right now, where would men and women get money to pay the exorbitant fees asked for a union card now? The terribly little amount of money that the greater part of our working people make today deprives them of paying for union cards at the rate asked.

We are going to organize our men and women that work for a living in the great country, for a fee of from 50 cents to a dollar a month and educate them on a national recovery program and give them real protection, cutting out the rackets and graft.

We observe that under section 7 (a) of the National Recovery Act, we have to change our principles and policies, with time, and here is a change that has to be made quick; too much greed in industry and also too much greed with labor racketeers. Craft unionism is out of date, unethical for these times. We have to be in one union,

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and then we will eliminate disputes and settle our differences very easily. Our unions will give the masses in this country plenty of protection. With proper cooperation, the wheel of industry will be moving soon, and that prosperity that we have been looking for so long finally will arrive. I have a plan for this policy, right here, and if carried out it will do what we have been looking for, for the past 4 years. One of our laboring men produced this national program, and the same man a solution for handling conditions as they are right now. His name is William Kuehne, one of the secretary-treasurers of our unions, the Federation of Building Trades Workmen of America.

In conclusion, gentlemen, isn't this solution American, liberal, progressive? It will stop the revolution and not so destructive or so disastrous. Dictatorship and forced dues in any American Federation of Labor organization is not American, and we are not going to be any part of the American Federation of Labor. The United States of America is a free country, and we are not going to be forced into the American Federation of Labor.

Now, a condition arises where it is thought our forefathers put up for—taxes without representation caused one of the greatest difficulties in this country that was ever produced. We are forced to pay anything that those delegates want to charge to get into a union, and after you are in there and you work 2 or 3 days you are out, you hit the line again. We have some records and affidavits, a suitcase full of them. They are in the courts all over, and nothing is being done.

William Green does nothing. According to his own statement, under cross-examination by General Johnson, he says that the men on the labor board are specialists, and that the codes are passed by the chairman; in other words, "Doc" Wolman passes the code. After they deviate into the question a little, General Johnson informs Mr. Green that they are his babies, not the general's.

Now, if that is the kind of representation we are going to have, and that man deliberately takes it on himself to speak for 40,000,000 people, it is time there should be something done.

I thank you. That is enough.

The CHAIRMAN. All right. The committee will stand adjourned until tomorrow morning at 10 o'clock.

(Whereupon, at 4:20 p.m. Thursday, Mar. 29, 1934, the further hearing upon S. 2926 was adjourned until 10 a.m., Friday, Mar. 30, 1934.)

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TO CREATE A NATIONAL LABOR BOARD

FRIDAY, MARCH 30, 1934

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The committee met, pursuant to adjournment, at 10 a.m., in room 318, Senate Office Building, Washington, D.C., Senator David I. Walsh (chairman) presiding.

Present: Senators Walsh (chairman), Thomas, and Davis.

The CHAIRMAN. The committee will please come to order. Mr. Hall.

STATEMENT OF ROY F. HALL

The CHAIRMAN. Your full name?

Mr. HALL. Roy F. Hall.

The CHAIRMAN. Your residence.

Mr. HALL. Rockford, Ill.

The CHAIRMAN. Whom are you representing before this committee?

Mr. HALL. The National Lock Co.

The CHAIRMAN. Where are they located?

Mr. HALL. Rockford, Ill.

The CHAIRMAN. How many people do they employ?

Mr. HALL. Prior to August 31 they employed about 1,200.

The CHAIRMAN. Are you in favor of this, or opposed to this measure?

Mr. HALL. I am opposed to it.

The CHAIRMAN. We will be glad to have your views.

Mr. HALL. Mr. Chairman, the National Lock Co. has had an experience with labor agitators and with the Labor Board, and if I can tell that simply, I know that I can furnish you some food for thought on the question of whether or not this bill should be enacted.

I am but a country lawyer, and in this presence I probably could not do as well as I could at home.

The CHAIRMAN. I used to be a country lawyer, so I am in sympathy with you.

Mr. HALL. You can sympathize with me.

On the 31st of August, in the early morning, without any previous demand of any kind whatsoever, a few labor agitators, about 5 o'clock in the morning, got to the front of our plant, where men come into work and told them that there was no work that day, and that the Federal Labor Union was going to rob that plant.

The CHAIRMAN. Which labor union?

Mr. HALL. Federal; the Federal Labor Union, they called it.

A number of the people did not go to work that day, some of them through sympathy with the principles that the men represented some

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of them through fear, and some of them through other reasons, so that about 700 or 800 of them walked out that day and left their jobs.

The president of the company was in Chicago that day; he left in the early morning, and we got him back as soon as we could.

These workers went to a park, selected a committee of seven, and when the president got back at 4:30, we called a meeting of the employees, committee and all.

The committee came to the meeting, and after about the first word the president uttered, the committee jumped up and rudely left the meeting and said, "Come on, committee, this is not our meeting."

We did everything to get them back and bargain with them.

The CHAIRMAN. Were you present at the meeting?

Mr. HALL. Yes, sir. We tried to find out what was the trouble, but they would not come back, and induced others to leave the meeting.

The CHAIRMAN. Just a minute. Were the employees of this kind organized prior to this date?

Mr. HALL. Not that we know of.

The CHAIRMAN. You had no official notice of personal information that they were organized?

Mr. HALL. No, sir; and, so far as we know and believe, they were not.

The CHAIRMAN. How many employees did you have?

Mr. HALL. There were about 1,200 on that morning.

The CHAIRMAN. Now, you had this conference, this attempted conference, and those who represented the employees, or claimed to represent them, left indignantly, and refused to go on with the conference?

Mr. HALL. Yes, sir.

The CHAIRMAN. What did you do next?

Mr. HALL. There were about from 150 to 400 people there. We held a meeting, and those people agreed that they would at once, or shortly thereafter—Labor Day intervened—return to work, and each one would try to bring a man with him, a man or a woman.

They did that. They returned—I should say, the company had a large number of orders, just happened to have them; it was unusual, and these people knew it. We had to employ people wherever we could get them, and try to fill those orders. We lost business, lost our orders, but with those that we employed, and those that came back, we had almost a full force, so that there are now probably from 100 to 200 that have not returned.

The company has secured an injunction against the employees from congregating around the plant. It was a very mild injunction and was not obeyed. We secured another one, and that one had teeth in it, and it was obeyed.

A little later, through a union labor agitator that we have there, who runs a labor paper, the matter was referred to the Labor Board, and by them to the Chicago Regional Labor Board.

A man named Lapp was delegated to settle that strike, to come down and take evidence, and the like.

The CHAIRMAN. He has testified before this committee. He has some connection with this Labor Board.

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Mr. HALL. Yes, sir; he is supposed to have. At that time I think the President's proclamation was not very satisfactory to establish anything.

At any rate, we investigated Mr. Lapp and found that he was not satisfactory to us to settle our dispute. We went before the Circuit Court of Winnebago County, and brought suit against the Chicago Regional Labor Board and Mr. Lapp, and asked the court to enjoin them from hearing that dispute.

Mr. Lapp came, and while Mr. Lapp was there, we served summons on him, and gave notice to him that we would apply to the court at a certain future date for an injunction, and if I may read to you what occurred at that meeting, you will know why we are opposed to this bill, and I think it will give you some idea why this bill should not be passed.

The CHAIRMAN. You may read it.

Mr. HALL. This is sworn to both by the deputy sheriff and myself. We made these notes immediately after the thing occurred. [Reading.]

There was present Adolph Germer and four or five other men and a lady. These evidently represented former employees of National Lock Co. There was also present, Roy F. Hall, representing National Lock Co., and William Bell, a deputy sheriff of Winnebago County, Ill.

The parties waited for about three quarters of an hour beyond the time set by John A. Lapp as the time when the meeting would convene.

Enter Mr. Lapp and Mr. Mullenbach.

Mr. LAPP. "We have been delayed on the way and we will proceed immediately to the matter in hand." He then proceeded to name three or four names of persons who are prominent in business, and then states, "You can see from this that the board is composed of representative men.

"There was a complaint filed before our board some time ago by the strikers of the National Lock Co., and there was referred to us 2 or 3 days ago from the National Labor Board a complaint by the strikers. The Chicago Regional Labor Board is affiliated with the National Labor Board and we are representatives of the Chicago Regional Labor Board, and therefore of the National Labor Board. We are Federal officers."

"Inasmuch as the strikers have made the complaint, it will be proper to hear from their spokesmen first." He turned to Mr. Germer and said, "Are you the spokesman for the strikers?" Mr. Germer advised in the affirmative. Lapp said, "We will then hear you first."

At this juncture, Mr. Hall said, "I represent the National Lock Co. and I have a special appearance I desire to file protesting the jurisdiction of the board at this time to conduct a hearing or to make any report or statement whatsoever. We believe you have no jurisdiction of it." Whereupon Mr. Hall laid on the table the special appearance in writing.

(At this point, Mr. Handler presented a paper to the chairman.)

Mr. HALL. Mr. Handler has butted into this thing all along, and I want to say something about him before we get through, but I would like to have the attention of the court rather than have him——

The CHAIRMAN. He has just handed me the decision of the board.

Mr. HALL. Yes; and I am going to refer to him shortly.

The CHAIRMAN. Proceed. This evidence, of course, that you are presenting now is for the purpose of indicating that under such a board as is proposed in this bill, employers could not expect to get fair treatment?

Mr. HALL. Not only that, but to show you the arbitrary manner in which those things are handled even at the present time.

The CHAIRMAN. They are not investigating that.

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Mr. HALL. I know, but if you know how they handle it now, you will know how they will do under this bill.

The CHAIRMAN. I suppose so. I was helping you. I suppose the reason you are offering this evidence is to show the state of mind of the Labor Board that you have experienced, and you would expect to find it in any board named, and, therefore, it is not to the advantage of employers to have this bill enacted?

Mr. HALL. Yes, sir. I will continue with the statement [reading]:

Mr. Lapp did not read the appearance, or look at what was in it; he merely pushed it aside and into other papers which he had and stated, "Your protest is overruled. We are Federal officers, and we will pay no attention to the protest but will proceed to a hearing."

Thereupon Mr. Hall said, "We did not know how you would feel about the question of jurisdiction and so I have begun on behalf of my client a suit in the Circuit Court of Winnebago County, Ill., protesting that you have no jurisdiction and challenging it and asking the court to grant an injunction both temporary and permanent against any action at this time on account of the walkout at the National Lock Co. August 31.

Mr. Lapp became greatly excited and appeared very nervous. He spoke in a loud, harsh tone of voice. He said, "We are officers of the Federal Government. We do not recognize that a court has any authority over us. We are not acting under the courts and the courts cannot regulate us in any way. We are Federal officers and the hearing will proceed."

Mr. Hall thereupon said, "I have a notice which I desire to serve upon you to the effect that we will appear before the circuit court and ask a temporary writ of injunction against you; we expect to do this on Tuesday, December 5, 1933." Thereupon Mr. Hall laid before Mr. Lapp and also before Mr. Mullenbach a copy for each of them of the notice.

Thereupon Mr. Lapp said, "You may do what you please about giving notice. We will not appear before any court; we are not subject to be directed by any court. We are Federal officers and not responsible to the court, and we will not pay any attention to any notice you may serve." This was spoken by Mr. Lapp in a very loud and angry voice. He was standing. He shook with emotion, his face was white and he was very angry. While he was saying those words, he struck the table a hard blow with his fist.

Thereupon Mr. Hall said to the deputy sheriff, who was present: "Well, I think you should serve the summons."

Thereupon William Bell, deputy sheriff of Winnebago County went over to where Mr. Mullenbach was sitting at the table and leaned over toward him and spoke in a very low, quiet voice and said, "Are you Mr. Mullenbach?" Mullenbach said, "Yes." Mr. Bell began to read the summons. Mullenbach raised his hand and said, "You can't read a summons to me. I am a Federal officer, and the courts have nothing to do with me. I won't pay any attention to it and we are not subject to any orders of your court." Mr. Mullenbach was very angry and spoke in a loud tone of voice. Thereupon Mr. Bell continued to read the summons until it was completely read. He then laid on the table in front of Mr. Mullenbach a copy of the summons. He then stepped to where Mr. Lapp was sitting at the table and started to read the summons to Mr. Lapp.

Mr. Lapp hit the table several violent blows and said, "You can't do that; you can't read a summons to me. I am a Federal officer and your courts have nothing to say about me; I will attend to the business I have and pay no attention to your court."

This is only a part of what Mr. Lapp said, but I cannot remember exactly what the rest of it was but it was of the same general tenor.

Deputy Bell thereupon raised his hand and said to Lapp, "Just a moment, now. I am here to read this summons and I intend to read it to you." Thereupon Lapp quieted himself to some extent. The deputy finished reading the summons and handed a copy of it to Lapp. Lapp at first pushed it away from him and then he grabbed the summons and tore it into probably a dozen pieces. He was very angry. His face was white, and after he had torn the summons into a dozen pieces, he wadded them up in his hand and threw them into the face of Mr. Hall who was standing far enough away that the papers fell before reaching his face.

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The CHAIRMAN. Did the judge bring him in for contempt?

Mr. HALL. No, sir.

The CHAIRMAN. Did you ask to have him brought in for contempt?

Mr. HALL. No, sir.

The CHAIRMAN. Why?

Mr. HALL. A man, I suppose, can tear up a summons if he wishes to show contempt for the summons.

The CHAIRMAN. He cannot abuse the officers; the officer is representing the judge.

Mr. HALL. Well, he should have been. [Continuing:[

Mullenback thereupon grabbed the copy of the summons that had been left with him and tore it up and threw it at the face of the deputy sheriff who had recently served it upon him.

Lapp pounded the table a half dozen times and as he was doing so he said, "By appealing to the courts you have insulted the President of the United States—you have insulted the National Labor Board—you have insulted the Regional Labor Board—you have insulted us." During the time that he was saying these words and pounding his fist on the table he was jumping up and down. Mullenbach got up and was very angry and said, "We are Federal officers and you cannot bring suit against us. We won't pay any attention to the summons."

Thereupon Mr. Hall said, "Gentlemen, you will excuse me. It will do me no good to stay here so I shall retire." And thereupon Mr. Hall and Mr. Bell backed toward the door. When they had just about reached the door, Lapp reached over the table and shook his finger at the sheriff and said, "You tell your court that we will disregard this summons. We will pay no attention to it. We will not respond to it; we will not be there." He was at this time very angry and spoke in a loud and harsh tone of voice.

Deputy Sheriff Bell and Mr. Hall thereupon walked out of the door and nothing more was said.

Now, shortly after that we received notice from the National Labor Board and a telegram signed by Senator Wagner, which we think Senator Wagner never saw, to come to Washington to have a hearing before the Labor Board.

The president of our company is an old-time Swedish gentleman. He believes in the constituted authority, and, contrary to advice, he decided to come here and present his case to the Labor Board.

He came here, Mr. Chairman, and we started out in the afternoon. No witnesses were sworn, of course; just statements were made. For a short time there were present Messrs. Dupont and Haas, of the Labor Board. After we had gone a little while, they adjourned for the night. The next morning there was present only Mr. Haas. We went along for a while, and then Mr. Haas left for half an hour, and he left there Mr. Handler, the man who interrupted me by giving you the opinion of the Labor Board. Mr. Handler appears to be a young lawyer in some way connected with the Labor Board. Mr. Handler heard us a while, and then he had to go away, and he turned us over to some assistant. I do not remember who the assistant was, but the only thing I liked about him was that he had red hair.

The CHAIRMAN. Was it male or female?

Mr. HALL. It was male.

After a while Mr. Handler came back, and after a while Mr. Haas came back. Then Mr. Haas left again and was gone that time three quarters of an hour.

Each time we protested that we were not having a hearing before the Labor Board, we were having a hearing before underlings, and

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every time we were assured that the Labor Board would read the record.

Now, gentlemen, we finally got an opinion, and that opinion is signed by Senator Wagner. I am confident Senator Wagner did not write that opinion, but that it was written by Handler. The reason I say Senator Wagner did not write it is because I understand he was at one time a judge, and there is an implied criticism of the Supreme Court of the United States in that opinion. That opinion does not decide anything, so far as we know, and the gentleman——

Senator DAVIS. What opinion was that?

Mr. HALL. The opinion of the Labor Board. But, gentlemen there is this——

The CHAIRMAN. You mean it is not enforcible because of no power in the law to authorize this Labor Board to enforce any of its decrees?

Mr. HALL. I mean that, and then I have another thing I want to refer to a moment, to show you more of what I mean.

It says there that the company secured two drastic or hard injunctions against the employees. Gentlemen, the first one was so mild that the employees did not obey it. The second one is in the exact language in which the Supreme Court of the United States directed the lower court to issue an injunction in a case almost like it, and for the Labor Board to say that those were harsh or otherwise, I think they are taking a great deal upon themselves.

The only difference between the injunction that was granted by our circuit court in Winnebago County, and the one that was ordered by the Supreme Court of the United States, is that the Supreme Court of the United States directed the lower court to enjoin the strikers from congregating within a reasonable distance of the plant. Our circuit judge fixed the distance at one half a mile. Otherwise, it is in the exact language, but this Labor Board, I think Mr. Handler writing the opinion, criticizes us for using the court, and using the models that the courts have fixed for us.

The CHAIRMAN. On February 23 this board issued a decree?

Mr. HALL. Yes.

The CHAIRMAN. In which it ordered, first, that the strike should be called off at once. Did you do that?

Mr. HALL. We had no strike. The men were all back, all but about 150 of them, and, Mr. Chairman, we were employing those men just as fast as we could.

The CHAIRMAN (reading):

All the employees on the pay roll on August 31, who are now without permanent employment, and who manifest a desire to be reinstated, shall be placed by the company on a preferential list, and shall be reinstated in order of seniority, without discrimination, before any new employees are engaged.

Was that complied with?

Mr. HALL. We have not employed people since then.

The CHAIRMAN (reading):

An election shall be held under the supervision of the National Labor Board for the selection of representatives for the purposes of collective bargaining.

Was that done?

Mr. HALL. An election had been held shortly before that for the employees, and it has not come time to hold another one.

The CHAIRMAN. Proceed.

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Mr. HALL. Now, Mr. Green, who spoke here before this committee a week or two ago, called attention to our case, and very shortly after that we received from the Labor Board notice to come in to show cause why we should not be sent to the Compliance Board, and have our Blue Eagle taken away, and to the Department of Justice for appropriate action.

Now, I went there late yesterday afternoon, when I found I could not be heard before this board, and saw Mr. Handler and told him I could not come there today until I got through here, and then I would come. He said that I would have to be there this morning because he was going to New York this afternoon.

Now, when he goes to New York, I cannot be heard before the board. That is why we think Mr. Handler is writing these opinions and sending these notices.

Now, I am going to reply to them—he is here—I am going to reply to them that if we violated any law, we will not ask them not to enforce that law against us, but to proceed immediately. As to the Blue Eagle, we desire to do everything we can to maintain every avenue that the Government has for creating jobs, and we will do everything we can to work with him on that.

Senator DAVIS. Winnebago County, Ill., is the county seat in Rockford?

Mr. HALL. Yes, sir; not very far from Mooseheart. You have been there? We are very fond of Mooseheart, ourselves.

Mr. Chairman, I get from all this, told as ramblingly as I have told, this thing that I want to call to the attention of this committee:

1. Small industries located in small communities and employing not over 2,000 persons should not be handled in the same manner and subjected to the same treatment as those engaged in mass production, requiring mass labor, such as the coal mines, the steel mills, even the automobile industry.

Some of the reasons for the above are:

(*a*) The inability of the small manufacturer to pay the tremendous overhead made necessary.

(*b*) In a small locality and in a small business, the affairs of a company are more or less public property.

(*c*) Public sentiment automatically regulates to a very large extent the action of the employer and the employee.

(*d*) In the present system, the Labor Board seems obsessed with the idea of holding elections—if they can just hold an election they have settled something. These elections cause turmoil and uncertainty, and many times are of no value, and this is nearly always true in small industries.

(*e*) The expense to the Government of supervising such elections is enormous.

(*f*) You cannot successfully American federationize all labor and create in one organization a monopoly without compensating responsibilities. Particularly in small plants.

Senator DAVIS. May I ask you if you give the right to your employees to join a labor organization?

Mr. HALL. Yes, sir. We have never asked a man if he belonged to it, and when these men who walked out came back and wanted work, we took them one at a time and never asked whether they belonged to a labor organization or not. We live in a small community where our shops are not unionized, where they could not very well be and have the manufacturers succeed.

Senator DAVIS. You said they did come back one at a time. Why was not a general order made to let them all go back who could have worked?

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Mr. HALL. That is true; all who could have worked, came back.

Senator DAVIS. You did not have them sign any agreement?

Mr. HALL. They signed nothing, except they made application. We asked each man if he was willing to come back, and if his family was satisfied to have him come back. We want men who are contented, and we cannot have men coming in and going out all the while. That is why it was done individually. Many times we went to the home of the man, and asked his wife if it was satisfactory for him to come back.

Senator DAVIS. There was nothing in the application he signed to go back which pledged him not to join any organization?

Mr. HALL. No, sir; nothing at all. That has never been our policy, never in the world.

Then, the second thing I have is this:

The American Federation of Labor officials should be removed from all key positions insofar as they affect what ought to be judicial hearings and findings. Some of the reasons for these are:

(*a*) They assume to speak for labor whereas they represent but a small part of labor.

(*b*) Those officials are privately paid by organized labor, yet they are supposed to be serving the public for no compensation. Those supposed to represent other interests on these boards do not have, and do not give, time to the work. The union labor man is there at every turn. It is his very life. He therefore dominates.

(*c*) It gives them undue influence in trying to federationize labor.

Senator DAVIS. Just a minute; do I understand you to say that those who represent the business interests of the country on the Labor Board do not attend meetings?

Mr. HALL. I am giving you this based on my experience. Mr. Dupont was there the first afternoon for a little while, and from then on, Mr. Haas attended part of the time, Mr. Handler a part of the time, and the red-headed gentleman the other part of the time.

The CHAIRMAN. Mr. Hall, you will have to excuse me.

Mr. HALL. I am very sorry. I wanted to finish while you were here.

Senator DAVIS. Are you opposed to the so-called "bi-partisan boards?"

Mr. HALL. Yes, sir; absolutely. Why, they do nothing but put on people to bargain against each other. Why not have men of judicial turn of mind, who are not interested in either side? Why should we have boards made up half one way and half the other? I don't think there is anything to that at all, and I never saw that work yet.

In the hearings before the present Labor Board, the union labor officials seldom appear openly, but their fine hand is seen in the acts and decisions of the Board.

Take our own case——

Senator DAVIS. I might say for Senator Wagner, the author of the bill, that he stated here that all he wanted to do was to give men the right of collective bargaining. He was not trying to federationize, as you point out, to put everybody into the Federation of Labor.

Mr. HALL. Well, now, Senator, if that is what he wants, you, I, practically every man in this room, can take a sheet of paper and on one sheet we can free the laboring man from any supposed slavery

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he is under, and we can make it an offense for any man to try to enslave him, and we can put it in the courts to decide when a man has done that, and send him to jail if he does it. You do not have to set this great monster up that is suggested for going into every little hamlet in this Nation of ours, and laying his hand on the employer, and dragging him around from place to place, and have young men like Handler writing your decisions. You do not need that at all. This is just a monster that is set up.

Senator DAVIS. I think what Senator Wagner is trying to do, is prevent the company from dominating the union.

Mr. HALL. Very well. Make it an offense for both of them, the company or the laborites, to do it, either of them, and have it punishable.

Senator DAVIS. I would sort of like to take issue with you on Senator Wagner not being able to write a report. I do not think he would take anybody's report if he did not approve of it.

Mr. HALL. Do you mean to tell me that 353 pages of that record, that Senator Wagner sat down and read that, with all of the records that there are? I cannot believe it.

Senator DAVIS. I should think he would if he attached his signature to it.

Mr. HALL. Well, I think he did not. If he did, Senator, why did he say those were severe injunctions when the United States Supreme Court directed the issuance of one just like it? Will you tell me that? He is a lawyer and has been a judge, I understand.

Senator DAVIS. I am not a lawyer, but is it true that because a man is a lawyer, he cannot comment upon a decision of the Supreme Court?

Mr. HALL. I should not think he would set up his own small labor board in defiance of the Supreme Court of the United States, and that is just the reason I am opposed to this legislation. You will have a board here trailing all over this country, setting at defiance the principles of more than government. That is just what they will do.

Take our own case. Mr. Green was a witness on March 15 for this committee—I have stated that.

Men elected to hold office in the legislative branch of the Government, or appointed to the judicial branch, should not sit on commissions of the executive branch. Some of the reasons for this are:

(*a*) It has a tendency to give more weight to acts of such persons than otherwise would be given.

(*b*) The object is, or at least the tendency is, to influence them in their acts on the legislative or judicial side.

(*c*) It tends to confuse the branches of Government, whereas, they were intended to be separate, coordinate branches, not mixed together.

To the best of my ability, that is the thing I have in mind, and I have just this to say in closing——

Senator DAVIS. Have you concluded?

Mr. HALL. Yes.

Senator DAVIS. It is not customary, unless it is agreeable with those who make statements to the Board, to let outsiders ask them, but if you wish, I will be very glad to request Mr. Handler to make a statement following yours, and if you wish, you may question him, inasmuch as Senator Wagner is not here.

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Mr. HALL. Senator, I do not care to hear from Mr. Handler. I have heard from him more than I want to hear from him now, and I am taking the time of the Illinois Manufacturers' Association. I have this to say——

Senator DAVIS. I should think it would not take him more than 10 minutes.

Mr. HALL. I don't know; I don't care to hear it. Unless you put him on, I don't want him.

Senator DAVIS. It is perfectly all right with me if you want to say something, Mr. Hall.

Mr. HALL. I will just say this, it is all right with me, because I don't care to mix into it, and when I say this, I am through.

I want to say that I regard this bill of Senator Wagner's as a primer from Moscow, and I think that this committee and the Senate, which they represent, should turn their backs on it, pick up the American flag, and walk in the other direction.

Thank you very much.

Senator DAVIS. A request has been made to have, following the remarks of the last witness, the decision of the National Labor Board of the National Recovery Administration. That decision will appear in the record at this point.

(The decision of Feb. 20, 1934, of the National Labor Board in the matter of the National Lock Co., and Federal Labor Union, 18830, is as follows:)

(Release No. 3433.) In the matter of the National Lock Co., Rockford, Ill., and Federal Labor Union 18830. Case no. 52, February 20, 1934.

A strike of the employees of the National Lock Co., at Rockford, Ill., occurred on August 31, 1933. The efforts of a mediator of the United States Department of Labor and the National Labor Board having been unavailing, the matter was referred to the Chicago Regional Labor Board. The attempts of that board to mediate the dispute and to ascertain the facts of the controversy were thwarted by a court injunction which the company obtained, restraining the Chicago board from conducting any hearing or making any report. The National Labor Board, in the exercise of its original jurisdiction, conducted a hearing in Washington. As the facts are in dispute, it is essential that the evidence submitted to the Board be examined in detail.

The National Lock Co., which manufactures hardware, has been operating under the fabricated metal industry code since its effective date, November 13. According to the office of the national recovery director for the State of Illinois, the company signed the President's reemployment agreement on August 31, although counsel for the company at the hearing before this board stated that the agreement was signed on the afternoon of September 1.

On August 25, several days before the signing of the President's reemployment agreement, the company inserted in the pay envelopes of all its employees a statement which read "In conformity with the N.R.A. program, we have subscribed to the fabricated metal industry code." This statement contained the minimum rates provided for by the code and announced that they would become effective on September 1. During August many of the employees formed a Federal labor union, affiliated with the American Federation of Labor. On August 11, James Marsh,who had been elected temporary president of the union, and on August 30, Reuben Potter, who was also active in the union, were discharged. The employees contend that the discharges were for union activity, whereas the company insists that Marsh was an uncooperative, and Potter an inefficient workman. On the evening of August 30, a meeting to discuss the discharge of Potter was attended by about 200 employees. Those present at this meeting decided to urge their fellow employees to refrain from working on the following morning.

No demands were presented to the company at this time. It is contended by the employees that there had never been any satisfactory means of adjusting differences and that on several occasions, employees who brought their grievances to the attention of company officials were discharged. The employees claim that

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their action during the week preceding the strike was taken in reliance upon the company's statement on August 25 that it had subscribed to the fabricated metal industry code.

Early on the morning of the 31st, a strike of the employees on the morning shift occurred. Workers proceeded to a park where a meeting was held to discuss the grievances against the company. About 500 people attended this meeting. There were 1,235 employees on the pay roll on the day before the strike. It is uncertain, however, how many of the employees had joined the Federal Labor Union at this time. The representatives of the employees submitted membership cards totaling 854, but since these cards are undated, they cannot be exclusively relied upon in determining the strength of the union at the beginning of the strike.

Mr. Hogland, president of the company, was absent from Rockford, but returned immediately when notified of the strike. According to his statement, he requested his employees to meet with him at the factory on the afternoon of the 31st. The employees' grienvance committee which had been selected at the park meeting appeared, but objected to the persence of a large number of other employees, since the committee desired a conference with the officials alone. After the departure of the committee, Mr. Hogland addressed those remaining and suggested that the employees select a representative committee from the various departments of the plant.

The employees assert that the strikers' committee returned on the morning of September 1 to submit their demands to the company. They claim that the company officials then suggested that they reduce their demands to writing, which they did. They insist that they submitted a writing to Mr. Strenquist, a vice president of the company, requesting that the company recognize their rights under section 7 (a) of the National Industrial Recovery Act and offering to return to work if the company would agree not to discriminate against the participants in the strike. Mr. Hogland categorically denied that any responsible official received this document. The conflicting testimony on this matter presents an issue of fact which cannot be determined by this Board, since neither the members of the committee nor Mr. Stranquist appeared before it. If the document was received, the summary rejection by the employer could only be construed as a denial of the rights conferred upon the workers by the statute. Further investigation, including the taking of testimony under oath, will be required to determine the truth of this charge.

Late on the afternoon of September 1, the company mailed a statement to its employees, asserting that the company had been informed that a committee had been chosen to present grievances, but that the committee was "not representative of all employees, because four members thereof are employed on the sixth floor." The company went on to say "We suggest that a committee of 7 employees be selected, 1 from each of the following departments" and listed 7 departments which vary considerably in size. The statement suggested that the employees report to work on September 5, and that an election be held on that day. The statement also included the following:

"As we are operating under the N.R.A. code being affiliated with the Fabricated Metal Products Federation, which code has been tentatively approved, and because of this fact, we have been granted the Blue Eagle emblem, we are consequently subject to the following:

"SEC. 7. (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing.

"(2) That no employee and no one seeking employment shall be required as a condition of employment to join any organization or to refrain from joining a labor organization of his own choosing."

A serious omission occurs in this quotation of section 7 (a). The important provision precluding employers from interfering in the self-organization of employees was deleted. There is also a serious misquotation in clause (2) in that the word "organization" is substituted for the words "company union." The company denied that the misquotation was deliberate, and insisted that the provision had been copied from a draft of the proposed fabricated metal code which the company had received from its trade association. However, the original basic code for the industry as presented to the National Recovery Administration by the Fabricated Metal Products Federation included a correct quotation of section 7 (a).

The workers contend that the company's statement was in response to their written demands. If this be true, the company occupies the unenviable position of meeting a demand for the recognition of the rights conferred by section 7 (a),

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with a counterproposal, garbling the statute and restricting the statutory rights of its employees.

The employees have alleged that on September 2 the company solicited the members of the strike committee to appear individually at its offices, and that at this time Mr. Stranquist, vice president of the company, stated when section 7 (a) was read to him, "We will never agree to that. We will never let any outsider tell us what do do." Again, a sharp issue of fact is raised by the company's denial.

On September 6, the National Lock Co. addressed a telegram to General Johnson, reading in part: "We are now and at all times have been willing to deal with our employees individually or collectively, but we resent and refuse to accept interference from outside labor forces, who are not in sympathy with our mode of operation, and whom we refuse to trust with our business secrets.".

During the first week of the strike, the company obtained two extremely severe injunctions against the strikers.

On September 12 Conciliator Rodgers of the Department of Labor sought, at the request of the National Labor Board, to mediate the dispute. He proposed that the strike be terminated, that all the employees be reinstated without prejudice, and that upon their return representatives should be selected for the purposes of collective bargaining. The company countered with the following proposals. It offered to reinstate all those who had been on the pay roll prior to March 1, and to reemploy within its own discretion those who had entered its employ after that date. But it refused to take back March, Potter, or 12 other employees whose names were designated. It insisted that "the members of the committee * * * be selected from the employees of the company." The company's proposals imposed restrictions upon the ordinary scope of collective bargaining and included a merit clause.

These proposals were rejected by the representatives of the strikers on the ground that they were inconsistent with the law. In a second letter to Mr. Rodgers, which was substantially reproduced in the Rockford newspapers, the company reiterated its position and included in its proposals the plan for employee representation presented to the workers on September 1. At the hearing before the National Labor Board, the company's reasons for refusing to consider the reinstatement of the aforementioned 12 men were not brought out clearly, but it was indicated that their participation in the strike, and particularly in the carrying of certain placards in a parade, had given offense to the company.

The formation of the employees' representation plan was described in considerable detail by the witnesses for the company at the hearing before this board. An election was held within the plant for the choice of employee representatives on October 3. This plan was promulgated by the company and was explained to the employees less than an hour before the election. A meeting of the employees in each department was called by the management. The works manager admitted that he had not only selected those who were to explain the plan to the employees but that he had also explained it himself in several of the departments of the plant. All of the employees were instructed to vote. Section 7 (a) was not read to them, and they were not afforded an opportunity to pass upon any other form of organization or representation. Nominations were oral. The judges of the election were selected by the employees.

Various officials of the company called off the names of the employees as they proceeded to the ballot box. The ballot itself was secret, but the company officials were in a position to know whether or not an employee participated in the election. Immediately after the election, the length of the terms of the individual representatives was fixed by pulling numbers out of a hat. The company not only proposed that the terms should vary from 1 to 3 years but suggested and supervised the device which was employed to determine the length of each representative term. No constitution or bylaws were prepared for the plant either before the election or since, and no collective agreement with the management has ever been reached by the elected representatives. At least two of the elected representatives are assistant foremen.

The National Labor Board sought to bring the parties to an agreement in order to terminate an industrial dispute of long standing. Proposals and counterproposals were offered by the parties, and the board suggested various modes of settlement, but the company's unyielding position on several of the controversial issues made a mutually satisfactory agreement impossible. The employees' representatives proposed, as a means of settling the strike, that the company acknowledge its obligations under section 7 (a), that it permit an election of representatives by those on the pay roll on August 31, that it place all the strikers

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upon a preferential list for reinstatement, and refer the question of the reinstatement of the aforementioned 12 men to the National Labor Board for decision.

They also requested that the company seek the dismissal of the injunctions against the strikers and the Chicago Regional Labor Board. As soon as these proposals were heard by the company's representatives, they withdrew their own previous offer to place the strikers, exclusive of the 12 men, upon a preferential list and maintained an uncomprising position thereafter. At no time did the company indicate any willingness to reinstate the 12 blacklisted men or to submit the question of their right to reinstatement to an impartial tribunal.

The collective bargaining envisaged by the statute involves a duality of obligation, an obligation on the part of employees to present grievances and demands to the employer before striking and an obligation on the part of the employer to discuss differences with the representatives of the employees and to exert every reasonable effort to reach an agreement on all matters in dispute. Negotiations should precede rather than follow the calling of a strike. But no matter how grievous the fault of the employees may have been in striking before exhausting every possible means of reaching an amicable adjustment of differences, there was and can be no justification for the infringement by the employer of the statutory rights of his employees.

Section 7 (a) cannot be altered by omission or qualification by those unsympathetic with its major objectives. The statute was enacted by the Congress after full deliberation and debate. Its mandates are unequivocal. Representation is not restricted under the statute to follow employees. There is no limitation on the form of organization which may be established by the workers.

There is no limitation on the form of organization which may be established by the workers. There is no requirement that the organization which is set up shall follow the departmental lines of any plant. Organization and representation are matters which concern the employees exclusively. The employer has no right to initiate a plan of organization or to participate in any way in the absence of any request from the employees, in their designation of representatives and their self-organization. In fact, such actions are expressly forbidden by the statute. The record reveals a studied hostility to the purposes of section 7 (a) and a disinclination to observe its requirements.

The National Labor Board and its regional boards were established by the President of the United States for the purpose of maintaining industrial peace. To restrain a disinterested agency of the Government from investigating the causes of an industrial dispute and seeking to compose the differences between the parties to the dispute manifests a lack of cooperation in the recovery program.

This Board finds as a fact that the National Lock Co. interfered with the right of its employees to organize and bargain collectively through representatives of their own choosing.

The National Labor Board, in order to bring about a condition in harmony with the law, rules:

(1) The strike shall be called off at once.

(2) All the employees on the pay roll on August 31, who are now without permanent employment and who manifest a desire to be reinstated, shall be placed by the company on a preferential list and shall be reinstated in order of seniority without discrimination before any new employees are engaged. This ruling shall not apply to any employee who was guilty of violence or other improper action during the strike, as determined by this board upon the submission of specific complaints by the company.

(3) An election shall be held under the supervision of the National Labor Board for the selection of representatives for the purposes of collective bargaining. All employees on the pay roll of August 31 who are now in the company's employ or who manifest a desire to be reinstated shall be eligible to vote, as well as all employees who have been on the company's pay roll for 90 days prior to the nolding of the election.

ROBERT F. WAGNER, *Chairman.*

Senator DAVIS. James L. Donnelly, executive vice president of the Illinois Manufacturers' Association, Chicago. Will you give your name to the record?

Mr. DONNELLY. James L. Donnelly, executive vice president Illinois Manufacturers' Association, 120 South La Salle Street, Chicago.

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I have here approximately 15 industrial executives, representing various major industries in Illinois. These representatives are prepared to indicate how this bill, if enacted into law, would affect their particular industry.

I would like to have the privilege of having them make their statements, and at the end of that time I would like to make a summary, if I may.

I would like to have you call on Mr. Craigmile, Mr. Chairman.

Senator DAVIS. Mr. Craigmile. Will you give your name, Mr. Craigmile, and your business connection?

STATEMENT OF CHARLES S. CRAIGMILE, GENERAL SUPERINTENDENT OF THE BELDEN MANUFACTURING CO., CHICAGO

Senator DAVIS. That is a part of the electrical industry, is it not?

Mr. CRAIGMILE. Yes, sir.

Senator DAVIS. What do you manufacture?

Mr. CRAIGMILE. We manufacture insulated wire.

I appear before this committee as a member of the Illinois Manufacturers' Association and as a representative of the electrical industry in our State. I will present the viewpoint and opinion of our particular company, with the belief that we are fairly representative of the well-run companies in our industry.

The Belden Manufacturing Co. manufactures bare wire, magnet wire, enamel wire, rubber-covered wire, cordage, and cords. Our office and magnet wire plant are located in Chicago. Rubber-covered wire and cords are manufactured in our plant at Richmond, Ind. Our company was established in 1902. Its paid-in capital is $1,868,000. It has a bonded obligation amounting to $350,000, which must be retired by 1937. We employ, at the present time, a total of 916 people, about equally divided between our two plant locations. Our operations for the last 13 years, from 1921 through 1933, are shown best by the following figures, which, incidentally, have been shown to and discussed with all of our employees. In 8 of these 13 years we operated at a profit and in 5 years showed a loss.

Year	Sales	Profit	Factory pay roll	Officers and office pay roll	Officers	Dividends paid
1921	2,552,876	343,996	672,987	352,500	49,142	----------
1922	3,758,929	24,352	935,320	364,701	34,800	----------
1923	5,153,614	114,660	1,043,220	431,474	36,400	----------
1924	4,998,830	70,300	1,036,810	440,671	39,650	----------
1925	5,439,357	191,291	1,110,615	473,288	37,400	18,641
1926	5,315,484	49,620	1,011,890	474,242	52,540	37,360
1927	4,652,133	23,287	1,017,761	444,868	53,400	----------
1928	5,063,043	130,764	1,035,482	411,086	43,611	----------
1929	6,906,701	447,873	1,288,891	434,761	40,700	112,080
1930	4,070,299	278,162	874,691	446,849	46,300	84,060
1931	3,025,489	227,343	605,704	404,119	44,112	18,680
1932	1,997,137	231,044	359,219	265,810	32,446	----------
1933	2,956,921	210,519	559,984	285,931	46,522	9,340
Total years	55,890,813	135,547	11,552,574	5,230,300	557,023	280,161
			16,782,874			

You will note from these figures that during the last 13 years we have paid out a total of almost $17,000,000 in pay roll. During the same period our profit was $135,547, and our stockholders received a

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total of $280,161, or a return of only 1.15 percent per year on their investment. Our earned surplus at the end of 1933 was $24,973.

I have shown you the detail of our company's operations and position up to date as a background for the opinions I will express on Senate bill 2926, which is before this committee for consideration. It is my opinion that these figures not only reflect the experience of the Belden Manufacturing Co., but are a fair sample of at least the recent experience of the average well-run small industrial enterprise. It is of particular importance to note that after this period of the last 13 years, during which approximately $17,000,000 was paid out in pay roll, that we had a very small surplus of approximately $25,000. Our profit for the period was less than one quarter of 1 percent on our sales, and our stockholders had received much less than an ordinary savings bank return on their investment. In other words, for 13 years our business was run for almost the exclusive benefit of our employees.

If industry is to absorb the unemployed and is to continue to pay in taxes the large part which it is now paying of the Federal Government expense, it is essential that industrial concerns which are well run shall make a profit. There is nothing more necessary to profit than good sound relations between employer and employee. Such relations are best cultivated by close cooperation.

This bill now being considered means turning over the management of industrial relations to union-labor representatives, without any responsibility on them to provide the money to meet pay rolls. Disguised under the title to equalize the bargaining power of employees and employer; to encourage the amicable settlement of disputes between employees and employer; to create a National Labor Board; and for other purposes the text of the bill nevertheless reverts back to the old and thoroughly disproved philosophy that the interests of employees and employers are more antagonistic than mutual. Robert Lund has expressed the danger of such philosophy as follows:

> Management and labor work together to produce their product for a market. If their work is well done, both prosper; if not, both suffer. Any influence which divides the employer and his employees destroys the capacity of industry to do its job well and the dividing wall which organized labor attempts to erect between management and labor is dangerously destructive to the public welfare.

The question is: How can sound industrial relations be best maintained? The Congress of the United States has attempted to answer this question in section 7 A of the National Industrial Recovery Act. The principle of this answer is that the employer must deal with his employees by whatever method they choose and in deciding upon this method they shall be free from any interference or coercion by the employer or his agents. This means that if employees wish to conduct their dealings with the employer through organized labor union representatives, they are free to do so. If, on the other hand, they wish to organize their own plan of employee representation within the company for this purpose, they are equally free to do so. And, if they do not favor collective bargaining in any form, but prefer to deal with the employer as individuals, they have a perfect right to do that, also.

The Wagner bill is frankly a bill aimed at so-ca led "company unions," at the open shop in industry under which individual employees deal directly with their employer, and in favor of the standard

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type of craft unions which constitute the American Federation of Labor. That this aim is clearly not in accord with the best judgment of our working people is shown by data recently given out by the Labor Department of the present administration on reports from 3314 industrial companies. These reports show that industrial workers of America are divided as follows: 45 percent are employed under open-shop conditions, 45 percent belong to company unions, and 10 percent belong to craft unions.

Let us examine these different forms of employee-employer relationship.

In the open shop without any form of organization and which is particularly applicable to the medium- and smaller-sized shops, all employees deal with the employer as individuals. In our own company under this plan we hold meetings with our employees by departmental groups at which the business situation, the company's position, and similar subjects are discussed. In addition employees are given full opportunity to bring up any subject they choose, or make any suggestion in connection with the operation of our business. The importance of these meetings and their effect in promoting good relations as shown by the last paragraph of our annual report to the stockholders for 1933, by Mr. J. C. Belden, our president, which reads as follows:

> The labor clause of the National Recovery Act has been the cause of much misunderstanding and many strikes costly to both labor and employer. Your management held many group meetings with employees, where discussions were frank and open. A number of valuable suggestions of mutual benefit were received from employees and acted upon the company. Such harmonious relations are a great source of satisfaction to your management and of benefit to all concerned. We take this means of expressing our appreciation of the cooperation received from all our fellow workers.

Under the plan of employee representation the employees of a company form an organization of their own and elect from among themselves a committee or council to act for them in dealing with the employer. The term "company union" has been widely, but in most cases improperly, applied to plans of this character. There is nothing new about employee representation except its greatly increased use in recent months. It has been in successful operation in some companies for years. The reason why so much has been heard about it lately is that the National Industrial Recovery Act grants to workers the right to bargain collectively with employers through representatives of their own choosing and, since employee representation is the leading form of collective bargaining, it has been widely discussed and has been adopted in many companies. The outstanding advantages of this plan are:

1. It makes it possible for both management and employees to learn the point of view and problems of the other and to discuss a question in a frank and friendly way.
2. Questions are confined to local conditions and needs.
3. As an organization of the employees of a company, it is the natural body to initiate and coordinate various activities of interest to employees. Plans of mutual aid, recreation and athletic programs, social gatherings, educational and cultural projects may well be undertaken and carried on by the representation committee or council.

Under the labor-union plan when a worker joins a labor union he accepts the leadership of union officials. He turns over to these

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officials the right to represent him in dealings with the employer. In effect the union member makes regular payments to the union to have officials conduct his dealings with his employer. If he is ordered out on strike he is expected to strike. A strike may be ordered for a variety of reasons:

It may be to try to force the employer to recognize the union.

It may be to try to force the employer to agree to changes in wages and working conditions demanded by the union.

It may have nothing to do with conditions in the particular plant, but union members in that plant may be ordered out to strengthen the union's position in its struggle with some other employer.

It may have nothing to do with any employer's policy or action, but may be caused by the struggle of rival unions for supremacy, or for jurisdiction over a particular kind of work.

A study of these three plans of industrial relations clearly indicates why only 10 percent of industrial workers of America belong to craft unions.

Senator DAVIS. You have made that statement before, that 45 percent belongs to company unions—was that it? What were those figures you gave us?

Mr. CRAIGMILE. Forty-five percent are in open shops; 45 percent are in so-called "company unions"; and 10 percent in craft unions. These are Department of Labor figures.

Senator DAVIS. As I understand it, inasmuch as I was former Secretary of Labor, I read those reports, if I remember correctly, the Department of Labor just published those and stated when they published them that they were for the National Conference Board, they were figures of the National Conference Board, and they were not the figures of the Department of Labor, that it was done for the National Conference Board in New York City.

Mr. CRAIGMILE. The most recent figures, at least, those most recently in the press and made public as far as I know by the Federation of Labor checks about that percentage. It is to be assumed, as I understand it, from the figures, that there are somewhere between 40,000,000 and 50,000,000 employed people in the United States.

Senator DAVIS. I think, if I remember correctly, it was 48,000,000 gainfully employed while I was Secretary of Labor, and now they say it is 50,000,000 gainfully employed.

Mr. CRAIGMILE. The Federation of Labor, as far as I have seen their latest report on membership, is approximately 4,000,000, so that really tends to check approximately with the 10 percent.

Senator DAVIS. When Mr. Green was here making his statement, I asked him how many members had joined the Federation of Labor since the passage of the National Industrial Recovery Act, and I think he said around 2,000,000. I asked him if he had any figures on the number who had joined so-called "company unions", and he said, I think it was, 2,000,000 had joined up in the so-called "company unions."

Mr. CRAIGMILE. Of course, that does not check at all with the figures of the conference board, and their figures are generally accepted as being pretty reliable.

Senator DAVIS. In reading the report of the Secretary of Labor, I know those particular figures were quoted from the National Industrial Conference Board, but they were not the Department of Labor figures.

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Mr. CRAIGMILE. I see.

Well, I simply point out that according to all the information that has been made public, if, as Mr. Green says, approximately 2,000,000 men have joined the Federation of Labor, then it makes the total somewhere in the neighborhood of 4,000,000, which, roughly, would be something about 10 percent of the total employed people.

Senator DAVIS. I have forgotten the number of members that there are in the brotherhoods, that is, the railway labor group, but I believe it brings it up to around 5,000,000 or 6,000,000 for those who belong to organized labor, and that with 50,000,000 gainfully employed, is somewhere about 10 percent.

Mr. CRAIGMILE. I will put it this way:

A study of the three plans of industrial relations clearly indicates why only approximately 10 percent of industrial workers of America belong to craft unions.

Senator DAVIS. May I just say this? I noticed in reading the annual report of one of the constituent unions of the Federation of Labor, that they are more or less an industrial union because they take everybody in from the common laborer to the highest-paid mechanic.

Mr. CRAIGMILE. Yes. The principal objection to the Wagner bill is that it attempts to do by compulsion what can only successfully be done by evolution and education. Neither the cause of economic justice nor the cause of economic recovery is promoted by the employment of force to compel men to do these things which they should do of their free choice.

This bill, if passed, would create a labor monopoly which would deprive the individual of his freedom in the selection of a job. If for any reason he got into difficulty with the union he might easily find it difficult or impossible to get a job in his line of work. Under the open shop if for any reason a man leaves one company, he is at perfect liberty to work for any other company, where he can find employment. If that liberty is taken away, as it will be under this bill, the opposition of open-shop employees now inarticulate will be terriffic.

In regard to the extraordinary nature of the powers which this bill seeks to convey to the National Labor Board, it is perfectly evident that to convey them to a board constituted as provided in the bill means inevitable political domination of the employer-employee relation and the ultimate destruction of both.

In conclusion our opinion——

Senator DAVIS. Before you conclude, I note your statement here related to the make-up of the board. Are you of the opinion that if we are to have a board at all, it ought to be nonpartisan?

Mr. CRAIGMILE. It should be, if such a board is possible——

Senator DAVIS. The railroads have been more or less guided in their work by the Interstate Commerce Commission. What would you think of having a commission similar to the Interstate Commerce Commission that now regulates the railroads, to sort of guide industry?

Mr. CRAIGMILE. I should say that if the regulation which now exists has anything to do with the financial condition of the railroads, it would be tremendously unfortunate for industry to have such regulation. I can say no more because I am not familiar with the

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railroad situation except from the standpoint of their financial condition.

Senator DAVIS. Are you familiar with the set-up of the Railway Labor Board?

Mr. CRAIGMILE. Only as any citizen might be from reading in the papers; I am not thoroughly familiar with the set-up.

Senator DAVIS. All right, proceed.

Mr. CRAIGMILE. In conclusion, our opinion has been so well expressed in an article which came to my desk recently that I would like to read one paragraph of that article [reads]:

> The Wagner bill is instinct with the spirit of war. It deals with employer and employee definitely as opposing forces. Even the prospect of its passage in its present form has filled the air with rumors of impending clashes and predictions of widespread strikes. The people of the United States as a whole are sick of war. They want peace and a chance to work and support themselves and their families. Any special class which seeks to precipitate and prolong class warfare will earn the hostility and condemnation of the public. The sound, sane, and wholesome conception of an overwhelming majority of the people is that employer and employee constitute a team who must pull together if the wagon of common welfare is to be pulled out of the mire of depression up to the heights of a restored prosperity.

Thank you very much, sir.

Senator DAVIS. Do you care to give the name of the author of that particular article?

Mr. CRAIGMILE. I think I can; yes, sir.

Senator DAVIS. I would like to have you put it in the record. If you could get the rest of that article, I would like to read it myself.

Mr. CRAIGMILE. I think I am quite sure in stating that the article is the reported statement of Col. Frank Knox, over the National Broadcasting System on the 16th of March.

Senator DAVIS. That is the Knox of the Chicago Daily News?

Mr. CRAIGMILE. Yes.

Senator DAVIS. Thank you.

Mr. CRAIGMILE. Thank you very much for your attention.

Senator DAVIS. Mr. Preston B. Heller.

STATEMENT OF PRESTON B. HELLER

Senator DAVIS. Mr. Heller, just give your name for the record.

Mr. HELLER. Preston B. Heller.

Senator DAVIS. And your business and your general connection.

Mr. HELLER. I am secretary of B. Heller & Co., manufacturing chemists, Chicago.

Senator Davis, it is my desire to tell you briefly how the passage of the Wagner bill would affect my particular business, a small concern manufacturing chemicals and food products, and employing about 200 persons.

This business was started 40 years ago. Many of our employees have been with us over 20 years. In all the 40 years of our existence we never had a labor dispute either with our own people or with outside organizers. That is, until a few months ago, an organizer for the engineers' union attempted to foment trouble, and justifying his intrusion with paragraph 7 (a) of the N.R.A. not by a desire of any of our employees to be organized.

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Because of the secretive nature of our formulae and processes, we have adopted a rigid rule excluding everyone—even our own salesmen and customers—from our plant. Notwithstanding that, one Evans, representative of the engineers' union, was discovered in our engine room talking to our engineer. He had sneaked in, and had never tried to gain entrance through our front door, giving as the reason that he would not have been admitted.

Senator DAVIS. If he had, and made application to come into the plant, would you have admitted him?

Mr. HELLER. No, sir, we would not; but we would have given him permission to meet the men and talk to them, just as he could have gone to their homes.

When discovered by two of our officers he stated he was a city inspector checking up to see if employment had been increased by the N.R.A. When asked for his credentials he became abusive and threatening, using language that could not be included in the record here.

This was our one experience with a representative of the American Federation of Labor. Shortly after this, our employees, unsolicited, signed a petition requesting the management to protect them from attempts of professional organizers to stampede them unwillingly into trade unions. They gave as their reasons that they preferred to bargain as individuals with the management. And the reason for their decision, gentlemen, was because every man and woman in our employ knew he or she had always received a square deal, and could talk to us about wages or any other problem at any time. They had no desire to be dominated by a union which would cost them heavily for dues, and possibly call them out on strike because some other institution might be having a dispute. They knew they had always been treated with consideration, and could expect a continuation of this treatment in the future.

The proof of the foregoing statement lies in the fact that although the volume of our business fell about one half from the peak, we have today, and have had all through the depression, the exact number of employees that we had in 1929. Not only that, but when we signed the President's agreement, under the N.R.A., immediately on its appearance, we were obliged to make practically no wage readjustments. In short, the policy we deliberately followed was to retain our personnel intact, and pay them good living wages, rather than create profits for a few.

The result of this is an appreciative loyalty, which legislation like the Wagner bill would tend to destroy or at least impair. Our concern functions like a team. We pull together, not in two diverging, selfish directions. And when I say "our concern" I also include many small businesses in a like or other industry with which I am familiar.

In our particular case we feel that the drastic arbitrary action contemplated by the bill would have the effect of driving a wedge between us and our employees, create strife, and finally destroy our business altogether.

This last contingency can easily occur because the margin of profit is almost nonexistent because of our policy of keeping our organization intact and paying liberal wages. We feel, and our employees feel, that we have earned the right to control our own business with-

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out outside interference, and to determine the amount we can afford to pay our labor, based not only upon the right of the employee to earn as much as possible, but also on the conditions of our particular industry, and the amount we can afford to pay as indicated by what our customers will pay us. If this delicate balance is disturbed now, it may mean the finish of ourselves and thousands of other small businesses, which have survived so far but are none too robust, I do not think that the wholesale killing of enterprises will further the cause of recovery, nor the resultant throwing out of employment of vast numbers of employees would under any circumstances be considered as desirable, not even to strengthen the American Federation of Labor.

We have a large investment in building and machinery. Have we no right to desire the conservation of this investment? Are we to be at the mercy of an outside organization that knows nothing of the problems and difficulties of our particular business? An organization, that at least in some cases, I know positively, is more interested in swelling membership dues than in working conditions of its members, which it so blatantly protects. And I say this advisedly, because the same representative of the engineers' union, previously mentioned, in attempting to win over the management to the unionization of our engineers and watchmen, himself pointed out that under the local union scale we could work them 4 hours more a week each. That is the foulmouthed, blustering, lying, selfish type of man who is threatened to be put in control of our own employees to protect their interests in the mythical battle management and labor.

Gentlemen, in my humble opinion, if more power is given the labor boards as contemplated in the Wagner bill, if all industry is unionized which will be the certain outcome, then the mythical battle between capital and labor will become real enough and the community of purpose will vanish. What progress we have made toward recovery will be lost, confidence will be destroyed, and business will stagnate.

Thank you, sir.

Senator DAVIS. Mr. D. W. Kimball?

STATEMENT OF D. W. KIMBALL

Senator DAVIS. Will you give your name for the record?

Mr. KIMBALL. D. W. Kimball, assistant treasurer, W. W. Kimball Co., 306 South Wabash Avenue, Chicago.

Senator DAVIS. Go right ahead, Mr. Kimball.

Mr. KIMBALL. Mr. Chairman, I would like just to take a minute to give you a little picture of our company.

We have been operating continuously without reorganization or change of family ownership for the past 77 years. We manufacture pianos and pipe organs and have a considerable investment in our one plant in Chicago, covering some 800,000 square feet.

We operate and own a 17-story building in the Loop. Our financial standing at the present time is unquestioned.

My reason for bringing these points up is, not to impress you with any size, because we are not big in comparison with other forms of industry, other companies, but we think during those years that for over three quarters of a century we have done a good job in running a business in its various forms.

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It has required diligent care at all times to weather the times of panic and plenty which we have seen and gone through, and during that time, our employee method has been entirely on the open-shop basis, both in our building and in our factory.

We are employing today a total of approximately 850 people; they are contented; they have always had an opportunity to go to their foremen and take things up with the management, and during our entire period we have had a good relationship, and we think they realize it. We have carried as many as we could, as many as was sane, as was profitable, through these last 3 or 4 years, and there is a brighter outlook ahead, we think.

We are building pianos today and we want to build more. We want to hire more people. That is our business. That is what it always has been, but with a bill like this Wagner bill hanging over us, with its various phases, it does not encourage us right at the moment to go ahead, and we do not know what to expect. It naturally does not meet with our approval, and we are against the bill.

I do not want to go into any details on it. We are operating today under our national piano manufacturers' code, and complying with it, and we want to go ahead and do everything possible, but there is so much unrest in the air—take it in our building operation there, as I said before, we run an open-shop building, all the employees there, although there are some who carry cards, and belong to the unions. We have never kept them out. They come around to us every once in a while, and say they have been approached on the outside, the engineers in the building, for instance, and big dues held up to them, and told they ought to belong, and they do not see why they should. All those things just tend to unsettle the whole situation, not only in our own case, but I know you have heard a great many other business representatives here, and they have conveyed the same idea to you.

Senator DAVIS. You do not deny them a right to join?

Mr. KIMBALL. No, sir.

Senator DAVIS. If they want to, they can?

Mr. KIMBALL. They can. Why should we go out today and experiment? It is unnecessary. To some extent we have to keep abreast of the times in our industry, we have to keep our product still, but when we do it, we do it with some caution, with some thought into the future. We will not make up a thousand, or 5,000 of one particular new style of piano without feeling out the market, and know how it is going to pay. We cannot afford to do it.

This is just the opinion of our company, why hamper industry any more? I say "hamper it", because this bill, this form of legislation, is going to do it, both with the employer and with the employee.

We have had some experience in the past year, a little difficulty at the factory, and this form of legislation is going to promote more and more of that. The antagonistic elements creep in, they get a few of your people off on the side, and it makes things awfully difficult. It does not tend to speed up production, it does not tend to produce employment of more people, and I think that is what the entire country here is confronted with. We all want to do it.

I think there is a better feeling here today between employer and employee, and it has got to be, we have got to go hand in hand, but, at the same time, to have these outside agencies set up that cause

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unrest, that is not conducive to peace. At least, it has not been in our operation through the years.

That is all I have to say, sir. I am down here for the company. We are having to do quite a lot of this running around. I would rather be back promoting the sale of our product which in turn is going to mean more people employed. That is our prime interest, our prime thought, sir.

Senator DAVIS. Mr. A. L. Johnson, of Chicago. We have got to move along rather rapidly, and I suggest that inasmuch as you have heard what these other gentlemen said, if you have a paper, you can omit those parts of it, and we will insert that in the record for you.

Mr. JOHNSON. I will do that.

Senator DAVIS. We might speed it up a little, because I have to attend another Senate committee meeting.

STATEMENT OF ARTHUR L. JOHNSON, SECRETARY, JOHNSON CHAIR CO., CHICAGO

Mr. JOHNSON. My name is Arthur L. Johnson, secretary of Johnson Chair Co., Chicago. I am speaking for the furniture manufacturers of Chicago.

Inexperienced in appearing before such an important committee, I will tell you in a few words my ideas of this so-called "Wagner bill" and its effect on my business and the furniture industry in Chicago.

Chicago is one of the large furniture manufacturing centers in the United States, employing about 5,000 employees, with investment of approximately $25,000,000 and annual sales of about the same amount We are in competition with all other large cities and towns of smaller population.

During normal times at least 15,000 are employed, with sales of about $50,000,000.

This industry has been one of the hardest hit since the year 1929, as will be evidenced by the very large number of factories which have gone out of business during the last 2 years.

Labor in Chicago is paid 50 percent more than is paid for similar labor in smaller towns both in the North and South.

Unionized factories will naturally begin first in large cities and in my opinion would take a year or more to unionize the rural centers. Our industry in Chicago could not exist for that length of time on more unfavorable terms than exist at present.

A large percentage of our employees in Chicago are home owners. The furniture industry in Chicago has been exceptionally free from labor troubles until last year when union labor organizers threatened the men unless they joined their union. This occurred among the upholsterers, which brought about a serious disagreement, and of which I will speak later.

The business which I represent and of which I own about one seventh of the stock is located in the western part of Chicago. We have an investment of about $900,000 and have never had sales of over 1¼ million dollars. Our employees now number about 200, and in normal times number about 450. Two of my brothers and I manage the business. I am just saying that, because I would say 90 percent of the furniture factories are comparatively small, and the

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employees have ready access to the management, do not have to go through foremen.

We have had no labor troubles of any kind for 30 years, until last summer after the N.R.A. went into effect. Immediately the labor agitators persuaded our upholsterers to join their union. Our men told us they were afraid to work without joining and told us a delegate from the union would see us in a few days to make their demand. We met the two delegates, talked with them, received their agreement, and asked them if this was all they could arbitrate on.

On getting their statement that they could do no more, we told them we would see them the following day. Their demand was that we should employ none but union men, raise wages about 40 percent, discharge no one for any offense unless the union officials agreed. We told them we could sign no such agreement. The men struck for 8 weeks, after which time the men sent a delegation of their own choosing, employees of Johnson Chair Co., and immediately an agreement was reached. Every one of the employees was given his former place.

This year we advanced their wages again. We have the confidence of our employees and they know they can come to us with any of their problems, whether concerning wages, conditions of employment, and so forth. I think this condition applies to all the furniture factories in Chicago.

The furniture business took a decided turn for the better last fall, but this spring, during February and March, which ordinarily are very good furniture months, business dropped off materially—lack of confidence.

There is a feeling of insecurity prevailing which is holding back recovery, and this feeling is caused by such revolutionary bills as the Wagner bill.

Congress has enacted some very strong and constructive legislation, so I pray that you give industry an opportunity to get a breathing spell, to recoup some of their losses that they might do their share in bringing back prosperity.

The Chicago furniture manufacturers wish me to state that they object to the Wagner bill, believing it will materially hinder prosperity's return, and they urge that it be not passed.

Thank you.

The CHAIRMAN. Thank you. Mr. I. R. Fauntleroy, of St. Charles, Ill.

STATEMENT OF I. R. FAUNTLEROY, OF THE MALLEABLE FOUNDRY INDUSTRY, ST. CHARLES, ILL.; APPEARING ALSO FOR THE FOX RIVER VALLEY MANUFACTURERS ASSOCIATION

The CHAIRMAN. Just give your name, Mr. Fauntleroy.

Mr. FAUNTLEROY. I. R. Fauntleroy, St. Charles, Ill. My company is a small company. I also am speaking for the Fox River Valley Manufacturers Association.

We should like to suggest to you, sir, that the N.I.R.A. was passed June 16, I believe. It has taken approximately 9 months to get clause 7–A interpreted so that we all understand it. That was done, in the settlement of the auto manufacturers difficulty in Detroit.

The CHAIRMAN. Is that settlement satisfactory to you?

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Mr. FAUNTLEROY. Yes, sir. We feel that there should be a cessation of more of the so-called reform legislation. We have got mental indigestion, trying to keep up. We approve of N.R.A. It quite changes our system of doing business. Now, let us get so that we are used to that. Let us see if clause 7–A is not enough, before putting something else on it. The N.I.R.A. does not expire until 1935. If experience should prove that this clause 7–A should be refined, should be elaborated on, there is ample time before that bill lapses, to learn.

Why experiment further, when there are literally untold hundreds of thousands of business executives who are taken away from their desks, they have to come to Washignton, and they do it ungrudgingly, to try to speed up recovery. Now, why put an extra burden on them? Why not let them stay at their desks and see if they cannot increase the sales of their goods and put more men at work? Why give us something more that we have to digest, and think about, and worry about at night, that may disturb relations between employer and employee?

That is the simple message that the Fox River Valley sends in, sir.

The CHAIRMAN. Thank you. Mr. J. L. Walker, secretary of the Fox River Valley Manufacturers' Association, Aurora, Ill.

STATEMENT OF J. L. WALKER, SECRETARY FOX RIVER VALLEY MANUFACTURERS' ASSOCIATION, AURORA, ILL.

Mr. WALKER. We simply wish to confirm and back up the statements of the speakers here this morning, against the Wagner bill. Our association consists of some 55 diversified industrialists.

The CHAIRMAN. Thank you. Mr. Charles Oliff, Chicago, Ill.

STATEMENT OF CHARLES OLIFF, TREASURER W. F. HALL PRINTING CO., CHICAGO, ILL., REPRESENTING THE COMMERCIAL PRINTING INDUSTRY OF ILLINOIS

The CHAIRMAN. Just give your name and your connection, if you please.

Mr. OLIFF. My name is Charles Oliff. I am the treasurer of the W. F. Hall Printing Co. of Chicago.

Senator DAVIS. What line of printing?

Mr. OLIFF. Commercial printing, catalogs, magazines.

Mr. CHAIRMAN. I appear before you as a representative of the commercial printing industry of Illinois, a subdivision and major group of the Graphic Arts Industry, to oppose the passage of the Wagner bill, S. 2926.

To give you some idea of the magnitude and size of the Graphic Arts Industry, I quote from a letter of transmittal of Gen. Hugh S. Johnson, Administrator, to the President, under date of February 16, 1934, pertaining to the code of fair competition for the Graphic Arts Industries:

> Only four other industries exceed the Graphic Arts Industries in the value added to the product by manufacturing. This value in normal times is $2,400,000,000 annually. The statistics for the Graphic Arts Industries are difficult to break down. The wage bill of the industries is in excess of $300,000,000 annually; there are over 300,000 employees, and the periodicals which are published have an annual circulation of approximately 180,000,000 copies. These figures, chosen almost at random, show the major character of the industry and indicate what an achievement it will be if the industrial self-government, of which

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I have spoken, proves to be successful as the industry confidently hopes. Further statistics appear in the several reports of the division of research and planning.

The printing and publishing industry in Chicago embraces close to 1,800 establishments, with an annual volume of about $300,000,000 and ranks first in number of establishments and second in volume of products. The wages paid annually amount to about $60,000,000, and the industry ranks first in volume of pay roll and in number of employees, which is estimated normally at 30,000.

The industry has on the whole, during the past 4 years, suffered greatly from lack of volume and stabilization and is today struggling to work out of the depths to which it has fallen. For decades the industry has been predominately open shop, and industrial strife has never assumed any great proportion. The records will show also that this industry has the distinction of paying the highest wages of all industries in the United States. The present wage levels are higher than those paid in 1929.

The particular printing plant with which I am associated is located in Chicago, Ill. It has been in continuous operation for 42 years, and its business is chiefly the production of mail-order catalogs and magazines of national circulation. We normally employ about 2,200 men and women, and the plant is operated from an industrial-relations standpoint as a union of independent men and women working in an open and free establishment. No discrimination is made against so-called "union" workers. These conditions have obtained for over 25 years. Individual bargaining agreements are entered into with our workers, whereby we agree to give them steady employment and pay as much as the so-called "union wage rates" in our locality and in some instances more, depending upon the skill and experience of the worker. The length of service of a substantial number of our employees extends over a long period of years.

I submit that the workers in our plant from the standpoint of hours, wages, and working conditions fare better than the plants dominated by organized labor. Our management feels its responsibility toward the employees and is constantly studying all those conditions and situations which would improve the general welfare of its workers. For many years it has maintained a mutual-benefit association in whose activities all employees participate without the payment of any dues or charges of any kind. All cases of sickness or distress are investigated promptly, so that the company may be helpful in extending necessary aid and relief. In cases of temporary financial embarrassment loans are available to employees at cost, and repayments permitted over an extended period, either weekly or monthly, whichever plan is the most convenient for the employee. In cases where repayment would impose an undue hardship, the loans are canceled. Where circumstances warrant, sums of money up to $200 are given to employees and care taken not to disclose the name. The company maintains a life-insurance protection fund without cost to the employees and has in innumerable instances paid to the families of its workers sums ranging from $500 to $2,000, depending upon the circumstances of each case. In addition, we have group life insurance which permits employees desiring additional protection to take out policies without medical examination at a very low cost to the employee, to which the company makes contribution in the premium. A cafeteria is maintained in the plant,

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under strictly sanitary conditions, for employees, and the charges for meals are below the actual cost of the service. Outdoor and recreational activities are encouraged.

To promote a better social feeling between the employees and to bring about one happy and harmonious family of workers with a proper and common understanding, we hold 2 picnics a year and 1 dance, which are real get-togethers and are always well attended. A well-equipped hospital, under the care of competent day and night nurses, and supervised by an attending physician is maintained in the plant to provide medical attention in cases of illness and injury. To disturb ideal conditions like these would be almost a tragedy.

Now, Senator, with this introductory preamble setting forth in the main some of the conditions prevailing in the industry, from a national, State, and local standpoint as well as the actual conditions in our own particular establishment, I will take up for discussion a review of the Wagner bill, which, in my opinion, is an unwarranted attack upon private rights of employers and employees and is designed to—

(1) Create labor union dictatorship over American industry;

(2) Destroy the sanctity of contracts entered into freely by both sides and force the closed shop upon employers;

(3) Destroy company unions and employee-representation plans;

(4) Guarantee the irresponsibility of labor organizations;

(5) Make the rulings of labor boards practically final;

(6) Provide a "gag rule" for industry;

(7) Make the term "employee" include striking employees and exclude those who take their places;

(8) Provide unlimited investigations and inquiries by agents and snoopers;

(9) Make the labor boards star-chamber bodies; and

(10) Assure domination of labor boards by organized labor agents.

The passage of the Wagner bill will lead to unprecedented strikes and confusion at a time when industry is striving in every practical way to help in the fight for recovery. In the unionization of American industry, for the benefit of any labor organization, we believe there will be imposed upon establishments the onerous union-shop practices, including the arbitrary complement of men for operating machines. This makes for unnecessary increased cost which must be passed on to the consumer and is flagrantly uneconomic. There is a limit to advancing costs. Experience in industry and commerce has shown that when costs get out of balance, it results in a lessened demand which in turn stagnates business and causes increased unemployment.

This bill also permits the disturbing of present mutually satisfactory employment relations in thousands of American industries all over the country.

It is a time, above all others, when labor leadership should be honest with itself and honest with the workers; when, with recovery in sight, cooperation rather than dissension should be the watchword. There are, in the labor organization, some of the best economists in the country. They must understand that moderation, in the circumstances, is the wise, as well as the patriotic, policy.

Figures published indicate that 90 percent of the workers in America are either members of company unions or are independent and that 10 percent are members of the organized labor group, which

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latter organization is attempting to dictate and control the other 90 percent. With the passage of the Wagner bill I fear that they will. In due time the organized-labor group would control the Government, because under the Wagner bill it would control all workers.

I respectfully ask your earnest cooperation to the end that this bill be defeated as a vicious piece of class legislation.

Senator DAVIS. Thank you.

STATEMENT OF W. BOOTH SETTLE, COUNSEL FOR THE BALTIMORE PRINTERS' ASSOCIATION; NATIONAL LEAGUE OF UNAFFILIATED PRINTERS; UNAFFILIATED PRINTERS OF CHICAGO

Senator DAVIS. Mr. Settle, will you give your full name?

Mr. SETTLE. W. Booth Settle.

Senator DAVIS. Where do you live?

Mr. SETTLE. Six hundred and twelve Equitable Building, Baltimore. I represent the National League of Unaffiliated Printers and the Unaffiliated Printers of Chicago. These are mostly small shops, but it is from the shops of this size that comes the poetry of industry.

They come in from Fargo, from Phoenix, and Fort Worth,
The cropper, the tanner, the weak and the strong,
And they've paid off Dad's mortgage by digging the earth,
And now for the charge—where our young men belong.

I had expected to be heard by the whole committee, but since we find that it is just in these capable hands, may I say this:

Sometimes they come from Pittsburgh,
Where the ores are running slim;
From the mills of Andy Mellon,
And the rolls of "Puddler Jim."

More than 30,000 people surge into Chicago every year in search of opportunity, and the commercial printing industry must absorb its share. Tractor and gang-plow have swept them into a field of wider opportunity.

Sometimes they come up from Springfield, when rail splitting is dull, and we send them down to Washington to free and to die; and their night-long toil is forgotten, and they come back to sleep. And back in Washington they build beautiful temples beside placid lagoons, so that we may remember.

Fifteen thousand men in Chicago want a chance to split their own rails. And 10,000 little Chicagoans want no daddies, doles, or guilds.

Twelve thousand workmen and a thousand shops—unaffiliated commercial printing establishments in the Chicago district—oppose the passage of the bill before this committee.

We want to be free. If we are to be compelled to spend 5 years in pretending to learn something that we know in 6 months, it were better that we stayed by the plow.

The free shop must survive. It is the free shop that has turned out the master mechanics, and developed inventive genius. The free shop has turned out for us the all-around man. It is the free shop that has elevated us to the independence of proprietorship and through the knowledge of coordination gained from contact with every phase of the art, has enabled the printer to educate the world.

No industry has ever shown greater progress or more consistent gains, nor has any served with wider usefulness. The normal pro-

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duction of the free shops of Chicago runs into tens of millions. The free shop absorbs the maimed, the handicapped, and the old. It provides steady and ennobling work from the wintry blast and the summer sun. All over this Nation, the free shop carries its workmen along through the dull season from peak to peak of the load.

The small free shop produces half of the Nation's printed page and the business casualty record is far better than its big unionized neighbor. These are the shops that train the boys; that upbuild the other small industries, that take the trembling hand, the faltering step, and the darkening eye away from the whir of the flywheel and the clatter of the matrix and give them work, through the freedom of individual contract. These are the plants that keep the old men in usefulness. Lives spent in indoor work don't make good road builders or canal diggers. Where shall we put them? How can we pay them $57 for a 30-hour week's work? Shall we keep them on at one half productivity and two thirds pay or turn them over to your $12 dole?

The free-shop printers of America ask no process tax, no bonus, and no dole. We ask the business that we have built. Nearly a thousand Chicago men more than 60 years old daily use their experienced minds and cunning hands in occupations of respectability and usefulness who cannot even approach the pace requirements of a volume production shop and the country-wide employment of apprentices, handicapped and aged, approaches a million souls.

And what of their market? Eighty percent of their product is letter-press work, the output of the job press, and it is trembling upon the brink. The big shop doesn't want it, the closed shop cannot produce it, and the codes have nearly doubled its price.

The office typewriter, in spare time, the office duplicating device, the rubber stamp, and the stencil are gnawing at the margin of profit, and the lifeblood is getting thin.

Raise the price and the lunch room types its menu, the church secretary stencils the program of the Sabbath service, the sub-deb of Main Street pens her calling card, and her father rubber stamps his envelops. The big, closed shop is a separate and different industry. It has continuity of production sufficiently constant to permit of long-time labor contracts and maintenance of the complement of men. But the small shop lives from day to day. The proprietor oft'times takes his place beside his workmen at the cylinder, the jobber, or the case. He must be author, designer, layout man, buyer, compositor, stonehand, lockup man, pressman, feeder, chemist, folder, collater, stitcher, wrapper—printer.

Now make him negotiator, bargainer, organizer, in the language of section 5 of this act, and then make him lawyer and see if even then he can interpret the words, "He shall exert every reasonable effort to make and maintain agreements with such representatives." And out of the window goes one of our largest industries—out of the ark like a dove to the farm, the apple corner or the dole—dole—dole—dole!

Gentlemen of the committee, will you destroy the borderline market? Under the provisions of section 5 you will supplant a million friendly agreements with a million controversies and compel employers to keep agreements with walking delegates for national organizations which are not only distastful to employers but obnoxious to employees, because in the average free shop the wage personnel is

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generally antipathetic to unionism and under section 6 the employer must disregard their wishes and actually exert himself to make union agreements.

Gentlemen, the 500 years that have elapsed since Gutenberg replaced the musty scroll with 10,000 Bibles have seen a pace-keeping comradeship between human progress, the art of printing and the law.

Five hundred years of progress in the printing trade has educated and enlarged the world, it has made possible the improvement of invention until the laborer, in comfort, is the peer of the king of yesterday; it has taught, amused, and entertained, under the free-shop system it has blazed the trail for every advancement of our race. It has freed the serf from the soil to which he was born and raised him to the freedom of proprietorship.

It has destroyed and proven false the ideas of regimented feudalism and the closed-shop tyranny of the guild.

It has carried the pages of Magna Carta to the uttermost parts of the world, and built up a system of rules of government for human society free from the principles under which trade unionism destroyed ancient Egypt, division of property scattered the Twelve Tribes of Israel and kept the world in sleeping ignorance for a thousand years.

Under its influence the right of trial by jury was established and maintained and judges trained so that causes might be heard and extraordinary disputes adjusted by men skilled in the administration of justice, free from the passions and prejudices of partianship and envy, governed by rules of popular selection expanded and improved by experience and time until in the American system of courts today we have the most enlightened and efficient system of administering equity and justice in abnormal cases that history has conceived.

What clamor of class hatred should make us desert that cause? What momentary whisper of expediency should make us discard those guaranties?

Shall we by the loose and unsatisfactory processes provided in this act bring honest men to waste their substance in unnecessary defense? Shall we in the heat of haste drag them over outrageous distances to stand trial before a Sanhedrin of strangers?

Must we subject them not only to the unsworn oaths of Judas, but under section 204 to mobs of unrelated evil wishers who cry "Crucify! Crucify!"?

Oh, the insolence that would substitute for the established rules of evidence, devised and revered by the most able minds produced through 500 years of enlightenment, the ill-considered flashlights from intermittent volcanos of envy and rapine, as uninformed of history as they are unconscious of the breadth of commercial and social intercourse.

What power is it that would seek to narcotize the Nation's sense of fairness by bribing the guilty to testify under promise of immunity from punishment as criminals, as provided in this act, only to subject them finally to the blackmail of civil prosecution or perhaps by a puppet show, to the ridicule and disdain of an envious or salacious public?

What is the whole purpose of the act? Are we to base the philosophy of our commercial relationship on the bondage of the Negro, on the enfeudage of the Nordic, on the vassalage of the Frank and Hun,

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on the peonage of the Slav? Or shall we look to the experience and stability of our own institutions? The Magna Carta, the trial by jury, the permanence of constitutions; the right of home rule, the unbiased judgment of trained intellect, the balanced apportionment of legislative and administrative power?

Nine hundred unaffiliated commercial printing establishments in the Chicago district oppose the passage of the bill before the committee.

It strikes directly at the most cherished rights of free social action, which have been woven into a superb social fabric through more than 500 years of application by the best and ablest minds of our race.

Without any palliative for the effects of a growing nationalism, with no provision for a repressive force to curb the expansion of inflamed envy, class consciousness and improvident abandon, the proponents of this bill would destroy every potent factor in local government, the orderly progress of legal controversies, and the systematic and scientific adjustment and solution of supercommercial disputes and erect in their place a latticework of radical cross currents buttressed with political chicanery and corruption and resulting either in a state of downright radical communism or at the best an alinement of large plants into a gigantic monopoly drawn up in array against a regimented minority of skilled labor, with a great mass of smaller, able, honest, industrial proprietors and unskilled workmen writhing between them in the maelstrom of "no man's land."

The CHAIRMAN. Mr. Hodgson, you are next.

STATEMENT OF G. C. HODGSON, PRESIDENT GREAT LAKES FORGE CO., CHICAGO, ILL.

The CHAIRMAN. Your full name, please?

Mr. HODGSON. G. C. Hodgson.

The CHAIRMAN. And your residence?

Mr. HODGSON. Chicago.

The CHAIRMAN. Whom do you represent here?

Mr. HODGSON. Great Lakes Forge Co.

The CHAIRMAN. What do they manufacture?

Mr. HODGSON. Forges, drop forges.

The CHAIRMAN. How many employees has that company?

Mr. HODGSON. Two hundred.

The CHAIRMAN. And what is your official relationship to that company?

Mr. HODGSON. President.

The CHAIRMAN. You are appearing in opposition to this bill?

Mr. HODGSON. Yes, sir.

The CHAIRMAN. We will be pleased to hear you.

Mr. HODGSON. I commenced work half a century ago and engaged in business for myself during the depression of the nineties.

Until 1920, I was in the contracting business in various parts of the country, having as many as 2,000 men in my employ at one time.

To Senator Davis of Pennsylvania, I wish to state I built, for the United States Government, the double lock at old Brownsville on the Monongahela River; and to Senator Copeland of New York that I built a mile section of the barge canal through Fulton, N.Y., in the Oswego River.

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Beginning with 1920, I have operated the Great Lakes Forge Co. in the southwest section of Chicago. We make drop forgings for automobiles, trucks, tractors, railroad cars, farm implements, and so forth, having a capacity of 50,000 tons of steel bars per annum.

When the depression hit us in the fall of 1929, we had 550 men. We first cut our operations to 3 days a week. This resulted in some of the men leaving for jobs of 5 or 6 days a week. We continued dividing the pay roll as best we could among those remaining, favoring those with families and most in need. In 1930 we added to the plant in machinery and buildings $225,000, all of the construction work being dome by our men. We have continued to find as much work as possible outside of our regular operations, both in the plant and the surrounding territory.

Until the spring of 1932, when the State relief went into operation, those men we could not find work for and who could not get other jobs, we asked the United Charities to care for, reimbursing them for their expenditures plus their overhead. This work by them was done without knowledge of our connection with it. In addition, there has been a welfare fund in operation in the plant.

Wage rates were maintained until the beginning of 1932 notwithstanding drastic cuts in sale prices. This same employer interest was general with varying methods in the Chicago district. As far as I know, that was the case. They all did it.

We now have 200 men connected with the pay roll operating in accordance with the code of our industry, which has not yet been signed, but may be any day. In the last 6 months the hours averaged per man were 600. Our code provides for 1,040.

A number of years ago the work of making things safe for the men, or human engineering, became intensified. This great work has many ramifications. The company has spent large sums on the mechanical part but the greater work embraces the human element. From this work has come committees of the men meeting with the foremen and management in the discussion not only of safety but other matters. First-aid classes are conducted. Group insurance with sick, accident, and death benefits is being carried. Welfare work is conducted. Employees' eyes are examined and fitted with nonshatterable goggles.

We have a large number of cracked glasses showing in each case a man's eyes would have been damaged or completely lost. Medical examinations are made in great detail and the men are assisted in putting themselves in shape.

The discharge or voluntary departure of an employee is a matter of grave concern. It interferes with our operations and is very costly.

A successful business is like a great orchestra, every instrument in harmony and in tune. It has no place for outside interference.

Mr. Senators, these company-employee business relations are a matter of education, growth, and development. They are not matters that can be legislated.

I denounce the Wagner bill in its entirely as a menace to every man, woman, and child in this country. It is un-American, and has already retarded business recovery. Its passage will cause the closing down and liquidation of large numbers of plants. It will cause more unemployment.

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This country has come to its present greatness due to the free, open competition of its men and business operations.

Those workmen and business concerns who have combined in regulating prices have been a considerable factor in this business depression even though they were but a small part of the whole.

I can get any accommodations I am entitled to from my bank. I am opposed to making needed capital additions to our plant due to the meddlesome and impractical legislation passed and proposed.

Thank you.

The CHAIRMAN. Thank you.

Mr. Arnold Wilson.

Mr. WILSON. Yes, sir.

STATEMENT OF ARNOLD WILSON, WESTERN CLOCK CO., LA SALLE, ILL.

The CHAIRMAN. Your full name?

Mr. WILSON. A. J. Wilson.

The CHAIRMAN. Residence?

Mr. WILSON. La Salle, Ill.

The CHAIRMAN. Whom do you represent here?

Mr. WILSON. Western Clock Co.

The CHAIRMAN. What do they manufacture?

Mr. WILSON. Clocks and watches, nonjeweled.

The CHAIRMAN. How many employees do they have?

Mr. WILSON. Two thousand and three hundred.

The CHAIRMAN. Where are they located?

Mr. WILSON. La Salle, Ill.

The CHAIRMAN. What is your connection with this company?

Mr. WILSON. Vice president and general manager.

The CHAIRMAN. You may proceed to give the committee your views on this proposed legislation.

Mr. WILSON. Senator, in appearing here, I want first to apologize for the fact that I have no prepared statement. It was almost a physical impossibility for me to come, but the implications of this bill seem so dangerous that I wanted to appear informally and voice my objection.

The CHAIRMAN. Very proper. You may do so.

Mr. WILSON. Assuming that the purpose of this legislation has the sole purpose of national recovery which we are all seeking, assuming that it has no ulterior motive of any kind, it is my sincere opinion that the results of this legislation will be the exact opposite of the avowed purpose of that bill. I believe that it is contrary to the concepts of our Government. I believe that it is contary to the spirit of the Constitution of our country, which starts out with the words, "We, the people of the United States", which does not divide the people between one class here, and another class there.

I believe also that is will tend to increase the feeling of division and hostility between the different elements in industry, which, if they do not work together and do not have some semblance of teamwork, cannot possibly achieve the results that we are all seeking. The very phrasing, the very wording in the bill itself indicates the use of the—to my notion—very undesirable words, "capital and labor". The inference there is that capital only can do wrong, that

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capital does not labor. If there is any class today that is laboring, in my opinion, it is the so-called "capitalist". The suggestions in the bill would make it possible for anyone who wanted to capitalize or to develop the idea of hostility, to point to that bill as the declared will, or the declared opinion of Congress, that capital and labor should be divided. I do not think they should be divided. I think they should be together.

Senator DAVIS. You think it would be a better term if it used "employer and employee", rather than "capital and labor"?

Mr. WILSON. It would seem so, Senator, because the implications there are that capital is a sort of a white-spotted fraternity that never does anything and that sits around, and draws dividends, and clips coupons. There may be some of them. I do not know where the dividends or the coupons are right now, but even assuming that there are, I think it is fatal, today, because we know that dissension and hostility are the greatest enemies we have to fight. At least, that is my humble opinion.

Now, I would like to say, in the second place—prior to that, I would like to say that, as far as my own industry is concerned, and my own business is concerned, we have no quarrel with labor, we have no quarrel or ax to grind, we have no grudge to bear. I do not come as a champion of capital, or anything of that kind, or as a champion of employers. I do not pretend to be that, but I am sincere in my convictions that this law would be injurious.

In the second place, I think it is contrary to the spirit of the National Industrial Recovery Act, already on our books. For the reasons that I have cited under no. 1, the National Industrial Recovery Act assumes the very thing I am talking about, namely, teamwork and partnership; a partnership of industry, of the public, of labor; a common interest in this country. I think we would do well to be sure that we do not set up some agency which might become the government itself, because of the power which it might exercise. I think that is perhaps the gravest danger.

In the third place, it seems to me an unnecessary piece of legislation, first, because we have the National Industrial Recovery Act, which does attempt, in a very able fashion, to try to control conflicting elements, and conflicting opinions, and to try to promote teamwork and cooperation, to punish the chiseler, to punish the unscrupulous employer, and it gives us an agency that we have not had before that I believe has vast possibilities of helpfulness in this country, and I do plead that we do not destroy by some other piece of legislation the possibilities for good which rest in the National Industrial Recovery Act.

In that act, under section 7 A—it has been interpreted in such a statesmanlike manner by our President in the recent automobile settlement—there is indicated there, entirely, the spirit of joint responsibility between both elements in industry, both employer and employee, and we should not destroy that. We should try to work out our problems harmoniously. I believe it can be done. I know it is being done in many, many industries today.

Another factor there, why I think it is unnecessary, is because I think it would be very confusing. Even the bill itself indicates possibilities of conflict between this legislation and the National Industrial Recovery Act, at sections of it. It attempts in one para-

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graph, as I recall it, to cancel everything in the Recovery Act which conflicts with this legislation, and to leave in force everything in the Industrial Recovery Act with which this legislation does not conflict.

It contemplates, there, the fact that there is an overlapping and a possibility of confusing, and it seems to me it would be a good deal as if we were going to improve the rules of football, so that there would be less accidents or less danger. We would say, "Yes, that is a good thing for the football rules committee to take up, and we will change this rule on forward passing this year, and maybe the next year we will change some other rule"; but as a matter of practical effect, if the football-rules committee were to try to change all the rules of football in 1 year, even the men who had been playing football for 4 years would have difficutlty in knowing when they were "off side." Now, maybe I am "off the track" a little, to draw that parallel, but I sincerely feel that that is the situation that business is in. Honestly, we do not know when we are "off side", try as we will to obey and to comply and to assent.

The last thing I am going to say—and I do not want to take too much of your time—is that I believe the law is dangerous and impractical of fair administration. I believe it is dangerous because it sets up a machinery which—granting that the present proponents of the law are completely sincere in their purpose, completely patriotic, I would be against that law if there were seven Abraham Lincolns who were going to be on that board because, regardless of integrity, of ability, or of understanding, there is an agency set up there which, if it got into the hands of a conspiring group, would be as great as the Government itself. I think, gentlemen, that is one of the greatest dangers that we have to face there.

I would vote against a king, even if he were the wisest ruler that ever lived, that was running for king in the United States. Probably my generation would be better off with that type of a situation. If you can imagine a superman, a Messiah, that for 30 years would be king of America, with policies of judgment and abilities that are utterly superhuman, I say I would vote against it, because I am afraid my children would some day pay just exactly like the story of the frogs that asked for a king and got a stork.

Senator DAVIS. Has the depression exploded the theory that there are supermen?

Mr. WILSON. I am afraid very much so, Senator. The second phase, the impossibility of administration, seems to me rests on this point. We have an enormous variety of products in America. We have an enormous variety of businesses. The locality that I come from has problems quite different from the problems in Chicago and the problems in Cleveland and the problems in New York, the problems of Peoria, or other cities of varying size, not only because of the size of our community, which is not a large community, but because of the character of the industries there. We are a combination farming and manufacturing section. It makes quite a difference whether we are in that kind of section or whether we are in, say, a coal section alone, or a steel section alone, or an automobile section alone. The problems are quite varied there. Now, that means that the only kind of an act which can be helpful is one which is based on fundamental principles of justice and cooperation in business and in dealings between the employer and employee such as are covered by the

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National Industrial Recovery Act, and if we attempt to set up a board or a group, or an individual who will go into each community and say, "That particular thing shall be done in this particular way", we are bound to get into serious trouble.

I do not think it is humanly possible for anyone to do that. I do not have figures, but I suppose we could assume that there are 3,000,000 businesses, 3,000,000 employers in this country, at least, that would come under the definition of this act. Let us assume that those 3,000,000 employers have some complaint against them. Let us assume that each complaint can be settled fairly in 10 minutes. It would take about 50,000 days, 10 hours a day, to settle those cases. Now, I know my proposal is absurd, because there wouldn't be disputes in every case, but I also know that if you divided by figures by 10, or by 100, you have an impossible complication there, unless this board would name a multitude of assistants, who could not possibly have the concept of the problem that they should have, to settle it, and to settle it fairly.

Senator DAVIS. If I remember correctly, during the most prosperous times of this country, there were always pending in the Department of Labor between 50 and 60 strikes; so, where there are 50,000,000 people gainfully employed, there is more than one complaint a day. It seems to me that in an industry, there is just complaint after complaint.

The CHAIRMAN. Mr. Wilson, I will have to ask you to suspend. We have several other witnesses.

Mr. WILSON. All right. My only other point is that we are covering, in just a public utility, such as the railroads, or anything of that kind, which in itself has been quite a problem—I know of cases, as it was brought out in earlier testimony, where there have been 3 years intervened between the presentation of a rate and the determination of whether or not the rate should be granted—just as an indication of the complication.

The CHAIRMAN. Thank you.

Mr. WILSON. Thank you very much.

The CHAIRMAN. Mr. Fay, come forward please. Now, will all others stand up who expect to be heard this morning? There are seven. You may have 5 minutes, Mr. Fay.

STATEMENT OF W. E. FAY, OF THE CHAMPION MACHINERY CO., JOLIET, ILL.

The CHAIRMAN. Your full name?
Mr. FAY. W. E. Fay.
The CHAIRMAN. Where do you reside?
Mr. FAY. Joliet, Ill.
The CHAIRMAN. What company are your representing here?
Mr. FAY. Champion Machinery Co.
The CHAIRMAN. What do they manufacture?
Mr. FAY. Baking machinery.
The CHAIRMAN. Now many employees?
Mr. FAY. One hundred and one.
The CHAIRMAN. Have you a union?
Mr. FAY. No, sir.
The CHAIRMAN. The employees are connected with no union?

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Mr. FAY. No.

The CHAIRMAN. Your employees are connected or associated with no union?

Mr. FAY. No.

The CHAIRMAN. Or otherwise?

Mr. FAY. Not that I know of. We are an open shop.

The CHAIRMAN. All right. You may proceed.

Mr. FAY. I am appearing before you today, not only in my capacity as president of the Champion Machinery Co., but also as representative of the industrial district centered around Joliet, Ill., a city of 43,000 people, enjoying a trading population of approximately 100,000, and the county seat of Will County, located in the State of Illinois. There are, according to the latest census of 1930, 10,503 families located within the city limits of Joliet. Of this number, 5,436 own their own homes. The exact figures for the township are not available, but based on a proportionate scale, it would appear that there were 17,500 families and about 9,000 home owners. These figures are interesting in view of the fact that Joliet is almost wholly dependent, either directly or indirectly, on its industries to provide for the livelihood of its people. There are within the immediate area of Joliet 145 purely manufacturing or processing concerns, and 24 service industries, producing 1,770 different kinds of articles. These industries are not only the sustaining factor in providing the people of Joliet with a means of making a living, but are the financial backbone of the various taxing bodies represented in our county. A report compiled as of year shows that of the taxes collected during the year 1933 in Will County, 55 percent of the total was paid by these industries.

It is my intention in presenting the aforementioned statistics to impress the vital part played by industry in our district, and to make clear that any major legislation affecting industry is sure to reflect throughout the community.

Of the 169 industries I have mentioned, there are a number employing less than 10 people. There are also a number employing well over 500 people. It is the group, however, of the many small concerns employing from 10 to not higher than 500 people, that I wish to speak of. It is my feeling that those who are employing less than 10 people will not be particularly affected by this, the Wagner bill, and that those who are employing great numbers of people are large enough and capable enough to speak for themselves. But these smaller concerns, which play so vital a part in the life of our community, because of their feeling of insignificance, are reluctant to express their convictions although such legislation as contained in the Wagner bill might well be accepted as imposing upon them conditions which would inevitably result in their retiring from the manufacturing field.

Acting upon this premise, a number of the smaller industries in the Joliet district have provided me with statistical data which reflects the conditions of concerns affected by this bill. These industries number 25, selected at random, representing diversified lines and employing last year an average of 2,519 people. There has been no labor trouble of a major nature in any of these companies. Employees and employers operating on a basis of mutual respect and understanding of each other's problems. Because of the fact that

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these industries are small, it was possible to have a much closer relationship between employer and employee than is probably true in larger industries.

The men employed in these small companies knew that they could talk to their employer about working problems and assured of helpful, fair-minded treatment. These employees recognize the fact that they always have been able to bargain either collectively through shop committee or similar means or as individuals. Why, then, burden them with unnecessary expense of paying some outside agency to secure for them something they already have.

Labor union organizers have not been active in the past in the Joliet district. With the interpretation by organized labor interests of section 7 A of the Recovery Act, construing collective bargaining to mean union representation, our community, in common with most industrial regions, was subject to the activities of paid union organizers. This outside agitation and the misrepresentation of facts which they presented to employees, had the natural result of causing unrest among employees and causing a sense of apprehension on the part of the employer.

One argument advanced, which I will cite as an example, was the claim made by an organizer endeavoring to secure members for his union, that in order for the employees to be given a fair deal under an industry's specific code, it would be necessary for them to join a union, and the union then would send individual representatives to Washington to be present at the code hearings. That was the sole argument advanced for joining the union and through interviewing individuals at their homes and continually pounding at the thought they would be unfairly dealt with in Washington unless represented, they almost succeeded in undermining the morale of that business.

The employer, however, hearing of the cause of the unrest, explained to his men that if they wished to be represented at Washington during the time of the hearings, he would be glad to personally pay the expenses for that trip of any representatives they should care to elect and that it would not be necessary for them to pay dues in any organization to secure such representation. I merely cite this as a typical example and to show how trouble may easily arise from some misleading statement on the part of a union organizer. Incidentally, I think it shows the fair, broad-minded attitude of the employer toward his men.

Under the provisions of the Wagner bill an existing harmonious situation between employee and employer is seriously jeopardized. A bill which delegates so much power to union labor is going to reflect itself in a greatly more active and rejuvenated action on the part of labor union organizers. Whether or not they would be successful in influencing the employee the resultant unrest, disruption of morale, and loss of efficiency caused by the agitation from outside the small shops, would seriously hinder these smaller industries, many of them who are just beginning to feel the effect of the recovery program.

Mentioning recovery, these industries to which I have been referring, have all signed the President's reemployment agreement or in cases where a specific code has been adopted have signed that code and are adhering to its regulations, important to the future welfare of small manufacturing industries.

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I now wish to give one example of why trade unionism in the smaller industry is not desirable. In companies of small size it is the custom to use men on more than one job. By that I mean, a machinist having no work of his own to do at a particular moment may be assigned to other mechanical work. This has been a satisfactory arrangement for all concerned, as it enabled the employer to provide the employee with work when his particular assignment is inactive and has enabled the employee to continue work when his services might otherwise have been temporarily discontinued. If the shop were unionized according to the trades, this arrangement as you can readily understand, would be impossible.

My company is engaged in manufacturing bakery equipment machinery, employing slightly over 100 men and these facts that I have mentioned would apply to our business. I know that my business is typical of the small industries in the Joliet area, and, I earnestly believe, of the smaller businesses throughout the United States. The men at the head of these industries have been able to run their concerns fairly, honestly, equitably, as good citizens of this country, and I feel in all fairness should be allowed to continue to do so without fear of any outside union-labor dictatorship, which I feel may be created if this bill becomes law.

Therefore, gentlemen, these industries for whom I am speaking are opposed to the passage of the Wagner labor bill. You may be sure of my appreciation of your consideration of this problem which our Joliet manufacturers deem to be of vital importance.

Firms and Employees

American Baking Co	45	Joliet Macaroni Co	95
Brewster Printing Co	11	Joliet Wall Paper Mills	110
Calumet Chemical Co	90	Knapp Bros	100
Champion Machinery	101	Lennon Wall Paper Co	75
Farrell Manufacturing Co	90	Mid West Wall Paper Co	60
G. H. Deaton Co	55	National Carton Co	80
Gerlach, Barklow Co	500	Northern Illinois Cereal Co	220
Groth & Co. Adam	60	Phoenix Manufacturing Co	250
Humphrey & Sons	50	Paul Ales, Inc	50
Illinois Clay Products	45	Superior Wall	50
James G. Heggie & Sons	80	Union Machinery Co	37
J. L. Ferguson Co	65	Wm. E. Pratt Manufacturing Co	200

Senator DAVIS. May I just ask the witness a question?

Mr. FAY. Yes, sir.

Senator DAVIS. You do not object to any of your employees joining an organization of their own choosing?

Mr. FAY. I do not, Senator Davis; no.

STATEMENT OF L. A. PECK, MANAGING DIRECTOR OF THE AMERICAN INSTITUTE OF LAUNDERING, JOLIET, ILL.

The CHAIRMAN. Mr. Peck.

Mr. PECK. My name is L. A. Peck.

The CHAIRMAN. Mr Peck, where is your residence?

Mr. PECK. Joliet, Ill.

The CHAIRMAN. What is your occupation or business?

Mr. PECK. Managing director of the American Institute of Laundering.

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The CHAIRMAN. And how large an association is that.

Mr. PECK. Well, we have in our plant, some 40 or 50 employees. I am here also——

The CHAIRMAN. You have a laundry of your own?

Mr. PECK. That is correct.

The CHAIRMAN. Where is that located?

Mr. PECK. At Joliet.

The CHAIRMAN. And then the institute has in its membership how many laundries?

Mr. PECK. We have a national association. I am not appearing on their behalf this morning.

The CHAIRMAN. I thought you were.

Mr. PECK. No.

The CHAIRMAN. You are appearing just for your own company?

Mr. PECK. Yes; and other Illinois members of the Illinois Manufacturers' Association.

The CHAIRMAN. Manufacturers' Association?

Mr. PECK. Yes.

The CHAIRMAN. In other words, the Manufacturers' Association includes laundrymen as well as others?

Mr. PECK. That is correct.

The CHAIRMAN. What office do you hold in connection with this Laundry Institute of which you speak?

Mr. PECK. Managing director of the American Institute of Laundering.

The CHAIRMAN. Are you yourself in the laundry business?

Mr. PECK. That is correct.

The CHAIRMAN. Where?

Mr. PECK. At Joliet.

The CHAIRMAN. That is what I understood.

Mr. PECK. That is a part of our association activities.

The CHAIRMAN. Are you an owner or officer in this laundry at Joliet?

Mr. PECK. Officer.

The CHAIRMAN. What officer?

Mr. PECK. Managing director.

The CHAIRMAN. You may proceed.

Mr. PECK. I am also representing Illinois laundries, at their request, to appear here in opposition to the Wagner bill. And, Mr. Chairman, I will only record, here, our general opposition to this bill, and state that we feel it is particularly unjust and unsound, for the small-type business represented by laundries in Illinois. We share the views of the Illinois Manufacturers' Association and the National Association of Manufacturers. I believe it is unnecessary for me to repeat the various details in connection with the bill, in this testimony.

The CHAIRMAN. Thank you very much, sir. That is helpful. Mr. Haake. It is "Doctor", I believe?

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STATEMENT OF A. P. HAAKE, MANAGING DIRECTOR OF THE NATIONAL ASSOCIATION OF FURNITURE MANUFACTURERS, AND MEMBER OF THE FURNITURE CODE AUTHORITY

The CHAIRMAN. Where do you reside?

Mr. HAAKE. In Chicago.

The CHAIRMAN. And your business?

Mr. HAAKE. Managing director of the National Association of Furniture Manufacturers and a member of the Furniture Code Authority.

The CHAIRMAN. Are you a manufacturer yourself?

Mr. HAAKE. No, sir; I am not.

The CHAIRMAN. And that association includes members all over the country?

Mr. HAAKE. It includes members all over the country except in the southeast.

The CHAIRMAN. How large a group is this?

Mr. HAAKE. That represents approximately 2,000 manufacturers, of whom 600 are paying members.

The CHAIRMAN. You may proceed.

Mr. HAAKE. I am speaking in behalf of the industry as a whole, and also, perhaps, immediately because of the group that is here this morning, in behalf of the Chicago Furniture Manufacturers. May I say, at the outset, that the furniture industry, in 1931, definitely took the position that something needed to be done in the way of improving the position of labor. That was not an unselfish or altruistic idea, at all. It was recognized that in order for the manufacturer himself to exist, and even prosper, there must be a measure of prosperity for employees. We are coming to recognize, I think, that employees are customers, as well, and so the association went on record at that time, in October 1931, as favoring some kind of legislation which would reduce hours without reducing wages. Therefore, we welcomed the passage of the National Industrial Recovery Act, and I think it is safe to say that 80 percent of the industry, or more, so welcomed it. I should be stultifying myself to say that the industry as a whole favored the inclusion of 7 (a) in the National Industrial Recovery Act. They did not entirely so favor its inclusion.

I think there were many manufacturers who were afraid of it, because of the encouragement that it would give to the professional organizers of labor, and to those self-confessed proponents of labor, who have, on occasions, in our judgment, never shown the best, real interest, or certainly not the best judgment in advancing the interests of labor; but, once it was in the act, it is safe to say that this entire industry has approved it, accepted it, and is willing to abide by it. If I understood you correctly, Senator, I think that Senator Wagner's primary idea is to see to it that labor may bargain collectively, that management will not deny labor their right to bargain collectively. I will say to you frankly that our industry grants that right, recognizes the rightness of it. I think where a difference sometimes comes is that the men are not—and when I say "the men" I mean management—the management is not sure that those who profess to speak for labor are truly representative. I haven't the time, and you perhaps haven't the inclination to give me the time for it, or to listen to it, but I could give you instance

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after instance where those who speak for labor are not representative of labor; where the workingman himself has been coerced into accepting a kind of leadership, as, for example, in Philadelphia, the son of the owner of an upholstery shop was badly mauled one night because he refused to join the union—a workman in his shop, going into his father's business, learning the trade, refused to join the union, and the way of persuading him was to maul him, to get him down on his back and give him some unofficial massaging. Tactics of that kind have been employed and, of course, on the other side there have been unfair tactics.

One does not deny that; it was the fear of the representation being not true that has made many manufacturers question the inclusion of 7–A, and particularly to question the wisdom of this particular act. There is a complete disposition to recognize labor in bargaining. I am afraid, frankly, that on the part of many of those who represent labor, when they ask for the right to bargain, what they really are asking for, and what I believe they would like to see the Wagner bill accomplish for them, is not the right to bargain, but some means of compelling the employer to accept the kind of bargaining they would like to make me accept. At any rate, that is the fear that is in the minds of a great many of these men who question the wisdom of adopting the Wagner bill, certainly at this time; though I will say unqualifiedly we are for bargaining with labor, with the men, but not through the agencies that elect themselves or sometimes profess to represent the interests of the men. We do not believe this law is necessary.

You will pardon me for being quite frank about this, but here we have on the statute books, now, an Industrial Recovery Act. We had, a week or so ago, quite a performance in Washington. Thousands of men came here to advise their opinions, about how it was working. I think that if one thing more than any other stood out, it was this, that whereas in March 1933 the President of the United States lifted the people up almost literally, took the heart of America into his hands, and lifted it up, and built for himself a tremendous acceptance on the basis of which Congress was induced to pass the National Industrial Recovery Act, and give the President tremendous power—that after that time there was a steady, and with acceler ted rapidity, diminution of confidence in the administration.

The thing, frankly, that has held the last has been a personal faith in the President, and I think that that can be traced more than to any other one thing, the fact that we had ourselves all keyed up to see legislation doing a job for us, just the same as, sometimes, the deacons of a church hire a preacher and then continue to raise hell, saying, "Now, we are perfectly all right, we are safe, because we have got a preacher", and so it is, in the habit of men to look upon a law and say, "Thank God, we have passed the law, now everything is going to be all right", and then it did not work. We did not get compliance.

These men have come to Washington and spent thousands of dollars when they ought to have been on their jobs. They should have been doing things in their offices and in their factories, to produce goods, to keep the wheels of commerce busy, and instead of that, we have been sitting down here in Washington, dealing with deputy administrators, and this and that and the other, quarreling among ourselves, thinking about things other than solving the real problem.

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America should have been at work during the last year, instead of being here, trying to figure out how finally we would get to work. Well, now, the net result of all of that has been that while that we have done a decent job—and I am not criticizing the N.R.A.; I think, under the conditions, a perfectly glorious job has been done, but the fact remains that we have tried to set the world right in the period of a few months' time, and it could not be done as quickly as all that. We have got the codes, but we didn't get compliances, and I have gone from place to place in our industry, and run into men, and 80, 90, sometimes 100 percent of them have lost faith in this whole business, because they haven't yet had the compliance.

Now, on top of that, witnessing the apparent failure of one piece of legislation, perhaps confession or conceding the failure of that legislation, by the mere fact of trying some other, we come along and now we say, "We are going to make this thing perfectly right; we were not able to do the little job, and now to prove that we are able to do the little job, we are going to tackle one that is perfectly impossible." So we offer a bill, which is unnecessary, in our judgment, because under the National Recovery Act we already have 7-A. We have set up the Labor Board in connection with N.R.A. Let us let the thing work. We believe that all the machinery necessary is right there, and in my humble judgment, you will pardon me for saying it, the Senate of the United States, in my judgment, would concede a failure on the part of N.R.A. It would concede that one piece of legislation already passed was futile, by virtue of the fact that it offers another one.

I see nothing in here, if all that is desired is to secure bargaining between the two groups, that is not already provided for. Now, it is going to be tremendously costly.

I know men come up here and tell their sad stories. I am not thinking of sentiment or anything like that in connection with those things, but the fact remains that in 1929, here is one industry that employs, in round numbers, now, around 110,000 people. They lost 10 percent on sales; in 1930, about 7 percent; in 1931, about 14 percent; in 1932, 22 percent. One third of the concerns, in that time, have gone out of business. Their reserves are exhausted; and, without hoping or trying to be facetious, I ask you, in all seriousness, what are we going to use for money? We just haven't got it. We cannot go to the banks.

It is perfectly true the banks are so solvent, many of them, that they have less than 10 percent of their assets in commercial loans, and they are told, on the one hand, "For God's sake, loan more money to business." And, then, on the other hand, by the same Government, "Don't you dare do so unless you have this and that kind of security." And the faith just isn't there. A banker dare not even think he wants to. Our money is gone, and, just a little bit more, it doesn't take much more and you will push them over the hill by tens and twenties and forties and fifties. I could name for you, off my records, 500 manufacturers for whom another 3 months of what we are going through now would mean passing out of the picture.

Now, is that what we want? Is it our desire to set the world right by legislation, while the patient is so sick that he can hardly stand on his legs? Or may there not be some virtue in taking what we have got, and letting it work, and building this body up somewhat

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before we experiment with it? You have got, today, as the biggest single thing standing in the way of return to prosperity, of recovery, the lack of faith. Men don't understand. They just started working along one direction, and, bang. Something hits them. Another direction, and something else hits them. Now, it is the Wagner bill, and we are in a constant turmoil, regardless of the merits of the bill, Senator; regardless of whether it is right or wrong; regardless of whether it is the finest piece of legislation that was ever formed; the mere fact that it is offered is one of the most disturbing things that has happened.

We began, the early part of this year, increasing our production, taking some chances, if you please, using what little reserves were left, to put more men to work, and piled up a lot of goods, and then there comes along these things that have disturbed the market, and the market has fallen off. Now, what are we up against? We have got to close it all out for anything from 10 to 50—you are lucky if you get 50 cents on the dollar. More of the reserve is gone, and a little bit more of the courage taken away, and you have got an industry, and there are hundreds of them, that are morally like that, because they are afraid—afraid of what is going to happen next. Now, without hoping to appear to be oratorical—pardon my earnestness—not to be profane, I would say, in God's name, let us let these fellows alone for a little while. They are not all devils. They do not wear horns. If you look at the record of these hearings before the Labor Board you will find there, evidence of willingness to bargain with labor, perfect willingness, and if you will get hold of those, you will find that the men are being treated as fairly and as reasonably as is possible. We have got to have money to do this with, and we have got to have an increase in transactions. I happen to be an economist, taught school for 10 years. I was head of a sales organization for a number of years, and I have gone into this thing with perhaps somewhat of the thought and the feeling of a missionary, hoping to get these manufacturers to see this thing in a broader light. I say that both groups are selfish and stupid at times, and the thing that stands out as the greatest thing, above all, at present, is to just get the machine working.

It doesn't matter whether it is 50 cents an hour, a dollar an hour, or what it is, so long as the wheels are turning; and the very thing needed now to make those things turn is to let us keep what courage we have got left, increase our faith, instead of destroying it, use the machinery that we have got; and I respectfully submit that under 7–A and under the N.A.R., and all that Senator Wagner—I almost called him "Professor Wagner"—all that Senator Wagner hopes for and dreams for is in his possession.

If, however, it is the desire of anyone to pass legislation that will force industry to accept the kind of agreement that labor wants, in addition to bargaining, then I grant you that something in addition to 7–A and N.R.A. is necessary.

The CHAIRMAN. Thank you, sir. Mr. Fisher?

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STATEMENT OF LEON FISHER, OF FISHER GROCERY CO., SPRINGFIELD, ILL.

The CHAIRMAN. Your full name?

Mr. FISHER. Leon Fisher.

The CHAIRMAN. Your residence?

Mr. FISHER. Springfield, Ill.

The CHAIRMAN. Your business?

Mr. FISHER. I am a partner and general manager of the Fisher Grocery Co.

The CHAIRMAN. And you represent that company here?

Mr. FISHER. I represent that company and other Illinois members of the Food and Grocery Chain Stores of America.

The CHAIRMAN. Has the Fisher Grocery Co. a chain of stores?

Mr. FISHER. Yes.

The CHAIRMAN. How many?

Mr. FISHER. Forty-seven.

The CHAIRMAN. All located in the West, I suppose?

Mr. FISHER. In the central part of Illinois.

The CHAIRMAN. Now, you represent not only that company but other chain-store companies?

Mr. FISHER. Yes, sir.

The CHAIRMAN. You may let us have your views.

Mr. FISHER. The Illinois food and grocery chain distributors, small and large, are opposed to the Wagner bill because we believe it will tend to destroy the friendly relation existing between employer and employee. When an employer is prohibited by law from taking any part in an employee organization, it is equivalent to saying that employer participation in an organization of his own employees will be prejudicial to their interests. When the law of the land starts employees out with that presumption, it will be most difficult for the employer to overcome it and to establish in their minds that he is interested in their welfare and success. Unless the employee has this confidence in his employer, efficient retail organizations cannot be developed.

Furthermore, we food distributors feel, if this bill becomes a law, it will hamper the rewarding of individual skill and efficient service. Most of us have a profit-sharing plan with our employees, based on the theory that when there is a profit those who were most instumental in producing it are entitled to their share in proportion to what their efforts contributed. In putting in the hands of outsiders the negotiations of remuneration for employees, the tendency will be an evening up, more as a minimum which of necessity means a reduction of the maximum, or rewarding the less efficient at the expense of the more efficient. This regards ambition, destroys initiative and causes dissatisfaction, and makes for inefficiency. Eventually prices must go up or wages of all go down.

Without confidence in the employer and that he will proportionately reward, when there is a profit, those whose individual skill and efficient service contributed to the earning of that profit, cost of distribution will mount and the spread between the amount the farmer receives and the amount the consumer pays will increase.

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We think section 7–A of N.I.R.A. fully protects the employee of the food distributor and we hope sufficient time will be given for results to demonstrate this before deciding a new law is necessary.

The CHAIRMAN. A. F. Dirksen? Not here. Moyer, Buchanan, Elton. There are no others, are there, except those?

Your full name, Mr. Moyer?

Mr. MOYER. E. J. T. Moyer.

The CHAIRMAN. And you live where?

Mr. MOYER. Naperville, Ill.

The CHAIRMAN. Who do you represent—the Kroebler Manufacturing Co.?

Mr. MOYER. Kroebler Manufacturing Co.

The CHAIRMAN. What do they manufacture?

Mr. MOYER. Furniture—living room, dining room, and bed room.

The CHAIRMAN. Can you leave with us your written statement for the stenographer, and then make a brief statement in addition?

Mr. MOYER. Yes. Several have appeared regarding furniture.

The CHAIRMAN. Yes.

Mr. MOYER. I am in the furniture industry so——

The CHAIRMAN. That matter has been covered here very well.

Mr. MOYER. Very well.

The CHAIRMAN. Thank you very much. That statement of the witness may go into the record.

(The statement referred to follows:)

STATEMENT OF E. J. T. MOYER, NAPERVILLE, ILL.

The branch of industry that we represent is furniture manufacturing.

The annual volume for the State of Illinois carries a value of $50,000,000, giving employment to 12,000 persons, with a pay roll of $13,000,000. Illinois produces 10 percent of the furniture manufactured in the United States. The above figures are based on the 1931 census.

To support this business a large investment is required for plants, machinery, inventory, and working capital, which places a large responsibility on management.

The restrictions imposed by a closed shop and union domination, which are clearly specified in the Wagner bill (S. 2926), will make successful operation very difficult.

My own company reached a high point of production in 1928 with total sales of $20,300,000. The production in 1931 fell off 50 percent from the above figure and totalled $10,000,000. The production in 1932, and again in 1933, showed a shrinkage of 40 percent from the 1931 figures, or $6,000,000.

The 1933 production represented only 30 percent of the 1928 peak figures. No doubt the experience of other manufacturers coincided closely with that of our own company.

Although every effort possible has been made to stimulate sales, the results during the past 4 years have been very disappointing, and in consequence of smaller sales volume employment suffered in proportion.

There are real benefits directly traceable to the National Industrial Recovery Act and the furniture code—such as minimum wage rates and numerous unfair-trade practices now prohibited—all of which will help materially in getting business back on its feet.

Either as a direct result of misunderstanding or deliberate misconstruction of the labor provisions of the act, section 7 (a), a small group of employees (25 cent) of the Naperville plant called a strike—acting against the recommendations of the Chicago regional board.

Fifty percent of the plant employees very promptly petitioned the management not to close the plant. However, because of threats and intimidations, the plant was closed on March 13, and remained closed until the following Monday, March 19. On Monday and Tuesday, March 19 and 20, the plant was picketed and the strikers resorted to violence—slugging, etc.

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Forty percent of the force is now at work in the Naperville plant, and because of the smaller working force, those now at work will operate on approximately a 36-hour schedule, while for some months past they have averaged 25 hours per week.

We have distributed $10,000,000 to wage earners in the last 5 years and hope we can duplicate this record in the coming 5-year period. Furniture is a luxury in times of business depression.

Wage rates have been increased at intervals from May 1933 to February 1934, affecting practically all departments.

Forty years ago our company was organized with 10 workmen. Today the business employs 2,400 men in operating 10 factories, and Mr. P. E. Kroehler, the man who started the company, is still the active head of the business and deeply concerned in the welfare, comfort, and prosperity of his employees.

The business cannot be successful unless there exists mutual confidence and friendly cooperation between employer and employee. That has been the guiding principle of this business.

Directly contrary to this spirit is the attitude shown by employee representatives who have chosen to create unemployment, mainly for the purpose, as admitted, of forcing on us a closed shop. This action can be taken as fairly representative of what might be expected from labor if the Wagner bill becomes effective.

We place a very high value on the true friendship existing between our employees and our executives for many years past, and we have reason to believe that this feeling is mutual. Any law which would prohibit continuation of such friendship and exchange of confidences would be a great injustice to every American citizen affected by such law and we cannot agree there is any justification for such legal action as is incorporated in the Wagner bill.

The speaker, Mr. E. J. T. Moyer, has been active in the company operations continuously for 31 years.

The CHAIRMAN. Mr. Buchanan.

STATEMENT OF W. C. BUCHANAN, PEORIA, ILL.

The CHAIRMAN. Your full name?
Mr. BUCHANAN. W. C. Buchanan.
The CHAIRMAN. Where do you reside?
Mr. BUCHANAN. Peoria, Ill.
The CHAIRMAN. You represent what industry here today?
Mr. BUCHANAN. The industry of Peoria.
The CHAIRMAN. Which one, or all of them?
Mr. BUCHANAN. Practically all of them.
The CHAIRMAN. And how many industries are there in Peoria?
Mr. BUCHANAN. My discussion, or my talk, is very informal. I haven't all that data.
The CHAIRMAN. You represent several of the various industries of Peoria?
Mr. BUCHANAN. Yes, sir. Keystone Steel & Wire, and——;
The CHAIRMAN. We are pleased to hear you. I wish you would be as brief as possible. A large amount of this evidence is now becoming cumulative and repetition, as you notice.
Mr. BUCHANAN. I was asked to appear here this morning, to state the opinion of the industry of Peoria, which has many large industries, quite a diversity of industry, including breweries, distilleries, tractor plants, fence manufacturers, and many other groups of industries.
The CHAIRMAN. How large a city is Peoria?
Mr. BUCHANAN. One hundred and five thousand; and with, you might say, the largest distillery in the world.
The CHAIRMAN. What is that?

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Mr. BUCHANAN. The Hiram Walker. And I guess the largest caterpillar tractor company. There has always been a very kindly relation between labor and management in the city of Peoria. There have been very few difficulties that they have experienced with labor. In the last several months, or since the National Recovery Act has been put into effect, practically all the industries are under a code, and have been abiding by the rules of that act. Recently, we have had some labor disturbance from agitators among men, which at the present time, I think, has been very well taken care of. A great many of these plants have workmen's representation. We believe that that is the proper way to handle labor disputes between men and employers. I personally have been in the steel business all my life, and have been active in certain union activities, as well as otherwise. I have had charge of many organizations that were completely organized, and again, many organizations of open shop. I am satisfied that the workmen's representation plan, as used by most industry, is very satisfactory to practically all of the employees in those companies.

Peoria is a diversified industry, which in most cases are seasonal. This means that our workmen, during this depression, have had more work than I think any other group of workmen in the United States.

The CHAIRMAN. You mean there has been less unemployment in your city?

Mr. BUCHANAN. We have had less unemployment. Practically all of the companies took care of their own employees, which meant that the charity that was necessary in Peoria was very limited. In fact, it was not necessary to increase our community fund, or the appropriation to the associated charities, during this period.

The CHAIRMAN. Are your people able to pay taxes?

Mr. BUCHANAN. Doing very well; yes, sir. One reason for this unusual employment is the fact that many employees work in the caterpillar tractor company during their busy period, and later work in the Keystone Steel & Wire Co., during their busy period, or at some of these others. Between the manufacturers' association and the association of commerce, in Peoria, they have diversified, in that manner. We are satisfied, though, that if this Wagner bill would be put into effect, that it would handicap the privileges of the laboring man, and the management, in the city of Peoria, as well as in other parts of this country. Just recently, the caterpillar tractor company needed 50 skilled workers. They interviewed 700 men, and picked out 5 that were capable of doing the job. We, at Keystone, many times in the last several months have interviewed as high as 300 men for skilled work, and have been unable to file that quota. Therefore, a shortening of hours would handicap the industry in Peoria considerably, as we are not in favor of importing men into Peoria, to take jobs during a busy season, and later have them on our hands, when the period becomes slack. We are satisfied that a great many employees in the industry in Peoria oppose this Wagner bill. We are satisfied that a great many of the employees in Peoria oppose the 40-hour week. In fact, in a number of cases, the employees have made that known, due mostly on account of their limited earnings. The records will show that Peoria is possibly paying as high wages as any part of the country, and we are satisfied that if this bill is

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enacted and put into effect, that that relationship is going to be materially strained, because we will still insist, and have to support management, will have to support supervision, and I do not believe the two will work very well.

The CHAIRMAN. Thank you very much. Mr. Elton.

STATEMENT OF R. W. ELTON, WASHINGTON, D.C., ON BEHALF OF THE ENTERPRISE PAINT MANUFACTURING CO. AND FEDERAL VARNISH CO., CHICAGO.

The CHAIRMAN. Your full name?

Mr. ELTON. R. W. Elton.

The CHAIRMAN. And where do you reside?

Mr. ELTON. Pittsburgh; and I am here representing Mr. Frank L. Falzberger, the president of the Enterprise Paint Manufacturing Co. and the Federal Varnish Co., both of Chicago.

The CHAIRMAN. How many employees are there in those companies?

Mr. ELTON. I do not have the information, sir.

The CHAIRMAN. All right. Have you a written statement you can file with us?

Mr. ELTON. I have. It will only take me 1 minute to read it, if I may.

The CHAIRMAN. Very well. You may proceed.

Mr. ELTON. The Enterprise Paint Manufacturing Co. and Federal Varnish Co., of Chicago, Ill., register their protest against the passage of S. 2926 and H.R. 8423, enlarging the authority of the National Labor Board.

It is believed that the bill (S. 2926) would encourage, rather than prevent or allay labor troubles; that it would destroy the normal relationships existing between employers and employees by requiring them to deal through outside agencies; that it tends to force all employees into organizations that have not heretofore been considered necessary or desirable by the employees themselves; that it imposes unequal restrictions upon employers and organizations of labor; that it subjects employers to heavy damages and imposes no like liability on unions; that it arrays class against class and invites difficulties that do not now exist and would not normally arise, and that it will do much to set back and retard a recovery of business, the benefit of which would be shared by employees, employers, and the country at large.

The CHAIRMAN. Thanks very much. Mr. Donnelly?

Mr. DONNELLY. Yes, sir.

The CHAIRMAN. Would you like to make any concluding remarks, Mr. Donnelly? Your full name, Mr. Donnelly?

Mr. DONNELLY. James L. Donnelly.

The CHAIRMAN. What is your residence?

Mr. DONNELLY. Chicago.

The CHAIRMAN. And you have appeared here this morning in what capacity?

Mr. DONNELLY. Executive vice president of the Illinois Manufacturers' Association.

The CHAIRMAN. And accompanying you were these witnesses who have just testified, representing various branches of manufacturing establishments in Illinois?

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Mr. DONNELLY. Yes, Senator.

The CHAIRMAN. And you have had charge of the delegation that came here? Do you want to say anything in conclusion?

Mr. DONNELLY. I have a rather comprehensive statement which, however, on account of the lateness of the hour, I am not going to undertake to present. I would like, however, to have the liberty to file it with the Secretary.

The CHAIRMAN. We should like to have that very much, and have it printed in the record.

Mr. DONNELLY. I would like to say only this, Senator, in conclusion, that while we are, of course, very apprehensive about what the Wagner bill in its present form would do to industry and to business generally, if enacted into law, and we appreciate that, as a practical matter, the likelihood of the enactment of the bill, in its present form is rather remote, and we are here today primarily to direct our opposition to the principle involved in this bill, of delegating to a quasi-judicial agency, similar to what is now called the National Labor Board and the Regional Labor Board, an authority to arbitrate and to settle industrial disputes. We feel that the subject matter involved in industrial disputes is such that they can only be settled satisfactorily to both sides by the parties who are immediately at interest, the employer and the employee, and we feel that the intrusion into that relationship of any agency similar to the National Labor Board, only tends to strife and confusion, and to universal destruction.

The CHAIRMAN. Your statement may be filed with the clerk and printed in the record.

The meeting stands adjourned until Tuesday morning at 10 o'clock.

(Whereupon, at 1 p.m., Friday, Mar. 30, 1934, the further hearing on S. 2926 was adjourned until 10 a.m., Tuesday, Apr. 3, 1934.)

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TO CREATE A NATIONAL LABOR BOARD

TUESDAY, APRIL 3, 1934

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The committee met, pursuant to adjournment, at 10 a.m., in room 318 Senate Office Building, Washington, D.C., Senator David I. Walsh, chairman, presiding.

Present: Senators Walsh (chairman), Murphy, Erickson, and Davis.

Senator MURPHY. Gentlemen, the meeting will come to order. Senator Walsh, the chairman, will be here shortly. Mr. Galvin, will you come forward?

STATEMENT OF JACK GALVIN, GENERAL MANAGER, SHEFFIELD BRICK & TITLE CO., SHEFFIELD, IOWA.

Senator MURPHY. Mr. Galvin, if you will, give your name and address to the reporter, the business in which you are engaged, and whom you are representing.

Mr. GALVIN. My name is Jack Galvin. I am general manager of the Sheffield Brick & Tile Co., of Sheffield, Iowa. I am speaking directly as chairman of the executive committee of the Iowa Manufacturers' Association, which organization sent me to Washington with General Guy Logan, president of the Standard Chemical Co., of Des Moines, Iowa, and Mr. Edward A. Kimball, manager of the Iowa Manufacturers' Association.

The organization I represent represents 85 percent of the factory investment in the State of Iowa and 75 percent of the factory wages paid by the industry to the workmen. The 1929 Federal census gives the figure of $898,000,000 as being the value of manufactured products in Iowa. That has dropped to $560,000,000 in 1931. The number of wage earners, according to that census, in 1929 was 82,000. This was reduced to 61,000 in 1931, which are the latest figures available. It would be my judgment that that is substantially increased at the present time. The amount of wages paid by manufacturers in Iowa in 1929 was $102,000,000. This figure was also reduced in 1931 to $68,000,000.

Now, Iowa is known as an agricultural State, but I believe it is not generally known that Iowa has 2,776 manufacturing industries scattered over the State. These are located, for the most part, in the smaller towns. As a matter of fact, there are only 18 cities or towns in Iowa with a population greater than 10,000, and only 1 city with a population of more than 100,000. The town in which my own company is located has a population of only 1,100 people.

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We employ either 50 or 100 men, depending on whether we have one or two plants in operation. This means that from 200 to 400 of our 1,100 people are dependent on the Sheffield Brick & Tile Co. for their livelihood.

Our men have been with us for many years, some of them as long as 25 years. We have a low labor turnover, and General Logan tells me the average term of employment of his 50 workmen is 15 years and 4 months.

Because our factories are widely distributed over the State, and many of them in the smaller towns, they are naturally comparatively small and the average number of workmen in Iowa factories is only 22. If we take into consideration also the still smaller employers, such as the farmers' cooperative elevators, cooperative creameries, chicken hatcheries, etc., the number of workmen per establishment is probably not more than 4 or 5. Now, this means that the employer and the employee have a very close relationship. In our own plant, for example, none of our employees ever call me Mr. Galvin, I am just Jack to them and they are Tom, Dick, and Harry to me, and the children of these small-town employees go to the same schools, churches, and Sunday school with our own kids. There is no class distinction, we are just one large family. This picture is typical of conditions throughout the State of Iowa, and probably throughout the Central West.

Now, as I interpret the Wagner Labor Disputes Act, it would unionize the workmen of all these factories and set up a barrier between the employer and employee, making it impossible for them to deal except through a third party who would presumably be a walking delegate, who would not understand the problems of either.

I believe one object of the bill is to eliminate the so-called "company" unions. Now, in our section of the country these so-called "company" unions take the form of mutual benefit associations wherein the employees endeavor to protect themselves by united effort in contributing to a sick benefit fund or perhaps to the cost of group insurance, which is ordinarily borne for the most part by the employer.

The bill provides, as I understand it, that the employer would be compelled to promptly notify his employees that all such mutual benefit associations must be dissolved. I am confident that would be sad news to thousands of Iowa laborers.

Now, our factories have for many years been besieged by business agents of the unions. They have, for many years, endeavored to unionize them, but at the present time only 2 percent of the men employed in Iowa manufacturing establishments belong to the American Federation of Labor, and if we include in our consideration the building trades and coal mines, the percentage of men belonging to the union is less than 6 percent. Now, the natural presumption is that the one and only reason the 94 percent do not belong to a union is because they do not want to, and the reason they do not want to is because they are unwilling to surrender their independence and freedom of action.

As I understand it, you have been holding hearings on this bill for several weeks, and in the very short time that you have kindly given us to present our views I shall not undertake to discuss the details of the bill, but we Iowa manufacturers do want you to know

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that we are opposed to it because we believe it to be unjust and unfair and inimical to the best interest of the employers and employees. We honestly believe that it would actually incur strife and dissension, where we now have a very happy relationship.

Iowa manufacturers have cheerfully subscribed to the labor provisions of the National Industrial Recovery Act. I do not know of any who are not observing it in its entirety, and we feel that clause 7-A of the National Industrial Recovery Act fully protects the worker and that no additional legislation is at all necessary at this time.

We believe, too, that it would increase the cost of manufactured articles, and inasmuch as the products of our Iowa factories are, for the most part, sold to the farmer, it would automatically increase the disparity which now exists between the prices of farm products and the prices of manufactured products.

My suggestion is that no legislation be enacted until the National Industrial Recovery Act has been given a fair trial. It is working entirely satisfactorily at the present time and is acceptable alike to the employer and employee. I am sure that in presenting this viewpoint I am speaking for the great mass of laboring men in Iowa as well as for the employers.

The CHAIRMAN. Thank you, Mr. Galvin.

Mr. GALVIN. Thank you.

The CHAIRMAN. Dr. Wallace B. Donham.

STATEMENT OF WALLACE B. DONHAM, DEAN HARVARD BUSINESS COLLEGE, CAMBRIDGE, MASS.

The CHAIRMAN. Your full name is Dr. Wallace B. Donham? You are dean of the Harvard Business School.

Mr. DONHAM. I am.

The CHAIRMAN. And the Harvard Business School is the business college of Harvard College?

Mr. DONHAM. Of Harvard University; yes, sir.

The CHAIRMAN. How large is your school, for the benefit of the other members of the committee?

Mr. DONHAM. Oh, it ranges from 900 to 1,100.

The CHAIRMAN. We will be pleased to have your views, Mr. Donham.

Mr. DONHAM. Mr. Chairman, and members of the committee, I appear here representing no one but myself. In the beginning, I should like to make my general position on labor problems clear.

I have thought for years that the weakness of the labor movement in this country was unfortunate. My own labor experience has been entirely with organized labor. Under the conditions I met if the union had not existed I should have found it necessary to urge some form of organization. In my particular experience the union covered the entire industry so that the operation of the company was not disturbed by constant friction among crafts or by separate disputes with particular craft unions involving small segments of the total labor group. I have regretted the difficulties, partly practical and partly of internal politics, that have prevented the American Federation of Labor from so reorganizing that a complex modern industry could deal with one union rather than with a variety of crafts. I know that the problem is complex from the standpoint of each side,

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but I have steadily urged the American Federation of Labor to recognize that until this is done the complicated industry involving many crafts must oppose unionization because if unionized by crafts it loses its capacity to plan for continuity of production. I am interested in the steps gradually being taken within the labor movement to bring about a closer adaptation of the forms of labor organization to the forms of modern industry.

Second. I approve the removal of legal bans which have prevented or hindered the development of trade-unionism. I am clear that such things as the "yellow dog" contract are evils to the manufacturer as well as the union.

Third. Trade unions are, and I think must remain if they are to remain healthy, voluntary organizations not creatures of the State. If the State now steps in and makes trade unions compulsory I believe there is no stopping point short of State control of the union and State control of industry. This in my opinion means not only a stodgy society with little opportunity for individuals, but it means State control of trade-union organizations, jurisdiction, elections; indeed, the death of trade-unionism as we now know it. If State control develops, as I believe it must if this bill passes, rebel organizations outside the official organization will lose all opportunity to function or will be considered revolutionary. Trade-union officials will in the long run become part of our political machinery.

Fourth. Neither industry nor employees can work out healthy cooperative organizations if the critical decisions are to be made in Washington. Under these conditions instead of attempting to find the best solution of problems which will always be in large measure mutual problems, each side will inevitably jockey for position before the Washington tribunal. The kind of cooperation which must, if we are to have a healthy society, rest upon mutual respect and understanding will inevitably be prevented from developing or be broken down.

Fifth. The trade-union movement has not yet earned the adherence of vast numbers of workers in the United States. Instead of being given such adherence by the fiat of government, it should be freed from objectionable restraints and left to earn the respect and cooperation of groups of workers not now convinced of its capacity to serve them well. Otherwise there is grave danger of a later reaction against forced domination. The American people do not like to be told what they must do or not do. Prohibition should teach us this.

Sixth. Radical alterations in industrial relations, however desirable they may be as long-run social objectives, are inherently undesirable if put through rapidly by fiat. The task of building up leadership to the point where the labor movement is ready for the kind of responsibilities imposed by this bill is far from completed. The labor-union organizations have been organized as fighting organizations and many of the best elements in labor have not been members in the unions. Rapid organization on the scale contemplated by this bill will create administration problems of almost prohibitive magnitude. Recovery will be seriously delayed. The leadership of the labor movement will inevitably be bad and will be paralleled by equally bad leadership on the part of the employers. This will invite rapid and violent swings of the pendulum; almost revolutionary and counterrevolutionary. Rackets and bootlegging of discretion will

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increase. European experience gives every reason to believe that too much power placed in the hands of the labor group without slow educational processes which fit it to exercise these responsibilities, subjects the country to the dangers of tyranny, of drastic conflicts between leaders and followers and with other social groups. It is a step in the direction of making revolution easy. Racketeering is already a serious danger to the labor movement, and the development of demagogues with little emphasis on the constructive side of this greatest if industrial problems would be inevitable. Corruption would thrive.

Seventh. Back of this bill is the feeling that the depression, with its consequent righteous discontent of the people of the United States, gives a kind of last-chance opportunity to get all kinds of reforms put on the statute books. To me this seems unsound. I do not believe people of the United States will soon forget the tremendous maladjustments brought about by the war, the Pollyanna atmosphere of the rapid recovery in the decade from 1920–29, and the painful awakening of the last 4 years. It is evident that great changes in our economy are desirable. If we push such changes through with almost no public discussion, and indeed it sometimes appears with conscious effort to divert attention from the real subject under consideration, we may bring on fresh calamities. We are now suffering severely from the aftermath of a wild boom in real estate, business, and the stock market. The political activities of the last 12 months have many of these same hectic characteristics. There is grave danger that the unforeseen consequences of ill-considered, undebated political reforms may create just as severe maladjustments as the speculative economic excesses of the period from 1926–29. The slow processes of education which are an essential part of the continuance of a great democracy are overlooked. What we need now is moderation and the stimulus to the orderly growth of a responsible labor movement. What we would get in this bill is not moderation but tremendous access of power in groups organized as fighting groups untrained for such great responsibility as is proposed and therefore inevitably extremist in attitude. The bill if passed would be a danger to all moderate movements in this country. This feeling that reform must be accomplished now or never imposes intolerable burdens on Congress, its committees, and on the Executive. The habit of rubber-stamping measures of the first importance is wholly inconsistent with the type of constitutional government under which we live in this country.

I have been much interested in problems of foresight. Every study I have made indicates the absolute impossibility of blueprinting the future with any assurance. The type of reorganization of society which follows on hasty pieces of major legislation will be something entirely different from what the proponents of these measures anticipate. It is sure that the consequences of such legislation will be far reaching. In some respects one can prophesy with assurance based on experience. If this bill is passed, the growth of racketeering, corruption, and bootlegging or discretion back to industry can be prophesied with assurance on the basis of much experience. But no one can prophesy with any assurance what the specific results of such legislation will be.

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I have frequently been accused by business friends in the last few years of being a dangerous radical. The point of view which I have just stated is a conservative view but it is not a stand-pat view. We in this country have something very precious to preserve—a great heritage to protect, improve, and pass on. We have made tremendous progress and I firmly believe can make tremendous progress in the future. Provided we can keep ourselves from violent swings of action and reaction, revolution and counterrevolution, I believe the progress already made is but a beginning. But a certain measure of stability is essential to progress. Any attempts to recreate the world in 7 days will result in chaos, social disorder, and general ruin. Utopias never work out as planned.

Too much speed presents dangers especially in this great problem of the relation between employer and employee. I am entirely convinced that up to the present we have not succeeded in this country in making conditions for the healthy growth of organized labor sufficiently favorable. I am clear that a Federal labor law should be enacted which includes a minimum wage, methods of controlling hours of labor, modification of various restrictive devices, and the abolition where possible of the graevyard shift. In other words, I believe the Federal Government must have power to establish a social framework within which the employer who wishes to give his labor a fair deal may do so without the destructive competition of socially unsound labor practices from other employer groups.

Senator MURPHY. May I ask a question?

Mr. DONHAM. Yes.

Senator MURPHY. You feel that section 7–A does not do that?

Mr. DONHAM. I do not think it is permanent enough to serve the purpose.

Senator MURPHY. If we gave it permanency, then do you think it would be sufficient?

Mr. DONHAM. I should think it is not sufficient. When things like the courts are established they should continue to exist in a continuous process, which I think is essential.

I am convinced that the Supreme Court on a reexamination of the constitutional questions involved in such a law could and probably would find reasons in the new conditions for changing its earlier decisions. Our continuance as a Nation may depend on this sort of exercise of Federal power. What N.R.A. has accomplished constructively is in my judgment almost wholly within this field. The bill now before the committee goes far beyond this. It will in the last analysis set up a great autocratic dictatorship in Washington which pays no attention to customs or traditions, threatens the basis of business calculations, and puts another deterring force against investment in capital goods and capital goods industries. A period when unemployment is close to the maximum and the stage where it is most difficult to help is no time to discourage private initiative and introduce great factors of stress and strain into an already disorganized economic structure.

I stated that this is a conservative viewpoint but it is not a stand-pat viewpoint. It is also a liveral view, if liberalism has anything to do with liberty. The so-called "liberal" who thinks he can blueprint the future, the so-called "liberal" who would regret a quick recovery from this depression because it might prevent a reconstruc-

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tion of society in accordance with his particular blueprint, will find, of course, nothing to commend itself in my statement, but I do not believe that the American people are ready to give up their heritage. I do not believe they are ready for a series of measures leading directly to some form of fascism or communism.

I do not believe they are ready for the creation of class walls in society so that it becomes more and more difficult for the individual to make progress. This country has gained infinitely more than it has lost from the existence of a situation where it was possible to go from shirt sleeve to shirt sleeve in three generations. The existence of conditions which made this possible have also made it possible for a man to rise from a laborer's job to a position of business leadership.

One word about the company union. Company unions are not all bad. To such extent as organized labor refuses to allow the organization of great modern industries in ways which foster the steady cooperative of many crafts in bringing about steady production, company unions furnish the only form of collective bargaining which will give the people of the United States the advantages of continuity of production and efficient factory management. The high standards of living which have been attained by this Nation have been attained by the constantly increasing capacity of American industry to produce more and more of the things the people of this country desire. The company union developed many years ago as a method of working out collective bargaining in ways which minimize the halts to production. Like every other institution, it has been abused. The present rapid growth of the movement is obviously unsound like the proposal to force the American Federation of Labor on all industries. But the American people wishes to have high standards. It wishes to regain the real income possessed in the last decade. It will not accomplish these things by forcing changes in labor relations which halt production all along the line.

In the last analysis, the cut-up for both labor and capital is dependent on what is produced. This bill if passed would in my judgment seriously limit this cut-up. I believe the company union is a better choice for labor than forced rapid organization under this bill. The bill is hostile to the employer group but fundamentally I believe it to be more hostile to the labor group. Increased productive capacity through new inventions and better organization is passed on very rapidly, although not always rapidly enough, to the labor group. The lag in wages is never great. Labor needs principally full employment and a fair bargaining position free from legal disqualifications. If everything which goes to the employer could be redistributed the increase in standards of living in the labor group resulting from this would be very slight. Our most critical problems do not lie in wage scales. Continued employment is far more important than wage levels. The simultaneous raising of real wages throughout our American society is impossible of attainment on any significant scale except through the steady improvement of technology, invention, factory efficiency, and of the social forms which enable the machinery to continue functioning. If we can find how to keep our economic machinery going, the standards of living, real wages, and leisure time available for workmen can rise far above where they are now. The threat to the standards of the labor group involved in this

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bill is I believe one of the most significant aspects of the bill. It is far more serious than the company union.

The compulsory organization of labor under the organized-labor movement and the abolition of company unions has never been debated before the American people. I submit that Congress has little justification for such revolutionary action as is here proposed until a thorough debate has been held and we are far better prepared for the proposed step. Many of us who have for years regretted the slow development of trade unionism and the weakness of the movement as it exists in this country believe that growth should come as an organic evolutionary growth and should not be imposed by a Congress which has no mandate to pass on the question.

I have heard it suggested that the regimentation of industry under the N.R.A. plan requires a similar regimentation of labor and Federal control of labor questions to restore balance. That there is something to be said for this thesis is obvious, but I believe this country is far from acceptance of regimentation under trade associations as a permanent solution of our problems of industrial management. Evidence of failure is already conspicuous. Price controls in the codes seem to me both ill-advised and on the way to a breakdown. Some exception to this statement may be necessary where the principle of conservation comes in but I believe outside of the group of industries like oil, coal, and mining, where natural resources are involved, efforts at general price controls through industry will in the not distant future be given up. But even on the assumption that they are not to be given up, there is no proposal to compel the consumers to recognize and deal exclusively with monopolistic business organizations. The consumer is not obliged to buy. Indeed I believe price-fixing elements in the codes are already showing signs of disintegration because consumers will not buy at the new prices. Unsound measures of price control that have been adopted can in most cases be left safely to the consumer.

It will be a calamity if a tottering and unsound structure of price control brought about by temporary codes is used as the basis for destruction of voluntary trade unionism. What the labor movement needs is a chance to grow slowly, to eliminate dishonest and irresponsible leaders and to develop discipline in the rank and file. It should have the chance to show moderation and a constructive social attitude without political controls. In the long run the industrial progress in this country depends on the development of these things. There is grave danger that we may destroy the whole movement by putting too much political force behind it.

Some parts of the administration's recovery program depend on incidental reforms. Some reforms are wise independent of questions of recovery, but when so much disorganization exists the presumption should be against any complex reform measure which can be delayed. This bill is a project for "reform" pure and simple and I conceive bad from this angle. It is certainly not a recovery measure. Indeed, if passed, it will surely delay and may prevent recovery.

The CHAIRMAN. We thank you, Dean, for the presentation. I am sure it will be very helpful to us.

The New Orleans Association of Commerce.

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STATEMENT OF WALTER CARROLL, NEW ORLEANS ASSOCIATION OF COMMERCE

The CHAIRMAN. Your full name?

Mr. CARROLL. Walter Carroll.

The CHAIRMAN. Is a Mr. Devlin with you?

Mr. CARROLL. Yes.

The CHAIRMAN. Does he desire to speak also or are you going to speak for both?

Mr. CARROLL. He will speak also.

The CHAIRMAN. You both represent the New Orleans Association of Commerce?

Mr. CARROLL. Yes.

The CHAIRMAN. And you are both residents of New Orleans?

Mr. CARROLL. Yes, sir.

The CHAIRMAN. How large is the Association of Commerce of New Orleans?

Mr. CARROLL. The Association of Commerce has approximately 3,000 memberships.

The CHAIRMAN. Representing the business element of the city of New Orleans?

Mr. CARROLL. Yes, sir.

The CHAIRMAN. What is your own personal business?

Mr. CARROLL. I am a lawyer.

The CHAIRMAN. We will be pleased to have your views.

Mr. CARROLL. Mr. Chairman, the time allotted will not allow us to make any extended comments on the bill. This bill has aroused the industrial element of New Orleans as no other proposed legislation on this subject ever has. The reason for this, we believe, is that in attempting to legislate a cure for the company-union situation the small industrial plants have been overlooked, or at least ignored.

New Orleans has no very large industries and only a few of moderate size. It has, however, a great many small industrial plants of a size that will permit almost continuous personal contact between the employee and the management. The great majority of these small industrial plants have operated throughout their existence without any labor troubles whatsoever. New Orleans has been very fortunate in having no serious labor trouble at any time in its existence.

We feel that the small industry has been overlooked in this bill. The company union is practically unknown in New Orleans and we feel that this bill, being aimed primarily at the settlement of that issue, has overlooked the small industry, and we are therefore not interested to any large extent in the controversy over the company-union issue.

The reasons in brief, for our opposition to the bill are these:

First, it will entirely abolish company organizations of workers, even where the employees genuinely desire them, rather than assure, if any further assurance is required, completely free expression of choice on the part of the employee.

Second, the keynote and foundation of the entire bill is industrial welfare, the employers as a class against the employees as a class.

Senator DAVIS. Just a minute. Senator Wagner has made the statement here that as long as the so-called "company" union is not

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dominated by the company, he is not opposed to it, and this bill does not prevent the organization of a company union.

Mr. CARROLL. As I understand the bill, if there is any element of mutual aid——

Senator DAVIS. Just a minute. I might say a noncompany dominated union.

Mr. CARROLL. Yes, sir.

Senator DAVIS. I wanted to make myself clear.

Mr. CARROLL. Third, it discourages every form of cooperation between employer and employee, abolishes all personal contacts, and makes unlawful many relations which up to now have been regarded as highly desirable.

Fourth, it denounces as unfair labor practices and many acts of the employer which are not in fact unfair from any viewpoint.

Fifth, no employer will have any confidence in the fairness and impartiality of the Labor Board if constituted as proposed in this bill, and no code of industrial relations can possibly succeed which is enforced by a tribunal which lacks the confidence and respect of the parties using it.

Sixth, labor unions are enabled to continuously harass and conduct unlimited warfare on the employer through their representatives on the Labor Board, without any recourse to the employer and without any adequate appeal to the court.

Seventh, the bill is designed to centrally unionize all industry and thus enable the labor unions to completely dominate industry, but neither this bill nor any other statute attempts in any way to regulate the use of this power or to restrain any harmful activities on the part of the labor unions.

Senator DAVIS. May I ask you a question as you go along?

Mr. CARROLL. Yes.

Senator DAVIS. What sort of a board would you think that both the employer and the worker would have confidence in?

Mr. CARROLL. I should think a board that is not a representative of either side but is neutral, as the ordinary court is.

Senator DAVIS. Would you say that a national board of that kind could be constituted?

Mr. CARROLL. It would be better, in my opinion, to have an entirely neutral board than to have a board where some of the members directly represent one of the parties litigant and owe a duty to them. As a matter of fact, I take it that under this set-up the labor unions would actually appoint two members. Now, there is no prohibition in the act against their receiving salaries from the labor unions. There can be a vice president of the labor union receiving a salary from the labor union and sitting on this board. Now, of course, nobody expects that their actions will be impartial, but further than that there is this, that the act gives the individual members of the board certain powers as distinguished from the board itself. The act provides that any member of the board may initiate a complaint and serve it and set it down for hearing, naming the time and place. The act also contemplates, I take it, that the members of the board act as examiners.

Now, the point I am making about that is that while the board in its entirety may apparently be fairly constituted, in the sense that it is evenly divided in representatives on the two sides to the

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issue before it, the act gives each individual member of the board certain powers which can be unfairly used, and we must always remember that these labor representatives owe a duty and owe an obligation to the people whom they represent, and it does seem to me that it would be better to have the board constituted of members who owe a duty to no one, just like the Federal courts here or the various other governmental commissions.

Senator ERICKSON. You do not believe, then, that this Board should have representatives from either side?

Mr. CARROLL. No; I do not.

Senator ERICKSON. From either the employer or the employee?

Mr. CARROLL. No. This is a judicial board. Its decisions and its findings and orders are really no different from the decisions and findings and orders of a court. There is no practical way to upset them, because it appears if there is any evidence to support their findings no court can upset the findings of this Board, and after all any matters that come before a board of this kind, in 95 percent of these cases what is decided is going to be a matter of fact.

Senator ERICKSON. I forget whether this act attempts to define the qualifications of the membership of this Board.

Senator DAVIS. Yes. Two members shall be designated by representatives of the employers, 2 as representatives of the employees, and 3 representatives of the general public.

Senator ERICKSON. Yes; that is right.

Mr. CARROLL. And there is a specific provision that the members representing industry and representing labor may continue in outside employment, although the members representing the public cannot.

Senator DAVIS. But the members representing the public receive fairly good compensation.

Mr. CARROLL. Yes, sir.

Senator DAVIS. And I presume the author of the bill has in mind that the others who serve would be compensated by those whom they represent.

Mr. CARROLL. Yes. My objection to that is, though, that here is a judicial officer who is deciding a case and he owes a duty to one of the parties at interest, he is paid by them, he is there to represent them. The act says so in so many words. If he was not representing them and doing what they wanted him to do in a general way certainly he would not be on the board.

Now, those reasons that I gave, in brief, are the reason for this opposition. With the consent of the committee I would like to file a brief amplifying these remarks.

The CHAIRMAN. That will be of assistance to us. We will be glad to give our approval of that suggestion. Is Mr. Devlin here?

Mr. CARROLL. Yes, sir. I would also like to file with the secretary a resolution passed by the Association of Commerce opposing this bill.

The CHAIRMAN. That may be entered in the record.

(The resolution referred to is as follows:)

RESOLUTION OF THE NEW ORLEANS ASSOCIATION OF COMMERCE ON THE PROPOSED WAGNER "LABOR DISPUTES ACT" (S. 2926)

Whereas there has been introduced in the Senate of the United States a bill known as the Wagner "Labor Disputes Act" (S. 2926); and

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Whereas this bill, if enacted into law, would in effect unionize every industrial and farm worker in the country, regardless of his own wishes and desires, and would set up a labor dictatorship with practically unlimited power and authority, and give labor-union officials virtual domination over American industrial and farm life, and would be inimical to the best interests of the employees themselves in that their personal liberty of contract would be taken away from them and put into the hands of professional labor organizers; and

Whereas this proposed legislation is wholly unsound, unfair, and un-American, in that while it contains drastic restraints on the employers in their relations with their own workers, it does not in any way whatsoever attempt to regulate the activities of labor unions or their professional organizers or to curb or discourage labor disturbances, but on the contrary encourages the unrestrained agitation of employes by labor unions, all of which would inevitably lead to unnecessary and wasteful strikes, disputes, and labor troubles in thousands of businesses which have heretofore maintained amicable and friendly relations with their employes under working conditions satisfactory to all concerned; and

Whereas this proposed legislation fails to assure the employers of a fair and impartial trial and hearing of complaints before a fair and impartial tribunal, and will subject employers to useless persecution and embarrassments at the hands of labor agitators, without any recourse or protection to the employers and without any fair and adequate appeal to the courts for a review of the orders of the Board; and

Whereas, this drastic, unfair, unjustified, and un-American legislation is inimical to the best interests of the employer and employee, as well as to the general public, and tends to unstabilize and retard industry and agriculture, therefore be it

Resolved by the New Orleans Association of Commerce that this association go on record as strongly opposing the enactment of the proposed Wagner "Labor Disputes Act" (S. 2926), now pending in the Congress of the United States, and all other proposed legislation embodying substantially the same plant to unionize all industrial and farm activities, and be it further

Resolved that a copy of this resolution be sent to the United States Senate Committee on Education and Labor.

I certify that the foregoing is a copy of a resolution adopted by the New Orleans Association of Commerce on March 14, 1934.

[SEAL.] H. VAN R. CHASE,
General Manager.

NEW ORLEANS, LA., *March 31, 1934.*

Mr. CARROLL. Mr. Devlin is here. Mr. Devlin is manager of a relatively small industrial concern in New Orleans, which I believe is characteristic of the industries in New Orleans, characteristic not only in size of the company and the number of employees, but in its experience with labor.

Senator DAVIS. Do you recall now the estimate that was made of the cost of the street car and the public utilities strike in New Orleans several years ago?

Mr. CARROLL. No; but it must have been very large.

Senator DAVIS. Would you think a board that was organized, that would have prevented that strike or made a settlement of that strike, would have been worth its existence?

Mr. CARROLL. Well, I do not know, of course, whether a board could have ever settled that strike. That strike, however, was not because of any circumstance that this bill is designed to prevent. The foundation of that strike was a matter of wages, and this bill really does not cover that phase of the industrial relation. There is no regulation of wages in the bill, and if we had the exact situation with this bill in effect, I think we would have the same strike. They did not arbitrate that strike.

Senator DAVIS. I think arbitration was refused, wasn't it, in that strike?

Mr. CARROLL. I think the employees refused arbitration.

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Senator DAVIS. Did not the employers refuse arbitration too?

Mr. CARROLL. I do not believe they did, but I confess I am not up on all the details of that particular strike. However, that strike was a matter over the issue of wages, it was not over the issue of a company union, or a company-dominated union. The street-car company today has a union, whether it is company-dominated or not I do not know, but my understanding is that that union came into existence after this strike, not before. That was not the cause of it.

The CHAIRMAN. We thank you for your presentation.

STATEMENT OF DANIEL DEVLIN, GENERAL MANAGER, MARINE PAINT & VARNISH CO.

May we have your full name, Mr. Devlin?

Mr. DEVLIN. Daniel Devlin.

The CHAIRMAN. You reside in New Orleans?

Mr. DEVLIN. Yes, sir.

The CHAIRMAN. What is your business?

Mr. DEVLIN. I am the general manager of the Marine Paint & Varnish Co.

The CHAIRMAN. Have they a manufacturing plant in New Orleans?

Mr. DEVLIN. Yes.

The CHAIRMAN. How many employees do you have?

Mr. DEVLIN. Forty-one.

The CHAIRMAN. You may proceed to address the committee.

Mr. DEVLIN. The first gentleman who appeared as a witness this morning from Iowa, although I have never met him or talked with him before, describes conditions which exist almost identically in New Orleans. New Orleans is a manufacturing city only to the extent that it produces in the total aggregate a considerable amount of manufactured goods, but most of those are produced in small plants. My own plant, with 41 employees, as I said, is considered a rather large one.

Because of the size of the plant the relationships between the employers and the employees have been much closer than they would be in larger plants. I think we are more human because of the limitations of our size and possibly because of the limitation of our capital, and our employees have felt free to come and talk to us, and we have felt free to counsel with them. There has been, therefore, little labor trouble of any kind in the past 4 years, and I think very little suffering, less than there possibly would have been if we had not been able to keep our men at work. In some instances we had to make work for them. In plants like ours we not only have to employ man-hours, we have to employ men. We have a man in our plant, say, that is a shader, and he may be shading paint for 2 or 3 hours at a time, and then we have to turn him to something else. We have just enough business to keep him busy all the time. We cannot let him loose. It makes for human relationships between us. I think all of the smaller manufacturers have been able to keep their men fairly well employed without very much trouble.

Our objection to this bill is a general one. We feel that the entire tenor of the bill is to emphasize a line of demarcation between the employer and the employee, which of course exists but which has been more or less a nebulous line. In the case of small employers of

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labor we have been closer together, we have been able to consult with each other. We think the general tenor of the bill emphasizes that line and makes it very marked and will tend to establish our employees entirely in one class and the employers in another class, which will not be for the benefit of either of us.

The small manufacturer has had, I need not say, a very difficult time in the past few years. We have all had a hard time, but the small fellow has had a particularly difficult time.

We are between the competition of the very large concerns that have vast resources and the possible competition of increasing costs of manufacturing. We have been able to maintain a proper balance and survive up to the present time, but if our dealing with our help, our labor, is made more difficult, if, by the influence of this bill they are taught that the only way to get a good deal from the employer is to get it through a paid negotiator, and it is the duty of most paid negotiators to get absolutely the maximum that he can get himself, we will just be between the competition, as I say, of the very large men with almost boundless resources and the ever-increasing cost of manufacturing. Things have gone so well with us that we are extremely reluctant to see any change, and for that reason we have come up here from New Orleans as representatives of the manufacturers' bureau of the Association of Commerce to add our very respectful protest against the passage of this Bill.

The CHAIRMAN. I thank you, Mr. Devlin. Mr. Morgan.

STATEMENT OF PHILIP M. MORGAN, PRESIDENT WIRE MACHINERY BUILDERS' ASSOCIATION

The CHAIRMAN. Your full name?

Mr. MORGAN. Philip M. Morgan.

The CHAIRMAN. You are treasurer of the Morgan Construction Co.?

Mr. MORGAN. Yes, sir.

The CHAIRMAN. Located at Worcester, Mass.?

Mr. MORGAN. Yes, sir.

The CHAIRMAN. How many employees have you, Mr. Morgan?

Mr. MORGAN. Normally about 750; at present, 150.

The CHAIRMAN. We will be pleased to hear you, Mr. Morgan. How many employees did you say you have now?

Mr. MORGAN. About 150 now.

The CHAIRMAN. You may tell us what kind of construction work you do.

Mr. MORGAN. We are machinery builders The name sounds like we construct buildings, but we are machinery builders.

The CHAIRMAN. What kind of machinery?

Mr. MORGAN. Heavy machinery, rolling mills largely for the steel company.

The CHAIRMAN. Proceed.

Mr. MORGAN. In the March 31 issue of Industry, the weekly publication of the Association Industries of Massachusetts there is an article written by your speaker entitled "Our part in N.R.A." One paragraph in this article is perhaps worthy of repetition before this Senate committee.

To maintain the existing business improvement, the delicate balance of the economic factors of business must not be disturbed. At all times there must be

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the proper relationship between management, labor, capital, and the consumer. Management must supply the facilities and materials for labor to assist in the manufacture of a good product at a cost which will enable the consumer to purchase it for a reasonable price. Even as labor must profit from its work, so must management supply profits to pay stockholders for the use of their invested capital. Any change which will affect the component parts of industry must not be made in a manner which unduly penalizes or favors management, labor, the consumer, or the investor in that business.

I wish to emphasize the last sentence—

Any change which will affect the component parts of industry must not be made in a manner which unduly penalizes or favors management, labor, the consumer, or the investor in that business.

Even in normal times it is difficult enough to maintain the delicate balance between management, labor, capital, and the consumer, but it has been even more serious a problem since N.R.A. has become operative; nevertheless, the balance has been partially maintained but only at the expense of management and the investor. I cannot see where labor has given anything of a sacrificial nature.

Now we are faced with this Wagner bill, which, unless I am grossly ignorant, gives further power to labor and thereby unbalances the scales still further. Provisions are made which in my opinion will strangle private industry. Penalties are heaped upon management. Not a single restraint is imposed upon labor. Although the bill purports to "equalize the bargaining power of employers and employees" and "to encourage the amicable settlement of disputes between employers and employees", I would rather paraphrase, based upon the provisions of the bill, that it will "make it impossible for an employer to exert any rights consistent with the laws of economics, and encourage strikes with the consequent economic losses."

Section 2 of the bill states that the individual, unorganized worker has been rendered helpless to exercise actual liberty of contract. Our company has operated on open shop for 43 years. We have union and nonunion men. We have never had any labor dispute or disturbance. We deal with the individual and we want to continue to do so until our men desire to make a change in their relationships with the management. A real understanding exists between our employees and the management. The workers know the problems of management and management knows the problems of the employee. Such conditions promote the balance initially referred to in my opening remarks. If they elect to deal with the management by a system of representatives, we will be glad to do so if those representatives are truly representatives of our employees and if those representatives are not professional agitators.

Senator DAVIS. Mr. Morgan, jut a minute.

Mr. MORGAN. Yes, sir.

Senator DAVIS. What would you call a professional agitator? That word we frequently use. I would like to get a definition from someone.

Mr. MORGAN. A professional agitator to me is one who receives more from a labor organization than he does from his employer, if he is employed as well as being of service to the labor unions.

Senator DAVIS. Do you know of anybody that is employed by a company and is also a labor leader and receiving a salary?

Mr. MORGAN. They may not be labor leaders. I will have to hark back, Senator Davis, to an instance that happened in our plant about

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30 years ago, which is almost as long ago as I am old. I have reference to the fact that the president of the local machinists union was also employed by our company.

Senator DAVIS. Employed as a machinist?

Mr. MORGAN. Yes, sir. I guess that was in the days before there was enough income to warrant a man taking all his salary as president of the labor union to live on. This man worked in a dual capacity for about 3 months, having been a member of the labor union, and a private in the ranks for about a year before that. He found that the two did not mix, and, as he has reported it to me—he is now superintendent of our plant and is still living, you can get it first-hand from him if you like—he found it was much more to his benefit to work with our company than to try to carry on the dual capacity of president of the union and work for the company and receive pay for it. Now, that goes back 30 years, and that is what I have reference to in answering your question. Does that answer it?

Senator DAVIS. Then you would be one who would advocate freedom of the worker without the employer; in other words, you do not believe in any company-dominated union, you want the worker to be free to express himself fully to the company without any domination on the part of the company?

Mr. MORGAN. Without any domination from any outside source.

Senator DAVIS. Well, do you believe in domination from an inside source?

Mr. MORGAN. No; I do not believe in any domination. I believe it is so fine a thing it is awfully difficult to tell who is dominating the thing. I think that is one of the weaknesses of this bill. The employer will say, "Well, labor dominates", and labor will say, "The employer dominates." In reality maybe none of them dominate it, but it is hard to conceive of such an organization that is not having some domination from one source or another.

Senator DAVIS. After all, isn't the relationship between a worker and an employer more of cooperation than it is of domination?

Mr. MORGAN. It must be. That is what we have had for 43 years, sir.

Senator DAVIS. You may proceed.

Mr. MORGAN. As nearly as I can learn from the bill, the practical results will be as follows:

First. It will establish a breach between employers and employees where none exists today.

Second. It will cause strikes through the widening of breaches today existent in employer-employee relationships.

Senator DAVIS. I might say this, because Senator Wagner is not here, that I do not believe he intends in any way to widen the breach between employer and worker; rather, I think he has an honest motive in trying to bring about cooperation between the employer and the worker.

Mr. MORGAN. It must be so, sir.

Third. It will place in the laps of existing national labor unions without any restraint whatsoever not only all the workers in our industries but also eventually the industries themselves for I know of but few employers who could possibly survive under the penalties provided for in the act for misdemeanors which are so vague as to permit of an almost unlimited interpretation.

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Fourth. It will sacrifice at the hands of professional agitators many happy and industrious citizens of the United States.

Fifth. It will give to national labor unions unlimited power without regard to labor's responsibility to the public well-being.

Sixth. It will force 90 percent of industry to conform to labor relationships which according to the National Industrial Conference Board existed in 10 percent of United States industries in the fall of 1933. I here refer to their statement issued March 29, 1934, and to that portion appearing on pages 4 and 5, which reads as follows:

> These studies show that in November 1933 less than 10 percent of the employees in manufacturing and mining industries in this country were working under agreements between employers and organizations of employees in which the authority for collective bargaining and negotiation rested with persons not employed in the enterprise concerned.
>
> At that time more than 90 percent of the employees in American productive industries carried on their negotiations with management individually or through organizations of employees in the enterprise.
>
> Of this 90 percent about half were working in enterprises where, because of the small number of employees and the direct contact between management and workers or for other reasons, no formal machinery for dealing with questions of industrial relations had been found necessary or had developed.
>
> The other half, or about 45 percent of the total employees in manufacturing and mining industries, were working in enterprises where some form of organized machinery and procedure other than agreements with outside labor unions had been developed.

To me one of the most serious aspects of our present situation, concerning national industrial recovery, is a disposition on the part of our legislators to attempt to legislate for every disease that presents itself regardless of whether the disease is contagious or whether it is prevalent enough to assume epidemic proportions.

This Wagner Disputes Act, in my opinion, seeks to legislate for all industry in a manner which will correct the trouble which may exist in one half of 1 percent of the industries in the United States. No legislation can possibly replace in any degree whatsoever the cordial industrial relations between employers and employees in most of our industrial plants today. I admit that there are probably places where the enactment of this proposed legislation might be of benefit. I refer to sweatshops where working conditions are bad and where wages have been inadequate compensation for services rendered. But do not the provisions of the National Industrial Recovery Act amply cover such situations? To rectify such conditions, isn't all that is required a bit of enforcement by N.R.A.?

I don't wish to be destructively critical of this labor disputes act; therefore, I must offer something constructive, so I present the following:

The drafters of the National Industrial Recovery Act never regarded their bill as perfect. I think we will all agree that in some respects it is deficient. We may not all regard the same portion as being deficient. The bill was originally enacted as an emergency measure. Recently we have all been told that it probably will become permanent. If it is to become permanent, I believe we should all endeavor to perfect it. Its perfection will not come from adoption of measures like this proposed bill, but it will come from experience. I for one wish to give N.R.A. every possible chance and I know that this feeling is shared by the vast majority of employers.

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N.I.R.A., if fairly administered, holds the promise of industrial advancement that could not otherwise have been obtained in a century. The task of organization of N.R.A. has been herculean. Its organization is not yet complete. It is now faced with the enforcement of its new codes—a task that is difficult even with the cooperation of the employers. I have already stated that employers by the large majority wish to cooperate—it has already been demonstrated that they are. Do you or I suppose for one minute that the same sort of cooperation can continue if the Wagner bill is fed them some morning for breakfast? I can see only indigestion as a result. I therefore plead with you to give existing laws a chance, particularly the National Industrial Recovery Act. Give industry a chance to assimilate the meal it has already swallowed before feeding it more.

The CHAIRMAN. Mr. Morgan, may I call your attention to the situation that has been presented to us, for the purpose of asking your views. In the city of New York there are a large number of small jewelry manufacturers, employing from 25 to 100 or more hands. They have all signed the jewelers' code, the jewelers manufacturers code. The code provides for a minimum wage but not for definite wage in the other brackets. In New York City the workers in the jewelry factories are organized and through collective bargaining have been able to remove some low wages in the higher brackets that were formerly paid, and they have advanced their wages to what would appear to be reasonable.

Across the river in Newark there are a large number of small jewlery manufacturers competing with those in New York City. There they have to pay the minimum wage, because they have signed the code, but their employees are not organized and they have been unable to obtain the same rate of wages for the more skilled employees in these jewelry factories. The result is that the so-called "sweat shops" in Newark, N.J., are able to place their jewelry on the market at a very much reduced price and to the disadvantage of the employers in New York who are paying better wages and whose men are organized. How would you handle a situation like that? You agree that that is a problem, do you not?

Mr. MORGAN. I agree that that is a problem, but I can see no reason why, if the code in that particular industry is not set up properly, that the situation could not be realized by the manufacturers and acted upon by that group. It is much more desirable, in my opinion, that a thing like that be handled, if possible, within that group, rather than have it handled by any board of disputes. That is my suggestion. That is what I am pleading for, that the N.R.A. be given some chance to enforce it. If they fail, of course, we may have to have something else.

Senator DAVIS. Are you of the opinion, then, that the licensing section of the N.R.A. put into effect with the jewelers' code would bring about a satisfactory adjustment?

Mr. MORGAN. There is that provision, of course, in the code. I should dislike very much to see it used. Of course, it is always a court of last resort as legislation stands now.

The CHAIRMAN. Then again, I suppose, if a majority of the jewelry manufacturers so desire they may amend that code and put in a scale of wages for the more skilled employees, which would force the recalcitrant employers to pay the wage that is being paid in other places.

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Mr. MORGAN. That might be the logical outcome of it and the way to reach it.

The CHAIRMAN. May I ask you, Mr. Morgan, have you talked with your association in Worcester who are manufacturers like yourself?

Mr. MORGAN. Yes, sir.

The CHAIRMAN. You have an organization there?

Mr. MORGAN. Yes, sir.

The CHAIRMAN. What is it called?

Mr. MORGAN. We have the Employers' Association of Central Massachusetts.

The CHAIRMAN. And you are expressing what is the sentiment among the members of that association?

Mr. MORGAN. I think you have already heard from two other members of that association, Mr. Gifford and Mr. Higgins, and although I think we may differ on some details of the thing, I think the general sentiment is: Give us a chance to do what we can with what we have, and then if we cannot meet the conditions that present themselves, just spank us if necessary.

The CHAIRMAN. I observe, Mr. Morgan, your industry does not seem to be coming back very much in increasing the number of employees. What is the explanation of that?

Mr. MORGAN. This is a capital-goods industry, Senator. We have had 3 years with a volume of business of about 10 percent of the average over a 12-year period, and we would have had 4 years had we not, in the fall of 1929, or 1930, I think it is 1929, realized that there might be a serious depression, and if we had not at that time taken on some work, which we knew at that time represented little or no profit to our industry but would afford employment to our employees throughout the winter months, and we have had even a small volume in the 4 years—I mean the 4 years' volume would have been comparable to the last 3.

The CHAIRMAN. The 4 what?

Mr. MORGAN. The volume of business would have been comparable to the last 3 for the 4 years.

The CHAIRMAN. I observe that in the last fall and the early winter concerns like the Compton Looms Works and the Whitersville Mills, manufacturing textile machinery, seem to have had a substantial recovery.

Mr. MORGAN. The answer is this—do you want it?

The CHAIRMAN. Yes.

Mr. MORGAN. There was a time in November and December—and mind you I am giving these figures now as they have been told to me, but I think they can be substantiated by referring to the table—there was a time in the last 6 months of 1933 when their bookings were very slight and they really did not know what was coming in the first part of 1934, but in December their bookings picked up and they have been running very well since.

Now, the answer is this, as I see it: That is a capital-goods industry which has to do with furnishing machinery to the cotton goods and woolen goods, and the cotton and woolen goods industry codes were among the first that were signed and they become operative almost immediately, and under that stimulus, and having put their house more or less in order, the cotton trades found that they were in a posi-

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tion to make more money, and the way they could make more money was to modernize their equipment, and they have done it. Of course, they deal with comparatively moderately priced machinery, whereas the type of machinery that we build involves, oh, from a half a million to $800,000, and it means that the purchaser of that equipment has got to spend nearly a like amount in electrical equipment, and perhaps half as much for a building to house that machinery, if there is no building in existence. It means that there has got to be capital available in a large sum before he can embark upon it and, of course, the cotton markets have been practically closed for the last 2 years.

The CHAIRMAN. Then, too, doesn't the machinery in the textile industry wear out more quickly?

Mr. MORGAN. Very apt to; yes, sir.

The CHAIRMAN. And aren't there rapid changes in improvements in that class of machinery?

Mr. MORGAN. There has been in the textile machinery industry, as I understand it, in the last 5 or 6 years, there has been a very rapid improvement in the modernization of equipment. I am not an authority on textile machinery at all, but I am just telling you all that I know.

The CHAIRMAN. Thank you, Mr. Morgan.

Senator DAVIS. Mr. Morgan, has there been any improvement in the continuous mills in the last year or two?

Mr. MORGAN. Practically the only improvement has been the continuous rolling of white sheets, of course.

Senator DAVIS. Better known as the strip mill?

Mr. MORGAN. The white strip, or the sheet-strip mill, is what they call it.

Senator DAVIS. That is it.

Mr. MORGAN. Those, of course, represent a larger capital expenditure than the mills I have been describing to you. Those might represent to the purchaser an expenditure between, oh, from 4 to 9 or 10 million dollars fully installed. We do not build that equipment because we are located where we cannot afford to ship any cast iron, machine it, and ship it back to the steel district, and so we never got into that at all. That has been practically the only field in the rolling-mill industry that has been at all active in the last 2 or 3 years.

Senator DAVIS. I suppose there has not been much improvement in the wire mills?

Mr. MORGAN. Yes; there has been tremendous improvement in the wire, the rods, and the drawing of wire. I would be glad to go into detail if you want me to, but I do not want to take the time.

Senator DAVIS. I do not want you to. I just wanted a general statement.

Mr. MORGAN. Yes.

The CHAIRMAN. Thank you, Mr. Morgan. The American Cotton Manufacturers' Association. Mr. Comer.

STATEMENT OF DONALD COMER, PRESIDENT AVONDALE MILLS, BIRMINGHAM, ALA., AND REPRESENTING THE AMERICAN COTTON MANUFACTURERS ASSOCIATION

The CHAIRMAN. Your full name?

Mr. COMER. Donald Comer.

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The CHAIRMAN. You are representing whom?

Mr. COMER. The American Cotton Manufacturers Association.

The CHAIRMAN. And is that a national organization or a sectional organization?

Mr. COMER. A sectional organization.

The CHAIRMAN. That is an organization of manufacturers in the Southern States?

Mr. COMER. Yes, sir.

The CHAIRMAN. What type of manufacturers constitute your organization?

Mr. COMER. Cotton.

The CHAIRMAN. And it includes manufacturers in what States?

Mr. COMER. Virginia, North and South Carolina, Alabama, Georgia, Tennessee, and Mississippi.

The CHAIRMAN. How many manufacturers are there in your organization?

Mr. COMER. Senator, I do not know exactly how many there are.

The CHAIRMAN. Are you a manufacturer yourself?

Mr. COMER. Yes, sir.

The CHAIRMAN. Where is your plant located?

Mr. COMER. Birmingham, Ala. I am president of the Avondale Mills.

The CHAIRMAN. How many employees in your plant?

Mr. COMER. About 7,500.

The CHAIRMAN. About 7,500?

Mr. COMER. Yes, sir.

The CHAIRMAN. Have you one plant or a series of plants?

Mr. COMER. A series of plants.

The CHAIRMAN. And are they all in Alabama?

Mr. COMER. Yes, sir.

The CHAIRMAN. What class of cotton goods do you manufacture?

Mr. COMER. I manufacture cotton yarns of all description, and I manufacture cotton goods, twills, drill, chambrays, and denims.

The CHAIRMAN. So you have both the yarn mills and the weaving mills?

Mr. COMER. Yes, sir.

The CHAIRMAN. You may proceed, Mr. Comer.

Mr. COMER. Mr. Chairman and members of the committee, you are here giving consideration to the Wagner bill, and while I am here in opposition to the bill, I am not here to oppose those stated purposes of the bill, namely, "to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees." I, too, am hunting desperately for a right way toward industrial peace. I have been hunting for that better way for a number of years. I believe that any of us would have to claim Divine wisdom who claims their way to be the one and only way. I believe that groups of our citizens, if given a fair chance, if free from coercion from all sources, will choose different ways. We divide on questions of religion, politics, and all other departments of life.

We are today hunting with a deep longing for world peace, peace among nations. We must also find industrial peace. Should not the "new deal" be the beginning of new ways? If industry in the past has been so controlled as to suggest the need of workers in indus-

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tries gathering in armed camps for protection as against their worst enemy, shouldn't industry under N.R.A. be given the opportunity to hunt for some other kind of relations?

Industry can never thrive on the premise that owner and worker must be natural enemies. The success of N.R.A. will depend upon finding the proof that owner and worker must be friends. We should try to find a way that will promise to bring all parties to the job in friendly, not hostile attitudes.

If I question this bill as I think it will operate, please give me credit for honesty of opinion, for I would gladly welcome any responsible leadership that will insure orderly attention to the job in hand and that could and would assume some degree of responsibility for successful operation. But one of the objections of this bill lies in the fact that in many cases the authority of the present management will be disturbed or destroyed before there can have developed proven ability to take its place and as a result great groups of employees, beguiled away from the old order of things, may find the new leaders unable to lead or, after trial, may be unwilling to follow their leadership.

My presence here today is not so much against this bill, but against any bill that so soon seeks by legislation to hurry on at a dangerous speed and thereby put in jeopardy the much that has already been gained. N.I.R.A. was a partnership arrangement. It has just begun. Let me go back to May 1933. In President Roosevelt's radio address of May 7, 1933, he said:

> It is wholly wrong to call the measures that we have taken Government control of farming or Government control of industry or Government control of transportation. It is rather a partnership between Government and farming and a partnership between Government and industry and a partnership between Government and transportation, not partnership in profits, because the profits would still go to the citizens, but rather a partnership in planning and a partnership to see that the plans are carried out.
>
> Let me illustrate with an example. Take, for instance, the cotton-goods industry. It is probably true that 90 percent of the cotton manufacturers would agree tomorrow to eliminate starvation wages, would agree to stop long hours of employment, would agree to stop child labor, would agree to prevent an overproduction that would result in unsalable surpluses. But, my friends, what good is such an agreement of the 90 percent if the other 10 percent of cotton manufacturers pay starvation wages, and require long hours, and employ children in their mills and turn out burdensome surpluses? The unfair 10 percent could produce goods so cheaply that the fair 90 percent would be compelled to meet the unfair conditions.
>
> And that is where Government comes in. Government ought to have the right and will have the right, after surveying and planning for an industry, to prevent, with the assistance of the overwhelming majority of that industry, all unfair practice and to enforce that agreement by the authority of Government.

On June 16, when the President signed the National Industrial Recovery Act, he designated it as the most important and far-reaching legislation ever enacted by Congress. Let me stop to say that we think the cotton textile code is exhibit A and proof of that statement. In a New York paper of January 17, carrying the above news, there was another Washington dispatch immediately following. I quote:

> COTTON-TEXTILE INSTITUTE EXECUTIVE MEETING IN CAPITAL
>
> WASHINGTON, June 16.—George A. Sloan, of the Cotton-Textile Institute, Inc., and members of the executive committee are meeting here today at the Mayflower, whipping into shape for presentation to the Government the code for the

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operation of the industry under the National Recovery Act, which is expected to be effective at once.

According to officials of the Institute, it is not believed that the code can be completed for presentation until late today and most likely not until tomorrow. The meeting was in progress before 8:30 this morning, Washington time, and is expected to be continuous.

Those 20 men from our industry had been working day and night in their effort to have a code built in the spirit of the President's message, built to do what our industry had been wishing to do for years. Our industry, through group action, has for a long time been attempting self-improvement. We have had as high as 80 percent committed to a program of a shorter work week with shorter hours still for the night shift. We have had 80 percent committed to no night work for women and minors. Real or pretended fear for the antitrust laws slowed down and defeated voluntary effort. Freed from this never-intended purpose of these laws, our industry welcomed this first opportunity to accomplish by 100 percent action under N.R.A. what we had tried to do before. For the first time we found industry, public opinion, and the law in one mind about this economic and social question. Please let me say that I don't think industry's management furnishes any preferred gathering place for the selfish nor are idealists only found from without that group.

You know I will always like Elbert Hubbard because in his message to Garcia he said:

> But when all the world goes a-sluming, I wish to speak a word of sympathy for the man who succeeds, the man who against great odds has directed the efforts of others and succeeded.

Our first united effort had to do primarily with increasing the age limit; increasing wages and shortening hours. Search our code through and you will find this first organized effort concerned itself with improvements for the people in the mills. There was no effort for price control—no provision for owner profit. Among the goals of labor have always been shorter hours and higher wages. By one stroke of the pen textile workers have by comparison made a tremendous step forward.

Today we are concerned because consumers are not yet paying over the counter prices that reflect those initial added costs.

The CHAIRMAN. What has been the percentage of increase in the cost of textiles?

Mr. COMER. I expect, sir, it will average 100 percent at the mill.

The CHAIRMAN. We have testimony to that effect, and I wanted to know if you corroborated it.

Mr. COMER. Yes.

The CHAIRMAN. And you are experiencing some difficulty now in the public absorbing that increased price?

Mr. COMER. Yes, sir.

The CHAIRMAN. And it has slowed up production somewhat?

Mr. COMER. Yes, sir. I would like to say that we think that slowed up production, though, is coming from two other sources, Senator, which we still hope to have corrected.

The CHAIRMAN. What are they?

Mr. COMER. One is the fact that the N.R.A. costs have not yet been equalized by adding such costs to those things which compete with cotton, and by the fact that we have lost, on account of N.R.A.

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costs, our export business, amounting to about 500,000,000 yards a year, about 7 or 8 percent, and that yardage has turned back on our home market.

The CHAIRMAN. Those seem to be reasonable deductions.

Mr. COMER. So often we hear it said that industry was given the right to organize under N.R.A. Those rights used either directly or indirectly, have had only to do with the betterment of the people in the mills. There are more than 1,100 separate units in the South and all continue sharply competitive.

Our organization that we speak of has only been used to do three things, to raise our age limit of the worker, to increase the wages, and to shorten the hours.

The CHAIRMAN. It is a commendable thing to know that you were making the effort yourselves, even before the N.R.A.

Mr. COMER. Under N.R.A. our code provides machinery for handling every question that can arise between owner and worker. Codes can and will be amended to fit new and changing conditions.

The CHAIRMAN. An objection that has been made here to your code is that it fails to satisfy and equalize the wages in the higher brackets. It is admitted that there is uniformity of wage in the textile industry, in the lower brackets, brought about by the minimum wage, but it has been stated here that there is still some wage differences in the industry, due to the fact that in those textile mills, where the employees are organized, they have been able to exact higher wages in the higher brackets than through the industry in general. Is that not a fact?

Mr. COMER. Senator, I do not know what mills have been organized, and what their particular rate is.

The CHAIRMAN. We have in the north, of course, what you call the National Textile Union.

Mr. COMER. The United Textile Workers.

The CHAIRMAN. And many of the mills, not all of them, but many of the mills, are fairly well organized. They have, of course, been more alert, naturally, in the past, and I assume even now, in raising the wages in the so-called "higher brackets," the weavers and spinners.

Mr. COMER. Are you familiar with the fact that our code carried a distinct provision covering that very question?

The CHAIRMAN. Yes; I think Mr. Sloan gave us some testimony to that effect.

Mr. COMER. I would like to make that very, very positive, because in the mills that I am acquainted with, every one, we followed the intent of the code which said that all of these employees who were getting before N.R.A. higher than the minimum, the relation between those civil organizations should not be disturbed, and, so far as I know, sir—take a mill, for instance, like a gentleman who is here today, whose spinners were advanced from $9 to $12, that was $3; he used that $3 as a level for all the others above the minimum paragraph.

In our own mills, sir, we either used $3 or 15 percent, whichever was the more, and that amount was being paid for the 40 hours, instead of the 55 hours, which we had been running previously to that time.

The CHAIRMAN. Do you insist that the weavers, for instance, who are now working 40 hours, and who formerly worked 55 hours, at the end of the week have as large a wage in their envelops as formerly?

Mr. COMER. Yes; and $3 more.

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The CHAIRMAN. So that they are working 40 hours now, and are getting the wage that they got for 55 hours, even if they were doing piecework, and $3 more?

Mr. COMER. Yes, sir; in many mills.

The CHAIRMAN. Is that general?

Mr. COMER. I think it is rather general, Senator. I am assuming that they work the 40 hours. Of course, if they work less than 40, that would not be so.

The CHAIRMAN. There is an impression abroad, some of the representatives of the textile union asserted here, that those who are on piecework who are now working 40 hours, instead of 48 or 54—48 in the north, I believe it is, and 54 in the Southern States—are not getting at the end of the week as much wages as formerly, but that there was an increase in the compensation received per piece yard over what it formerly was.

Mr. COMER. Senator, the code also provides that they must get as much for the shorter work week as they got for the longer week, so if they are not getting it, they are violating the code, and violating the law.

The CHAIRMAN. We are very glad to have that information.

Mr. COMER. Every fact concerning our business is on file with the Federal Government—the age and sex of the workers, the hours we work, the salaries we pay, the wages we pay, the profits or losses we make, and all are subject either to code regulation or tax law.

Under paragraph 17 of our code complete machinery is available for adjusting any questions or differences that may arise between management and employees. This plan was worked out by three men appointed by General Johnson: Dr. Robert W. Bruere, chairman; Maj. George L. Berry, and Dr. B. E. Geer. The plan was approved by Dr. Leo Wollman, of the Labor Board, and General Johnson said he would like to see such a plan included in all codes.

The CHAIRMAN. Briefly stated, what is that plan?

Mr. COMER. I will go ahead and read, and I think that will explain it. If not, I will come back.

The CHAIRMAN. In other words, you are asserting that, I suppose, for the purpose of showing that there is no need for this legislation because in your code you already provide for collective bargaining as one of the objectives of the N.R.A.?

Mr. COMER. That is right. This plan provides that management and employees shall first try to settle their own problems between themselves. Failing in this, either side can appeal to a State board with a further appeal to the National Board, composed of Dr. Bruere, Major Berry, and Dr. Geer, whose decision shall be final. No doubt, somewhat as a result of this arrangement, there has been so far as I know not a single effort to organize a company union in any of these 1,100 cotton mills.

The CHAIRMAN. Who were these three men? Are they all employers?

Mr. COMER. Major Berry is president of the Typographical Pressmen's Union and represents labor.

The CHAIRMAN. Oh, yes, from the Middle West.

Mr. COMER. Tennessee, I think.

The CHAIRMAN. Tennessee.

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Mr. COMER. And Dr. Geer is president of a college in South Carolina. Dr. Bruere——

The CHAIRMAN. Is he not from New York?

Mr. COMER. His brother is president of the Bowery Savings Bank in New York.

The CHAIRMAN. He has been active in social affairs?

Mr. COMER. And he is active in this Board.

The CHAIRMAN. There are no members there; one is a distinct labor man, and a college professor, and a social worker.

Mr. COMER. And yet we picked as our man for industry, Dr. Geer, although he is a college president. I think our industry has made a tremendous step forward under N.R.A. and I would like to put into this record some of those gains.

In March '33, we had 320,000 employees in this industry, which number grew to 460,000 in August. Our monthly pay rolls increased from about 12,000,000 to over 26,000,000. Employees increased 44 percent to our 1926 level of employment. Our pay rolls increased 111 percent and yet ours, the first code, is less than 9 months old.

The CHAIRMAN. The number of those employees has been reduced recently?

Mr. COMER. It has gone down to 455,000. I think it went a little below that before Christmas, but I think it is 455,000 now. Is that right, Senator?

Senator DAVIS. That is right.

The CHAIRMAN. But is the industry as a whole as prosperous now at the present time as it was last fall?

Mr. COMER. I think there is an uncertainty in the industry there was not here last fall, Senator.

The CHAIRMAN. Is the cotton industry satisfied with the national recovery legislation?

Mr. COMER. I think they are, Senator. I am for myself and I think our whole industry is.

The CHAIRMAN. That is the impression that I got from the evidence of others representing the industry like yourself.

Mr. COMER. I think we feel that N.R.A. was really the beginning of a better day for our industry, and without it we did not see where any beginning was going to be. We feel that these results justify our industry in asking that N.I.R.A. not be hurried or crowded. In a recent news dispatch from Greenville, S.C., is this statement from Dr. Bruere:

> The series of meetings I have held over the South have been successful and the spirit reflected indicates that the cotton textile business is on the upward trend. Everyone is trying to live up to the principles of the textile code and workers feel more like partners in the industry. We have had difficult problems but they have been cared for in the main.

Is it asking too much to say let some of us continue under the textile code arrangement. Let the automobile industry and others adjust themselves to President Roosevelt's recent interpretation of paragraph 7; (a) of N.I.R.A. Let some continue using company unions and some American Federation of Labor unions, and while we are all seeking a better way, efforts by each of these several groups will stimulate the best in all of them

Senator, we are speaking about giving time a chance to help us, to see what we can do with what machinery we already have in our

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hands, and we think the progress to date justifies us in asking that no further legislation be attempted right now. We think that under these programs, these several files, that the law of file and error will demonstrate which might be better, or where we might look toward a better solution of the—of industrial relations.

Let's not harass and burden all industry in our effort to punish the willful evader. Let's first apply the present law and its penalties. And gentlemen, please let me say that harassed management and harassed industry can hardly be expected to be enthusiastic in seeking new capital, new loans, or in expanding activities.

We wish with all our hearts to do a full part in the job to be done, but we were promised a partnership and that is all that we ask today. I continue to think that some sort of partnership arrangement between management and worker and Government will also furnish the final answer for all of our industry problems. We remember that our President said on June 17:

> It seems to me to be equally plain that no business which depends for existence on paying less than living wages to its workers has any right to continue in this country.

He also said as he signed N.I.R.A.:

> Its goal is the assurance of a reasonable profit to industry and living wages for labor, with the elimination of the piratical methods and practices which have not only harassed honest business, but also contributed to the ills of labor.

Our industry is cooperating with A.A.A. in the program to get the farmer more for his cotton. In the program of N.R.A. for increased wages and shorter hours; in the request of the consumer group to keep our prices down, and to the President's admonition that as between humanity and profits, it must be humanity first.

In closing, let me say that I think that the basic evil is not with industry, but with the economic condition of the farmer. With his improved economic condition would also come a more ordered movement from farm to industry. The only way to prevent farmers' sons and daughters from leaving the farms in excessive numbers and coming to industry will be to see to it that hours of labor and conditions of labor and reward for labor do not become too long unbalanced as between industry and farming. Obviously, if industrial workers can earn their living under work hours made more attractive still in comparison with the farmers' work day—from sun to sun—then farmers' sons in ever increasing numbers will be competing for that industry job.

We should be careful neither by law nor by code procedure to increase the cost of what industry makes that the farmer has to buy, faster than the purchasing power of the farmer increases. Where such a large percent of our population is agricultural, where the farmers' earnings and spendings so directly affect all of us, shouldn't his prosperity be the prime concern of all of us? Shouldn't we look more for our prosperity as an indirect sharing of his fatness instead of living off his leanness? Aren't we all trying too much to clear the stream below before we drive the old sow out of the spring above?

At this point I should like to insert copies of letters and statements.

The CHAIRMAN. They may be printed. Thank you.

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JUNE 5, 1933.

Miss FRANCES PERKINS,
Secretary of Labor, Washington, D.C.

DEAR MADAM SECRETARY: At the request of Mr. J. Craig Smith, assistant vice president of the Avondale Mills, I am sending you this reprint of their paper of December 7, 1929.

I am sending it by special messenger, for they desire that you have this issue.

I would like to mention in this connection that Mr. Donald Comer is president of the Avondale Mills. Mr. Comer is one of our most progressive citizens, and I might mention in this connection that he is one of the first persons in the United States to urge that I offer a bill regulating the hours of labor in the industries and factories of America.

Sincerely yours,

HUGO L. BLACK,
Senator from Alabama.

FEBRUARY 25, 1933.

Gov. FRANKLIN D. ROOSEVELT,
National Democratic Headquarters, New York City.

DEAR SIR: I have read of the several points that you have suggested as a basis for discussion at the meeting of the Governors called at Washington for March 6.

I would like to suggest that the lack of uniform and shorter hours in industry throughout the Nation is one of the greatest unsolved problems before industry today. This is particularly so in the textile industry. I do not believe that either of these results are going to be accomplished except by national effort and I further believe that the Governors of the several States will concur with this statement.

If today, as a permanent program, the several industries could have a maximum number of hours established, this effort and this program would not necessarily have to interfere with whatever effort is being made for still shorter hours as a temporary relief. Accomplishment of what I have in mind could be had by some machinery that would give the several industries the right to fix such matters themselves on the basis that if 75 percent of any industry agreed on a program then it must be the program for all, or if this is a matter that can only be accomplished by law, then in fixing the maximum hours by law, power could ge given the President to, in an emergency, change those hours. I should think that 8 hours as a maximum would not be wrong. For several reasons, but primarily because the supply of labor for industry today is coming from boys and girls off the farms and where they work from sunup to sundown, an industrial day of 6 hours would be constantly inviting an over supply of labor from the farms.

The fixing of a decent wage is more difficult, though it seems that the day for the fixing of a minimum wage is not far off. In the meantime, if wages swing too low, it seems that we should at least guard against the coupling of low wages with too long hours.

Respectfully yours,

AVONDALE MILLS,
DONALD COMER,
President.

EXTRACT COPY OF A LETTER WRITTEN BY DONALD COMER, PRESIDENT OF THE AVONDALE MILLS, BIRMINGHAM, ALA. TO THE AMERICAN WOOL & COTTON REPORTER IN THE SUMMER OF 1932 AND REPRINTED BY THAT PAPER IN THEIR ISSUE OF OCTOBER 13, 1932

The group that I speak of have decided that any accomplishments along this line are going to have to come through some kind of Federal control. Competition should not be fought out along the line of who can pay the lowest wages or work the longest hours. The correct kind of competition should have some fundamental rules of fair play agreed to by all, and I am thoroughly convinced that one of these rules should be shorter hours. I am about convinced that there also should be a minimum wage.

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It is possible that Congress could be asked to allow industries to organize themselves into something like the old guild, by which programs agreed to by an appreciable majority would become the policy of the whole group. I am sure that all people in the textile business want to see their business conducted on a higher plane than it is today; there is no reason why people should today be working 55 and 60 hours tending machines that are producing 1,000 percent more than the laborer could have produced by his own efforts in the olden times, producing goods beyond the needs of today, producing them under long hours and short wages; so the only question is what are we going to do about it, and how are we going to make a start.

EXTRACT FROM A SPEECH BY DONALD COMER, AVONDALE MILLS, BIRMINGHAM, ALA., MADE BEFORE THE NATIONAL ASSOCIATION OF COTTON MANUFACTURERS, BOSTON, MASS., ON APRIL 30, 1930

For honor and few dollars our greatest lawyers give their lives to the Supreme Court of our land. Would there be less honor to the man who for fewer dollars would and could make safe the investor's dollar and at the same time lead the group of fellow workers into a real profit-sharing operation? Every man that gives us a yardstick, other than dollars, as a measure of success, is a boon to the race. Are we too old for the venture? Is it to be left to the new generation?

Shouldn't an industry involving the well-being of hundreds of thousands of our fellow workers tempt the best skill, the best ability, of our day and time towards a solution where there would be more certainty of a common interest? Have any of us been so divinely endowed with wisdom that we feel justified in suggesting the continuance forever of our right to measure the standard of living as between owner and employee?

STATEMENT OF WILLIAM H. FOWLER

The CHAIRMAN. Mr. Fowler next. Your full name?

Mr. FOWLER. William H. Fowler.

The CHAIRMAN. Where do you reside?

Mr. FOWLER. Pittsburgh, Pa.

The CHAIRMAN. Your own personal business?

Mr. FOWLER. General construction and engineering work.

The CHAIRMAN. What is the name of your company?

Mr. FOWLER. The Dravo Contracting Co.

The CHAIRMAN. And you are here representing that company?

Mr. FOWLER. I am here representing that company.

The CHAIRMAN. How many employees has that company?

Mr. FOWLER. We operate a base plant at Pittsburgh with a normal employment of about 750 men, and with an employment on our outside project activities, of about 2,500 to 3,000 men.

The CHAIRMAN. The committee will hear you now.

Mr. FOWLER. Mr. Chairman and members of the committee, I come to you as a representative of our company who has risen from the ranks of the workers to an officer of the company, being the secretary.

We have been in business for 43 years. I have been connected with the company for a period of 18 years.

The company is owned and operated under a plan where all the active and administrative men have actually risen, I might say, from the ranks. We have come to the company with nothing more than our education as our resources, and by virtue of application to the job and advancement now occupy administrative positions.

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The company is owned, I would say, by a group of administrative men, and actual workers in the ranks. There is no stock held by the public.

The CHAIRMAN. Do your workers hold stock?

Mr. FOWLER. Our workers do hold stock.

The CHAIRMAN. How much of the stock do they hold?

Mr. FOWLER. I would say that there was probably distributed in the working group 20 or 25 percent with the entire stock distributed in the administrative and working group.

The CHAIRMAN. Is there some family that controls the majority of the stock?

Mr. FOWLER. There is a control of the majority stock by the Dravo family as such.

Our business has grown, not by virtue of the sale of any securities to the public, but by virtue of reinvestment in a small enterprise and the growing and upbuilding of it into the corporate structure that we have today.

We have during the period of our existence not had labor difficulties of any kind, and have had a relatively small turnover. We have had a plan of what we call welfare association, a cooperation between the worker and the management in the form of what we call the Dravo Country Club, in which each and every employee enjoys a membership and participation.

We have extensive recreation grounds, tennis, baseball, swimming, and such like activities provided for the employees. They enjoy the benefit of group insurance, health and accident insurance, beyond the necessary protection which they have, of course, under the workmen's compensation laws.

Our problem has been one of endeavoring to take care of our working organization throughout the stress and trying times of the last few years, and in order to comply with what we thought sort of constituted a custodianship of these men, we actually guaranteed to them, to those who had been with us as many as 3 years, a minimum earning, irrespective of whether there was employment for them or not. That was begun in the year 1932, when conditions grew more acute.

The situation as we have seen it has been one of cooperation between the worker and the management because the management really grew out of the working class of men.

Our concern, and the reason that I have come before the committee here as an individual representing the company, is the fact that since the press announcement of the proposed Wagner Disputes Act, and with the great amount of publicity given to the proposed legislation, there has developed a large question mark in the minds of our men in the ranks, the query taking pretty much the form of—this N.R.A. will require us to join a union? What will happen to us under the Wagner bill? We are being told that we will be outlawed.

Now, that query in the minds of the men has been further aggravated by presumably a definite movement on the part of organized labor external to our plant to enter therein and foment the organization of a union group and a union domination to the end that we have had requests for interviews and conferences on three separate occasions during the last 30 days since the proposed Wagner bill has been introduced. The visitation has been by members of the machinists

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and boilermakers, and shopworkers unions, officers of the named unions.

The anxiety on the part of the employees is natural, we believe, for the reason that as we have read the proposed bill and its terms, and the understanding that we have of it as a layman, it seems to challenge industrial harmony or to be founded on the thought that there is no such thing existing, and that it in fact moves toward a definite characterization of illegal the things that we have been doing for a number of years by way of promoting and advancing the welfare of our employees, which things, we assume, if our understanding is correct, must, of course, be eliminated in the event of the passage of the proposed bill.

The CHAIRMAN. I do not think any provisions you have made for their comfort would be eliminated, such as tennis courts, and swimming pools, and hospitalization, and that sort of thing.

Mr. FOWLER. You do not consider the terms would do that?

The CHAIRMAN. They would not do it.

Mr. FOWLER. We felt that in the nature of the bill, such activity by way of association of an employer in an employees' organization was outlawed.

The CHAIRMAN. No; that is not true. The bill would permit your men to organize a union independent of your management. They could, if they chose, join an outside union, become affiliated with it, or they could organize a labor organization of their own, and the bill would compel you to recognize the representatives of that outside union or the representatives of the organization within your organization, and deal with them in matters of collective bargaining.

Mr. FOWLER. I see. We have developed this feeling of custodianship and an interest in the employee by virtue of positive acts taken in these times of stress.

The CHAIRMAN. It is feared by some employers that the result of this would be to prevent that spirit of comradeship that you speak of, and cooperation, that it might lead to two camps in industry, the employers' and the employees', more or less looking at each other with suspicion and disgust. But that is not the intent or purpose of the author of the bill, but undoubtedly, that feeling exists among many employers who have been here, including yourself.

Mr. FOWLER. Yes, it was unquestionably the version that we had of some of the provisions of the act.

The association that we have developed by way of cooperetivy planning and adjustment of our problems and difficulties has been of long duration, and we have enjoyed confidence by virtue of such voluntary acts as in the case of the enactment of the National Recovery Act, our company was engaged in the execution of contracts for departments of the Government.

The CHAIRMAN. Do you deal with your employees individually? You do not deal with them through any committees?

Mr. FOWLER. No.

The CHAIRMAN. The same as Mr. Morgan, who just testified?

Mr. FOWLER. Yes; a similar plan to Mr. Morgan's; exactly as he has related it.

Senator DAVIS. You do not deny the right of any of your members, if they want to join an outside association or organization? You do not have any objection to that?

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Mr. FOWLER. We have never had any objection and have actually employed both union and nonunion men.

The CHAIRMAN. So Mr. Morgan testified.

Mr. FOWLER. The move at present that I acquainted you with, during the last 30 days, has been of the nature of forming an outside union with the theory that they were representative of the majority of our employees, and that will should be imposed on the minority.

The CHAIRMAN. This bill would permit that, that outside representatives, for instance, the American Federation of Labor, or the Machinists' Union, or any other union, can seek to organize your men, and if they succeeded in getting a majority of them to form a union you would be expected and obliged to deal with them in matters connected with collective bargaining.

Mr. FOWLER. Well, we have not felt, Mr. Chairman, that the provisions of the National Industrial Recovery Act, as we are now operating under it, were of a character which would impose the will of, say, a 51-percent majority on the 49-percent minority, but we feel that under the provisions of the proposed act, that although we, as an employer, are prohibited from taking a stand either by way of favoring organization or not favoring organization of our men, that it is more or less suggested that in the event of an agreement being worked out, that that agreement carry part and parcel the closed-shop understanding.

The CHAIRMAN. As I understand the proposed law, if a group of your men desired to form a union and represented to the authorities, the board set up in this law, that 51 percent of them desired to organize a union, arrangements would be made by the officials of the Government, officials set up under this law, to hold an election, and have them decide what kind of a union they wanted.

Mr. FOWLER. And then this will must be imposed on the entire group?

The CHAIRMAN. Yes. You would have to deal with the representatives of that 51 percent.

Mr. FOWLER. We do not so understand the existing legal structure, having in mind——

The CHAIRMAN. That is the trouble.

Mr. FOWLER. That the workers' group by way of representation of the workers, should carry an equal representation with respect to the 51 and the 49 percent.

The CHAIRMAN. That is the reason behind this bill. Employees say that under the National Recovery Act the right of collective bargaining is extended to employees, but that employers are not obliged to recognize the representatives of the 51 percent, and the purpose of this legislation is to compel employers to recognize the existence in their plants of an organization of their workers who after an election do actually represent 51 percent. The purpose of this bill is to compel the employer to recognize that organization and its representatives in dealing with each other in connection with wages and working conditions, and all these things embraced under the term "collective bargaining."

Mr. FOWLER. We feel, and I express this opinion not alone as an expression of the sentinent of the group who are responsible for management, but as the expression of the sentiment of a group of named representatives by a majority of our workers, named voluntarily by

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those workers, that they feel that the conduct of our business can be administered both in the best interests of the company and employees by a group who are named from and within the industry, rather than by individuals named from without.

We have had that distinct approach from our workers today, but their anxiety is now "What is going to happen to us under this proposed Wagner bill, which, as they feel, outlaws them because they are not a part of a chapter or a unit in the American Federation of Labor.

The CHAIRMAN. That is not true. They can organize a separate organization of their own without having anything to do with the American Federation of Labor or any other organization under this law, and have an independent organization just among your employees. They can carry on negotiations and collective bargaining with you, independent of any other union.

Of course, this bill does not go so far as to compel you to accept any proposition they may make to you in their efforts to carry on collective bargaining. You must receive them, you must recognize them, you must show no hostility or antagonism in an attempt to defeat their power and right to represent the employees, but you can very politely say to them after you have listened to them and discussed the matter, that their demands are beyond your power to grant, and then they must seek some other method that they choose, strike or otherwise, for exacting those demands, or they can abandon them after they have talked them over with you.

The bill only goes so far as to compel you to recognize the organization in your plant which clearly represents 51 percent of the employees, and you must receive them and treat with them, and deal with them, and negotiate with them, but you are not compelled to accept any unreasonable proposition that they may make to you.

Mr. FOWLER. I know, but there is nothing, as we see it, in the bill, Mr. Chairman, that protects us from a continuous assault and harassing by a group divorced from our actual working group, for instance, as I cited to you in the last 30 days——

The CHAIRMAN. This bill does permit—I would not say harassing, because there would be objection to it—this bill does permit—if I am not correct on this, Senator Davis, you will correct me—your men to organize a union, a branch of the American Federation of Labor, and that your employees could say, "We don't care to talk with you ourselves, but we will send to you representatives of the American Federation of Labor outside the plant, and you must receive and deal with them." Am I correct in that assumption?

Senator DAVIS. Yes.

The CHAIRMAN. It goes that far?

Senator DAVIS. It also goes—you might organize, if I understand correctly the statement made by the author of the bill, that they can have an association or an organization, but you must deal with their representatives, even though they are not affiliated with the Federation of Labor, and they can have some outside party coming to represent them to you.

The CHAIRMAN. Hiring a lawyer, for instance?

Senator DAVIS. Yes, hiring a lawyer. Or, if they desire, or, rather, if it was impossible for them to organize, they can go on and deal with you as individuals, if they so desire.

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The CHAIRMAN. So, you see, you were not fully informed as to the exact provisions of the bill, and yet, some of the fears which you entertained, are the outgrowth of what I have stated was undoubtedly in the bill.

Senator DAVIS. I may put it this way to you: You are familiar with the extreme radical organizations. They are referred to as the extreme radical organizations of the country, sometimes known as "Communists", some of them are known as the "Communistic Party"; if they would come in with their national organization, and your men desired to join them, they would have a perfect right to do so under the bill.

The CHAIRMAN. Yes; and be represented by leaders of that group?

Senator DAVIS. And be represented by men of their own choosing.

Mr. FOWLER. I see that point, but my situation— I think I can put my hand on it—from reading the bill it seems to me dictated that we must not deal with any organization, supposedly an actual representative of our workers, if that organization elected of its own will and accord to confer with the management and had so done.

The CHAIRMAN. No; you are mistaken about that. If it appeared that the management were directing this organization, were supporting it, were in copartnership with it, it would be under the bill an illegal organization. Of course, all of these questions that we are discussing only arise when some of your employees start to make claims to it. So long as whatever union it may be, the American Federation of Labor, a company union, or a dominated company union, or a socialistic union in your plant—so long as there is no trouble, and there is peace and harmony going along, nobody is going to disturb it, but the moment difficulties arise, the officials of the Federal Government under this bill will say, "What kind of a union have you?" "It is a company-dominated union." It is unlawful. Your employees must organize and set up a union that is not dominated or controlled by the employers, an independent organization, and we will call a meeting of the employees, and have a vote to have them name their representatives and set up such an organization", and then they will ask you to negotiate with these newly organized independent group of your employees, and you will be expected to try to carry on negotiations and reach an amicable settlement, if possible.

Now, if you say, "I will not negotiate with them" after this election is held under the auspices of this Board, or if you say, "I am not going to have such a union in my plant", you will be punished under this act; and injunction will be brought against you, and you will be brought into court and ordered to recognize such a union.

Mr. FOWLER. It seems to me, though, that under that——

Senator DAVIS. And if you do not recognize them, you will be cited for contempt.

Mr. FOWLER. But you cannot help but realize that we would of necessity be confronted, you might say, with an incipient disturbance on every separation from the employ of the company, because a man naturally feels aggrieved if he has lost his job, regardless of the circumstances, even from the standpoint of the inability to provide work for him, because of the lack of orders, and it is that element which is the disturbing one in present times.

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The man is aggrieved because of the loss of his work, the situation being entirely beyond the control of the management, because it is very frequently and has been during the last several years, helpless to provide work. But, that minority, or individual, or small group of individuals that would be separated, would be the incipient cause for complaint, and hearings.

The CHAIRMAN. Off the record.

(Discussion off the record.)

Mr. FOWLER. May I leave just one query? The query we would like to leave with the committee is this: There has been created under our code, as approved by the President, a so-called "national adjustment board", and various underlying regional boards, and the make-up of the board consists of 21 members, in total, 10 representative of all forms of construction industry, 10 representative of the various forms of labor used in the industry, and 1, a named representative by the Federal Government.

Now, the query in our minds is, Why before any opportunity has been given or granted for that board to function, which we believe has such comprehensive powers that it could handle, and settle, and accomplish everything that is contemplated by the Wagner bill, why, before giving that board a chance to work, do we abandon that in the now constituted law in favor of a new concept of an adjustment board? That is the query we have in our minds.

The CHAIRMAN. We are glad to have your views. Thank you very much. Mr. Lincoln?

STATEMENT OF JAMES F. LINCOLN

The CHAIRMAN. Your name is J. F. Lincoln?

Mr. LINCOLN. James F. Lincoln.

The CHAIRMAN. Of Cleveland, Ohio?

Mr. LINCOLN. Cleveland, Ohio.

The CHAIRMAN. You are president of the Lincoln Electric Co?

Mr. LINCOLN. That is correct, and I am also here as the representative of the Cleveland Chamber of Commerce.

The CHAIRMAN. How many employees have you in your own organization?

Mr. LINCOLN. About 425.

The CHAIRMAN. Are your employees organized?

Mr. LINCOLN. There has been a shop union there since 1916, and all matters of that kind have been handled through that since that time.

The CHAIRMAN. You may proceed, Mr. Lincoln.

Mr. LINCOLN. I want to read you first of all the resolution which is adopted by the chamber of commerce, and then I want to tell you what the opinion was of the people who made this resolution, which was a representative organization of the manufacturers of Cleveland.

RESOLUTION OF THE CLEVELAND CHAMBER OF COMMERCE ON THE WAGNER AND CONNERY BILLS, THE LABOR DISPUTES ACT

Resolved by the Board of Directors of the Cleveland Chamber of Commerce, That this organization opposes the passage by Congress of the Wagner and Connery bills, commonly referred to as the "Labor Disputes Act."

Resolved, That the Labor Disputes Act, in its language and intent, assumes, contrary to the facts, a relation of bitter enmity and hatred between employer

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and employee. The fact is that their interests, economically, are mutual, and that the attempt by statute to declare them otherwise is a far-reaching social menace. The friendly and cooperative relationship existing between thousands of employers and their employees—existing to so large an extent that such relationships are the rule and not the exception—should not be subjected to demoralization by professional labor agitators whose primary objective is to foment antagonism, with a view to an organized power, socially, politically, and economically dangerous to the American Commonwealth.

Resolved, That the Labor Disputes Act perpetuates the National Labor Board, a Government agency originally formed to assist the President's recovery program, and originally planned to go out of existence with the return of normal business conditions.

The chamber of commerce is opposed to the perpetuation of the National Labor Board even though its operations were confined to its present restricted rights.

The conduct of the National Labor Board, within its present restricted rights, has retarded instead of advancing national recovery.

Resolved, That the powers of the National Labor Board are greatly increased by the Labor Disputes Act, and the chamber of commerce opposes an increase in its powers.

The National Recovery Act guaranteed to workers the right to bargain collectively with their employers through representatives of their own choosing. The Labor Disputes Act denies this right to workers. Under that act a majority of the employees would have the right to deprive their fellow-workers of their right to bargain collectively through representatives of their own choosing.

The powers of the labor board are so extended as to permit it to hamper and retard collective bargaining in any other form than through the American Federation of Labor, a condition that cannot and will not be accepted by American industry, except under the compulsion of law. No single law that the Congress of the United States could enact (except perhaps the unlimited inflation of our currency) would so inevitably retard returning prosperity as the Labor Disputes Act.

Resolved, That this Chamber of Commerce reiterate its frequently expressed acceptance of the principle of representative negotiation, or collective bargaining, providing for negotiation between an employer and duly accredited representatives of his employees regarding hours, wages, and all other matters properly affecting their relationship; and our belief that employees' representatives should be chosen by the employees, from among their own number, unless otherwise agreed by employer and employees, and that such negotiations should be under the control of the parties immediately concerned, with due regard to the rights of individual employees, and, should they fail to reach an agreement, that the employer and the group of employees' representatives should each have the option of choosing, without restriction by either party, a reputable and competent adviser or advocate to meet with them in the continued negotiations.

Resolved, That The Cleveland Chamber of Commerce is opposed to the closed nonunion shop and equally opposed to the closed union shop.

The discussion which brought about this resolution was along this line.

The first question was, Why should the employer in industry be the one who is picked out to be deviled by a bill of this kind when he is paying at the present time the highest wages in the world, while there are groups, and any number of groups, in this Nation, who are paying wages a fraction as high. There is no attempt whatsoever to bring those rates of wages up to the rates which are now being paid by industry. Why should industry be picked out under those conditions and have this sort of legislation put on it?

At the present time, even with the reduction of the dollar by the evaluation, the wages in this country in industry are at least double those of any other nation in the world.

(Discussion off the record.)

Mr. LINCOLN. You have this situation at the present time; there has been union domination in England of labor for many, many years. Their average wage even now is less than half—I say "even

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now", because of the depreciated dollar—is even now less than half the wages paid to the same sort of labor in this country. They are all union men; it is all union domination, and yet with these wages which are one half as great, in the competitive market—not perhaps in England, but take in South America, in the competitive market where England and the United States go in on the same duty basis, the English manufacturer cannot compete to a very large extent with the American manufacturer, with the American manufacturer paying double the wages, but without the union domination. We have had exactly the same thing in this country——

The CHAIRMAN. Is it not more efficiency on the part of the American manufacturers?

Mr. LINCOLN. Of course it is.

The CHAIRMAN. And also advanced machinery?

Mr. LINCOLN. Of course it is.

The CHAIRMAN. And better methods?

Mr. LINCOLN. Of course it is. Let me finish my point. We have had the same thing in this country in industries which are dominated by the unions. There has been practically no advancement made in the methods of doing that work from the time that sort of thing began. In industry where there is not that union domination, the rapidity of change, the rapidity of getting new and better processes has been extremely great, and that points out just the difference, just the difficulty that you are going to have if union domination comes into industry. You will have absolute stagnation of progress, because the only way the union can dominate an industry is by making things stay on the status quo so the conditions which did exist always will exist, and they can put down rules which will regulate it under those conditions.

That is the great danger.

Now, I do not believe—while I can read this bill, I know perfectly well that the bill says that the company union is not actually legislated out, the net result will be this, and I know this from a good deal of experience, because I have handled labor for a good many years in competitive industry—the net result is this: Men who refuse to join the union become not only social but moral outcasts. The man has pressure put on himself and pressure put on his children. He is assaulted, his windows are broken, rotten vegetables are thrown through the windows, just to force him to come into line—a situation which occurs frequently.

Now, there is no doubt in my mind, if this bill should pass, that tnat pressure is going to be put on all industry, all labor, to force them into unions, whether the man wants to go in or not.

I also have had enough experience with labor to know this: That a laboring man's action is not generally the result of his own studied idea. He goes along with mass psychology fully as well as the employer does, and perhaps a little more rapidly, and when the situation gets to a place where the pressure is put on him—"Join this union because we are going to do this, that, or the other thing"—the call to do that is a great deal more strong than the average man can maintain himself against. The net result of that is that a great many men, the vast majority of them, will be forced into unions which they do not want to join.

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Remember, there have been unions all the time attempting to get these men in. If there were abuses before, and the union is the way to settle it, they could have joined these unions and could have settled them in that way. There was just as much reason for it then, and perhaps more, than there is today.

The only way that this thing can succeed is by forcing all men in the unions, if they do not want to join, as they have shown from the history of the last 20 or 30 years. There is a very small proportion of the people in unions, and the abuses which the unions are supposed to eliminate have been present always.

The CHAIRMAN. You would not condemn all unions, would you?

Mr. LINCOLN. There is nothing certainly against the idea of a union as such.

The CHAIRMAN. I appreciate the fear that you and other employers have impressed so hard upon the committee, the fear that the net result of this effort to permit the men to freely organize and engage in collective bargaining with the employers is likely to result in a mass drive for complete unionization of all industry.

Mr. LINCOLN. It undoubtedly will.

The CHAIRMAN. I know that feeling is expressed very strongly by you and others, and I can understand your fears. I find hardly any employer who comes here who has any objection to having an organization of his employees in his own concern, and the right to choose their own representatives, and the right of the representatives to come and talk and discuss with the management matters relating to their welfare and to the management of the industry. I think all agreed that they had no objection to that. Is that right?

Mr. LINCOLN. Yes; I think that is generally true, and it has been very successful in our own case.

The CHAIRMAN. But they have—they seem to have the feeling that that will not be the result of this legislation, that it will be along the lines that you have indicated.

Mr. LINCOLN. Let me cite you just two cases which are my own experience. We manufacture electric welding equipment. Some time ago we erected a building in Cleveland, and the building itself was welded. Now, there are not union welders. It happened, though, that the machines which were used for this purpose had a gas engine on them, therefore, it was necessary for us to have a union engineer to come down there and sit beside each one of these machines during all the time they were in operation. He did not know a gas engine from a row of apple trees, and whatever adjustment was necessary our man had to do, come down off the building and do it. He really sat there with his $1.75 an hour. That is one case.

One other case: We moved in the present building about 10 years ago. The industry in which I am engaged in not unionized. There is very little union agitation and never has been. When we did our construction work in there we let the contract to a contractor in Cleveland who was using union men. As soon as the millwright's work, entirely separate from that, was to be done, a strike was called on account of the fact that the millwrights, three men who had been with us for years, were not union men. All the rest of the men were entirely all right, but the strike was called because of the fact that we had three nonunion millwrights, and the only answer we could get

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was, "You fire those men." They had been with us for 10 years or more. "You fire them."

Now, having a union labor organization of that kind, I can say to you that one of two things will happen:

If you force that sort of thing down the throat of industry, they will either accept it, and go back to the same level of industry that they have in England, or they will reject it and organize as labor has organized, or is attempting to organize, and you will have a real fight with its attendant troubles, which will be tremendously more serious than anything you have ever seen.

Senator ERICKSON. Do you believe that there ought to be any legislation at the present time regulating the relation of employer and employee?

Mr. LINCOLN. That is a pretty general question. I will say this, that with the amount of undigested legislation already on the statute books, which has been passed, I certainly think there should be no more legislation until we have had a chance to digest it and see what the final outcome will be. You know, you cannot tell when you start a thing what the outcome will be. When they brought the first slaves here in 1620 or 1630, or whenever it was, they could not see the shooting of a President, but that was just as much a result of the landing of those slaves as the fact that two and two make four. Abraham Lincoln was shot because of the landing of those slaves, but nobody could possibly have foreseen it.

Exactly the same thing is true here. With the most of the legislation that has been passed, no one can possibly foresee what the eventual outcome of it is going to be, and you must not think because it looks happy, that the eventual outcome may not be an extremely serious thing. No, we had a war about 10 years ago which everybody at that time thought pretty well of; they do not think so well of it now.

The CHAIRMAN. Thank you.

Mr. Cornelius.

STATEMENT OF SIDNEY E. CORNELIUS

The CHAIRMAN. Your full name?

Mr. CORNELIUS. Sidney E. Cornelius.

The CHAIRMAN. Your residence?

Mr. CORNELIUS. Hartford, Conn.

The CHAIRMAN. You are appearing here representing the Hartford Manufacturers' Association, of Hartford, Conn.?

Mr. CORNELIUS. I am the manager of the Manufacturers' Association of Hartford County.

The CHAIRMAN. How many manufacturers are there in this association?

Mr. CORNELIUS. About 112.

The CHAIRMAN. Are you a manufacturer yourself?

Mr. CORNELIUS. No, sir; I am not.

The CHAIRMAN. You may forget the views of your organization.

Mr. CORNELIUS. I appear here in the stead of more than 100 manufacturers in Hartford County to voice for them their strenuous individual opposition to Senate bill 2926, introduced by Senator Wagner, and known, with its companion bill in the House, as the "Labor Disputes Bill."

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These manufacturers employ, today, more than 44,000 workers. I believe that our objections would receive the endorsement of the majority of those workers, were they able to express their own free-will opinions.

We challenge the premise of the bill.

We assert that if this premise as recited in section 2 of title I be the fundamental reason for this legislation, its foundation is unsound as far as Connecticut is concerned, and whatever conclusion be drawn therefrom must be erroneous in fact, and any remedy proposed therefor, unnecessary.

The bill recites that certain tendencies of economic life have destroyed the balance of bargaining power between the individual employer and the individual employee, and have rendered the individual, unorganized worker helpless to exert actual liberty of contract to secure a just reward for his service, and to preserve a decent standard of living.

These assumptions are unwarranted and not acceptable to the communities that I represent.

Among these thousands of employees to whom I have referred, there are in great number the highest types of American workmen. These workers for generations have dealt with their employers as individuals; have had their ability and merit recognized in terms of promotion or increased wages, and today enjoy that same right without the aid of paid spokesmen who have the power to tax them. From their ranks have risen most of our industrial leaders.

Hartford County manufacturing is, and has been for years, on a truly open-shop basis. The union member has not been barred from the shop. Nor has the right of the individual worker to join a union been impaired. But his labor organization has not been encouraged to the detriment of the nonunion worker. On the contrary, every worker has enjoyed a freedom of contact and a freedom to demonstrate his worthiness and ability unhampered by restrictions.

Statistics over a period of months and years, demonstrate that the average hourly earning of the factory workers of Hartford County is higher than that of the average in the United States. May I remind the committee again that no union representative was needed to obtain for them this full recognition of service.

He would point out, also, that under these favorable industrial conditions for years there have been no strikes in the factories in Hartford County until recently.

The CHAIRMAN. Most of your industries are specialized industries, are they not?

Mr. CORNELIUS. That is true, sir.

The CHAIRMAN. High-grade industries?

Mr. CORNELIUS. That is true, sir.

I wonder if the originators of this bill would impugn a disregard for services rendered, on the part of manufacturers, who even at the termination of so great a depression as we have just experienced, can point with pride to employees on pay rolls who number their term of constant employment, with the same firm, into the fifties, and sixties of years. I have with me the records of several companies. I know of one firm, 126 of whose employees have records of continuous service of more than 25 years; 8 of them range from 50 to 62 years; 30, from 42 to 60 years; 51, over 30 years; 37, over 25 years; and 350 others of

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the employees have continuous service records of from 10 to 24 years. Another, also of international reputation, has 270 employees with 10 years' service; 172 with 15 years' service; 60 with 20 years' service; and 41 with 25 years' service. And still another which has 62 employees whose years of service range from 25 to 56 years, and the majority of the other workmen in the plant between the 10- and 25-year mark. These reflect a general condition.

I might add that there are hundreds of employees on active pay roll in these factories who are practical pensioners, still assigned to insignificant and unimportant factory duties. These are in addition to many others on actual voluntary company pension lists. This does not indicate a failure to reward the past services of employees.

Manufacturers in these communities without thought of reward or public approbation have given privately of their money and time and human sympathy to help their individual workers. I know of hundreds of cases of employers helping to solve personal problems of employees or giving material aid in home financing, and even advice in domestic relations. No barriers must ever be erected to interrupt this human relationship between the employee and the employer.

Agitators have entered our field, striving unsuccessfully to disrupt that harmony. The bill under consideration provides for legislation that would promote discord.

I have referred to the fact that these manufacturers employ today more than 44,000 workers. In May of last year demand for goods created a need for production. Man-hours have more than doubled since that time. It was accomplished by an increase in hours per man per week, and a decided increase in employment. Ten thousand employees were added in these factories in 9 months, and this increase was initiated long before N.I.R.A. became effective. Employment in Hartford County today stands at 81 percent of normal.

These employees, eagerly welcoming an opportunity for increased work, and with it, increased pay, are now being besieged by representatives of the Federation of Labor, and cajoled, intimidated, and coerced into membership and participation in a system of industrial relations which the workers have not found necessary or desirable in the past. This is a result of misinterpretation of section 7 (a) of the Recovery Act. I know of employers in our communities who have been appealed to by their employees for actual protection against interference of this character.

Confidence is not to be established or maintained by putting in control organizations dissociated from management, responsible neither to the public, to the stockholders, or owners to the workers, to the consumer, to the Government, nor to the community in which problems arise; and virtually having the taxing power of Government, through persuasion, threats and coercion, and who are avowedly apprehensive of their own ability to restrain the activities of their members.

This bill is termed a "Labor disputes bill". In our opinion it is appropriately named. We feel sure that the terms of the bill would defeat the declared purpose. Its provisions would provoke and encourage disputes. It would not equalize the bargaining power of the parties affected. It would confer upon one of the parties, namely, the labor organization, a monopolistic power which would embroil industy in strike, disputes and dangerous distrubances, and load the

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dockets of the Federal courts. He would lose his present legally recognized right to choose his own method of contracting. He would be regmented into one big organization which, at any peak of its existence has only been able to entice, influence, or force into its ranks less than 10 percent of the Nation's wage earners.

The alleged purpose of the bill is to assist the helpless worker "to exercise actual liberty of contract." This cannot be reconciled with the provision in section 6 that an employer and a labor organization may agree that a person seeking employment shall be required as a condition of employment to join such labor organization. The methods employed by many labor organizations to force a closed-shop agreement upon an employer are well known. Such agreements have been signed unwillingly by employers through the years as a result of the threat of the strike and the boycott. Under the terms of this proposed measure the National Labor Board, the courts, and the Government add their weight and influence to force a closed-shop contract upon the employer and thereby preclude any future employees, or employees not in sympathy with the union, from exercising their "actual liberty of contract."

We are informed that some minor changes in the bill have been suggested. Gentlemen, we believe its premise constitutes an affront to industry and to industry's efforts toward sound industrial relations, and it should be repudiated. We ask for no substitutions, amendments, nor modifications of this bill. We ask for its rejection.

The CHAIRMAN. Thank you. I have an impression that most of the industries in Hartford are locally owned and controlled?

Mr. CORNELIUS. That is quite true, sir.

The CHAIRMAN. In other words, you have not much absentee landlordism there?

Mr. CORNELIUS. Very few companies are owned outside. If I may, I should like to file copies of this brief, for the members of the committee, if the chair will permit it.

The CHAIRMAN. We will be pleased to have them.

Mr. Goodman?

STATEMENT OF HOWARD GOODMAN

The CHAIRMAN. Your name is what?

Mr. GOODMAN. Howard Goodman.

The CHAIRMAN. Your residence?

Mr. GOODMAN. Chicago, Ill.

The CHAIRMAN. You are here representing the Goodman Manufacturing Co.?

Mr. GOODMAN. Yes, sir.

The CHAIRMAN. What is your position with the company?

Mr. GOODMAN. Work manager.

The CHAIRMAN. How many employees has this company?

Mr. GOODMAN. About 600.

The CHAIRMAN. What does the company produce?

Mr. GOODMAN. We make mining machinery.

The CHAIRMAN. You may proceed.

Mr. GOODMAN. Gentlemen, what I have to say to you, is out of my experience as work manager in dealing daily with the problems of operating a shop, problems which concern the working conditions,

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earnings, health, and to a great measure, the happiness of the people who work with me.

In September 1933, we gave to each of our employees the following statement:

To all shop employees:

Under the National Industrial Recovery Act each company must belong to a trade association which has a code approved by the President of the United States. Our company is a member of the National Electrical Manufacturers Association whose code was approved by the President on August 4, 1933.

This code provides for minimum rates of pay and maximum working hours and it is our intention to observe the rules. There is nothing in the rules which compels you to join any organization in order to secure the benefits under this code. The whole idea of the National Industrial Recovery Act is to make more jobs by reducing hours and increased wages. We have both reduced hours and increased wages and we are employing more people as rapidly as work becomes available.

Unfortunately, labor agitators and racketeers have been circulating information that it is necessary to join one of their organizations in order to get any benefits under the Recovery Act. This is not true.

General Johnson, the Administrator of the Recovery Act, clearly stated on July 7, 1933:

"It is the duty of this administration to see that all labor—organized as well as unorganized—gets a square deal, and the administration is organized to do and will do that duty. The purpose of the act is to create and preserve harmonious relationships."

It is the belief of the Goodman Manufacturing Co. that your best interests lie in the continuation of the mutually harmonious relationships which we have enjoyed. It is our intention, with your cooperation, to safeguard these relationships for both of us. The management is always glad to discuss with you any problem of mutual interest.

After this statement we gave the rates of pay and hours of work as provided for in our code.

I oppose the Wagner bill because of the power it gives to labor organizers to foist themselves on employees and employers alike, without adequate protection against the unscrupulous racketeer who can "muscle in" at will. If this bill is passed, it is my belief that I would be placed in a position where I could not maintain my promise to safeguard the harmonious relationships which have existed in our institution.

In Chicago unionism has a bad name not only among employers but also based on the remarks some of our workmen have made to me among employees. This is because union power has so often been abused and because this abuse has so frequently gone unpunished.

We are very familiar with the labor racketeer, whose chief aim is to make money for himself either by holding up the employer through threats of strikes or, what is to my mind far more serious, by intimidating individuals into joining a union on threats of slugging or murder. Let me give you two examples of what I mean by labor racketeers:

One Saturday afternoon in August 1927 Max Braverman, a junk dealer, was slain. The newspaper account is as follows:

Fifteen labor sluggers headed by Harry J. (Lefty) Lewis late yesterday swooped down on 60 junk dealers gathered in a yard at Roosevelt Road and Washtenaw Avenue, slugged, choked, and beat a number of them and fired on others, and when they raced away in their automobiles Max Braverman, 45, of 1624 South St. Louis Avenue, father of 7 children, lay on the ground mortally wounded.

Junkmen who witnessed the shooting said that Lewis, business agent of the Truck Drivers, Chauffeurs and Helpers Union, fired on Braverman while the latter's back was turned, and that Lewis shot him because he refused to be frightened or intimidated into joining a proposed new union of one-horse junk dealers.

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As Braverman fell the strong-arm men fired a final volley into the group of junkmen that gathered around Braverman and then leaped into the four automobiles in which they had come. Lewis failed to get his car started. He abandoned it and police found it in the yard, a book containing names of junkmen who had "signed up" still in a pocket * * *

According to witnesses, the attack of the labor leader and his gangsters followed an attempt to intimidate the junkmen gathered in the same yard on Thursday afternoon. On that occasion, when Lewis and several of his cohorts arrived, the junkmen seized stones and bits of old iron and steel and threw such a shower of it at them that they were driven away.

But yesterday afternoon Lewis came back, and this time he had four carloads of sluggers. They drove up to the yard and leaped out, and at once set upon the junkmen, waving their revolvers, seizing some and slugging others.

Lewis is said to have seized one Max Rosenkovitz, a slight man with a beard, by the throat and bent him double, choking him. Several of the junkmen remonstrated with him and he dropped his victim on the ground. Then he drew his revolver and walked over to Braverman. "I'll show you guys who's tough", he is reported to have shouted.

Lewis, according to witnesses, then threatened Braverman, but the latter stood his ground, refusing to join the union. Finally Braverman turned and walked away from Lewis. It was then the witnesses said, that Lewis fired.

A jury acquitted Lewis of this murder.

No less astonishing was the discovery during his trial that evidence which after the murder had been in the hands of the police was now in the exclusive possession of defense counsel.

The story of Max Wilner presents a different angle to the same picture. Wilner had been in the window-washing business in Cleveland, returned to his boyhood city of Chicago in 1927, and started a new window-washing enterprise. He had hardly begun business when he was visited by agents of the Window Washing Contractors and of the Window Washers Union. He was told by them that the only way he could do business in Chicago was to buy out some contractor already established. He laughed. His business was a legitimate one, he had complied with all of the laws of the State, he was a native Chicagoan, why should he not build up a business in his chosen city? He persisted, in defiance of the racket, and on November 17, 1927, in front of 55 West Washington Street, he was shot and so seriously wounded, that he died the next day. His killing was just another "unsolved murder."

One might go on at length to tell of the careers of such stormy petrels as "Umbrella Mike" Boyle, of the Electrical Workers' Union; Maxie Eisen, of the Fish Dealers; Mike Artery, of the Machinery, Safe Movers, Scrap Iron, Teamsters' Union, Local No. 714; Tom Maloy and Ralph O'Hara, of the Moving Picture Operators' Union, Local No. 110. But the examples I have given are sufficient, I believe, to indicate why I oppose a measure which would facilitate and perpetuate labor racketeering.

There are, unquestionably, many honest, able, and sincere men in the labor movement. I suspect, however, that most of them are in Washington, and that they do not know of these abuses of power, or if they do, they have neither the authority nor the ability to correct them.

But not only does this bill expose industry to the labor racketeer, it needlessly perpetuates and accentuates differences of opinion which may occasionally exist between management and men. The establishment of a National Labor Board for a minimum period of 5 years totally neglects the fact that during periods of normal employment, most differences are amicably settled by the individual plants or

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industries themselves and the inequality of bargaining power which which the bill seeks to correct, does not exist.

One of the greatest problems in connection with shop-representation plans, or as they are misnamed today, "company unions", is how to keep them going during periods of normal employment. I first ran into this fact back in 1922 when I worked as a laborer in a plant which had a shop-representation plan. This plan had been inaugurated following a strike in 1919. During the period of my employment, an election was held and the ballot box passed to each individual employee in order that he might vote. When I asked the men why this was done instead of having a central polling place, the answer was that the men would not take the trouble to vote unless it was made very easy for them. A further questioning of the men indicated that the indifference was not due to any failure on the part of the plan but simply that its purpose during the troublous years of 1919–21 had been fulfilled. They were satisfied with their conditions, could handle any current problems in the regular way through their supervisors, and saw no reason for the continuation of the plan. To the management of this plant, however, and for many others which have similar plans, the problem is always one of how to keep interest in representation alive and the plan functioning against another period of change and adjustment.

That this problem of maintaining interest is not unique in shop-representation plans is borne out by the drop in membership figures of the unions constituting the American Federation of Labor during the period of normal employment from 1923 through the middle of 1930.

In fact, this indifference to organizations which seek to represent employees is not confined to this country, but according to my observation is not uncommon in Soviet Russia. During the early part of 1930, it was my pleasure to spend some months in a small manufacturing and mining town in the Ukraine. An election was held for representatives in the local mine soviet. The night after the election I attended the movies which were shown in the workers' club, and the results of the election were flashed on the screen. Less than 50 percent of the eligible voters had voted and it was a local scandal. Cartoons were shown ridiculing the reasons which the men had given for not voting. One man who said he had a sick wife, was shown sound asleep under a tree; another who had complained of a bad headache, was shown with the bottle beside him which was presumably the cause of the headache. And this indifference, may I remind you, was in spite of all the propaganda of the Communist Party to stimulate and maintain interest in their plans. Here again my inquiry developed that the problem was not the fault of the plan but the lack of any real issues to stimulate the voters.

Thus, I believe, on the basis that the experiences cited are typical, that the mass of American workmen are not, under normal employment conditions, interested in any machinery to equalize their bargaining power.

During the present abnormal conditions of employment, my observation has been that most employers have been sympathetic and understanding in doing the terrifically difficult and heartrending job of laying off men and reducing wages. We are glad now of the opportunity to employ more men and increase wages. I believe that under

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section 7 (a) of the National Industrial Recovery Act, and the labor boards which are to be set up under the code authorities, any cases in which unfair advantage of the present situation has been taken by employers may be adequately adjusted. If normal employment conditions do not return by the expiration of the act, it may be extended. It is to be hoped, however, that by June 1935 labor conditions will have so far returned to normal that the labor boards may be dropped.

May I summarize then, my objections to the Wagner bill:

1. It opens the way for unscrupulous and irresponsible members of the labor groups to foist themselves on employees. Under the bill the employer cannot refuse to recognize such a racketeer provided he represents the choice of his employees and presumably may not inquire under what pressure the choice was made, lest he be accused of influencing his men.

2. The normal relationships of management and men are peaceful. The setting up of a National Labor Board for a minimum period of 5 years will inject into the whole labor situation a mechanism which is unnecessary and unwarranted in periods of reasonable employment. By the very fact of its existence, I believe this Board would tend to encourage labor agitation and give opportunity for minor disputes and differences of opinion to be magnified and distorted.

3. The National Industrial Recovery Act in section 7 (a) adequately provides for any temporary inequality in bargaining power because of the present lack of jobs.

The CHAIRMAN. Thank you, Mr. Goodman.

The committee stands adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 1 p.m., a recess was taken until 10 a.m., Apr. 3, 1934.)

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TO CREATE A NATIONAL LABOR BOARD

HEARINGS

BEFORE THE

COMMITTEE ON EDUCATION AND LABOR
UNITED STATES SENATE

SEVENTY-THIRD CONGRESS

SECOND SESSION

ON

S. 2926

A BILL TO EQUALIZE THE BARGAINING POWER OF EMPLOYERS AND EMPLOYEES, TO ENCOURAGE THE AMICABLE SETTLEMENT OF DISPUTES BETWEEN EMPLOYERS AND EMPLOYEES, TO CREATE A NATIONAL LABOR BOARD, AND FOR OTHER PURPOSES

PART 3

APRIL 4 TO APRIL 9, 1934

Printed for the use of the Committee on Education and Labor

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CONTENTS

Statement of—	Page
Balleisen, L. L	649
Berry, Paul D	820
Bowen, Ivan	696
Brenckman, Fred (brief)	1000
Brooks, S. G	685
Carr, Miss Charlotte	940
Cleary, Thomas	811
Colley, Robert F	823
Conn, C. W	844
Doragoff, Nathaniel	943
Drew, Walter (brief)	1004
Dunne, William F	972
Dyer, Dr. Gus W	900
Eastman, Whitney H	895
Edelman, John W	954
Edwards, Harold	947
Elliott, William S	911
Erickson, Charles	876
Fakler, Herman (brief)	999
Fisher, Wagner	690
Fullmer, G. L	675
Gillespie, Ben B	880
Girdler, Thomas M	772
Gordon, Neil	808
Grimm, John	871
Hill, T. Arnold (brief)	1020
Hook, Charles R	729, 1028
Kelly, John T. (brief)	998
Larkin, John	764
Larkin, J. M	780
Levy, Jerome (brief)	1011
Madden, Jacob F	862
Maloney, Francis C	673
MacKenzie, A. G	905
McDermott, William G	802
Merritt, Walter G. (brief)	1018
Miller, Nathan L	883
Mitchell, Guy E	832
Moore, James	841
Murphy, Martin	842
Oliver, Frank	918
Pierce, Charles P	969
Pinchot, Mrs. Cornelia Brice	924
Polier, Isadore (brief)	1012
Purnell, Frank	788
Ransom, Lloyd H	813
Reymond, M. H. (brief)	993
Robinson, Robert Lee	836
Roderick, Eugene R	840
Shields, John P	879
Skinner, Arnold	815
Smith, H. Garrish (brief)	1001
Sullivan, Daniel J	921
Smith, Ellwood H	795
Smith, Hal H	709

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Statement of—Continued
Taylor, Wm. E. (brief) 997
Thompson, A. F 960
Vickers, Leslie 678
Weed, Hugh H. C 954
Weir, Ernest T 757
Williams, Whiting 891
Wolf, George E 672
Woods, William W. (brief) 1002
Woolford, Edgar 665
Young, Arthur H 719
Young, George W 957
Young, James T 656

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TO CREATE A NATIONAL LABOR BOARD

WEDNESDAY, APRIL 4, 1934

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The committee met, pursuant to adjournment, at 10 a.m., in room 318, Senate Office Building, Washington, D.C., Senator David I. Walsh (chairman), presiding.

Present: Senators Walsh (chairman), Davis.

Senator DAVIS. The meeting will come to order. Mr. Balleisen will come forward. The Chairman will be here in a few minutes.

STATEMENT OF L. L. BALLEISEN, SECRETARY INDUSTRIAL DIVISION, BROOKLYN CHAMBER OF COMMERCE

Senator DAVIS. Will you state your name for the record?

Mr. BALLEISEN. L. L. Balleisen.

Senator DAVIS. Where do you reside?

Mr. BALLEISEN. Brooklyn, N.Y.

Senator DAVIS. You may proceed.

Mr. BALLEISEN. My name is L. L. Balleisen. I am secretary of the industrial division of the Brooklyn Chamber of Commerce, the representative organization of Brooklyn industry and commerce, having over 2,000 members engaged in the various walks of commercial and industrial life, in one of the largest industrial and commercial communities in the United States. The population of the borough of Brooklyn is surpassed only by that of Chicago, and, of course, Greater New York, of which Brooklyn is the largest borough. In industry, Brooklyn ranks third largest city as to the number of industrial establishments, fourth in the number of people employed in industry, and fifth in the value of products manufactured. Twenty-five percent of all water-borne foreign commerce of this country is shipped through Brooklyn, and we do a retail business exceeding $1,000,000,000 a year, which is exclusive of our industrial business which totals over $850,000,000 annually.

This bill is predicated on the assumption that "modern economic life * * * has long since destroyed the balance of bargaining power between the individual employer and the individual employee", leaving the "individual unorganized worker helpless to exercise liberty of contact", and thus "secure a just reward for his services and preserve a decent standard of living" and that "inadequate recognition of the right of employees to bargain collectively through representatives of their own choosing has been one of the causes of strikes, lockouts, and similar manifestations of economic strife."

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It is proposed to equalize the "bargaining power of employers and employees" by providing "agencies for the peaceful settlement of disputes."

The expressed intent of the bill—to provide for the "peaceful settlement of labor disputes" on an equitable basis—represents a principle, the complete effectuation of which is largely sought by employer and employee alike, and would greatly stimulate the economic recovery of the Nation.

Yet the various provisions of the bill in their present form are so drawn as to defeat its avowed purpose. Sections of this measure are of such character; are subject to such interpretation; and are based upon such obvious fallacies as to incite industrial strife, rather than assure the peaceful and equitable settlement of labor disputes.

Under section 7 (a) of the National Industrial Recovery Act employees are guaranteed "the right to organize and bargain collectively through representatives of their own choosing and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." It is therefore not the lack of "bargaining power" or the "inadequate recognition" of the right of employees to bargain collectively that has caused "strikes, lockouts, and similar manifestations of economic strife" during recent months, but the deliberate misinterpretation of section 7 (a) of the National Industrial Recovery Act on the part of various radical labor organizations and self-appointed labor leaders to further their own ends, and the lack of equitable and proper enforcement of section 7 (a). Consequently, the employer is frequently coerced into dealing with alleged representatives of employees who are radicals and Communists and whose avowed purposes are the destruction of the Constitution and an orderly form of government, and the blocking of the President's recovery program. Employers have not resisted section 7 (a), but have resisted the attempts of such professional labor agitators and fomenters of trouble and have resisted dealing with alleged representatives of employees who by coercion and force and violence have become self-appointed leaders of the workers. These labor agitators do not have the interests of the worker at heart, but are only concerned with what personal gain they may win for themselves. This is what has caused many of the strikes and lockouts during the past 9 months.

The further provision of section 7 (a) of the National Industrial Recovery Act that, "No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing" establishes the right to "exercise liberty of contract" to the fullest degree. Regardless of this, Mr. William Green, president of the American Federation of Labor, and other labor leaders have repeatedly in public speeches stated that collective bargaining can only be accomplished through labor unions; that there shall be only one labor union; and that that labor union shall be the American Federation of Labor.

Senator DAVIS. May I ask you when Mr. Green made that statement.

Mr. BALLEISEN. He made it in a statement I believe at Cleveland.

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The CHAIRMAN. Recently?

Mr. BALLEISEN. No; I believe it was in September.

Senator DAVIS. Of last year?

Mr. BALLEISEN. Last year. I do not happen to have that speech with me, but I could send it to you if you wish.

Senator DAVIS. I would appreciate you sending it to me.

Mr. BALLEISEN. Are you Senator Walsh, sir?

Senator DAVIS. I am Senator Davis.

Mr. BALLEISEN. I will make a note of that.

If section 7 (a) is being thus utilized to force employees into the membership of labor unions and labor organizations (as it is), this bill will give such organizations complete domination over employee and employer alike, and destroy completely any semblance of a balance of bargaining power between employer and employee.

It is our belief that this bill would—

(1) Give employees monopolistic powers and deprive the employers of their constitutional rights.

(2) Restrict the employer in negotiating directly with his own employees.

(3) Place organized labor in the position of controlling terms and conditions of employment of all wage earners in the country, whether they so desire or not.

(4) Give labor undue advantages in any labor dispute.

(5) Tend to retard the national recovery movement and the reemployment of workers.

(6) Increase labor disputes and industrial unrest.

(7) Impose unfair restrictions on the employer to the advantage of organized labor.

(8) Place extra expense and burden upon the small employer since the bill provides that when hearings are held the expense of witnesses called by the National Labor Board would be borne by the Government, whereas the expense of witnesses called by the employer would have to be borne by him personally, thus preventing many small employers from presenting a complete defense.

(9) Tend to close factories, stores, and other places of business.

(10) React to the definite disadvantage of the employee, the employer, and industry.

(11) Put more people out of work.

We recommend the following revision of the various provisions of the bill:

Title I, section 2: This section should read as follows:

Strikes, lockouts, the actions of unscrupulous labor agitators and the actions or near-sighted and selfish employers have caused untold industrial loss and the destruction of capital assets invested in enterprise, have destroyed peaceful relationship between employer and employee, have rendered ineffective section 7–A of the National Industrial Recovery Act, and have retarded the return to normal industrial and living conditions. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of commerce, to encourage the establishment of uniform labor standards, and to provide for the general welfare, by removing the obstacles which prevent the organization of labor for the purpose of cooperative action in maintaining its standards of living, by encouraging the equalization of the bargaining power of employers and employees, and by providing agencies for the peaceful settlement of disputes.

Section 3, paragraph 2: This paragraph should read:

The term "employer" means a person who has one or more employees, except that the term "employer" shall not include the United States, any State, munici-

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pal corporation, or other governmental instrumentality, or any person subject to the Railway Labor Act, as amended from time to time.

There is no reason why a labor organization or anyone acting in the capacity of an officer or agent of such labor organization who hires employees should not be termed and considered an employer. No reason exists why labor organizations should be exempt from the provisions of this act.

Section 3, paragraph 3: On line 17 of page 3, it is stated:

* * * *Provided*, That the term "employee" shall not include an individual who has replaced a striking employee.

This clause should be stricken out. A worker is a citizen whether he replaces another worker or not, and is entitled to the pursuit of happiness and to seek engagement in gainful employment.

Section 3, paragraph 4: This paragraph should read:

The term "representative" includes any individual who is a law-abiding citizen and who has not sought the destruction of the Constitution and the overthrow of the orderly form of government or any labor organization whose avowed purpose is to uphold the Constitution and the orderly form of government, and that has received a certificate of recognition from the National Labor Board, and who has been duly elected and accredited by a majority of the workers in that particular company to represent them.

This paragraph would remove the fear of an employer that he must deal with men of questionable character. This does not aim against the legitimate labor organization formed by the workers for their mutual benefit. There is no reason why employers shall be requested to deal with representatives of their workers unless definite proof is established that said representatives have been duly elected and accredited by a majority of the workers in their company.

Section 3, paragraph 5: This paragraph should read:

The term "labor organization" means any organization, labor union, association, corporation, or society of any kind in which employees participate to any degree whatsoever which has received a certificate of recognition, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, or hours of employment.

Section 4: This section should be changed to read:

Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing.

This is merely a restatement of section 7–A of the National Industrial Recovery Act, which gives full protection to the worker.

Section 5, paragraph 1: This paragraph should read:

To attempt by coercion, force, or lockout to impair the right of employees guaranteed in section 4.

Section 5, paragraph 2: This paragraph should read:

To refuse to recognize and/or deal with duly elected and accredited representatives of his employees or to fail to exert every reasonable effort to make and maintain agreements with such representatives concerning wages, hours, and other conditions of employment.

There is no reason why an employer should have to deal with anyone who has not been duly elected and accredited as representa-

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tive of his employees. As was stated previously, the reason for the resistance on the part of employers to section 7 (a) is due to the fact that it is not clear as to whom the employer shall deal with in negotiating with his men.

Section 5, paragraphs 3 and 4: These two paragraphs should be eliminated.

There is no reason why beneficial relationships between employee and employer should not exist nor why they should be legislated against. Company unions, when conducted in an equitable and fair manner, work to the advantage of both employer and employee. Thousands of workers have been working under company-union conditions for years and have derived far more benefit therefrom than may have been derived from most labor organizations. As paragraph 3 is now worded, a company would be prohibited from actually making an agreement with a labor union since it states:

To * * * participate in * * * operations * * * of any labor organization.

Certainly to participate in operations would also mean forbidding entering into agreements. It would also prevent a company from granting their employees the privilege of holding an election during working hours without loss of pay. Surely that is not an objectionable feature. Companies should not be restrained from treating their employees with consideration.

Section 5, paragraph 6. Beginning on line 7, page 6, it is stated:

Provided further, That nothing in this act shall preclude an employer and a labor organization from agreeing that a person seeking employment shall be required, as a condition of employment, to join such labor organization, if no attempt is made to influence such labor organization by any unfair labor practice, if such labor organization is composed of at least a majority of such employer's employees, and if the said agreement does not cover a period in excess of one year.

This clause should be eliminated. It would practically guarantee the leading labor organizations in this country the closed-shop principle. Approximately 3,000,000 workers (a small minority) would then decide the policies, conditions and destinies of the 40,000,000 workers gainfully employed in the United States. This is not even representation by majority vote. It would take away the right of an individual to earn his livelihood unless he became a member of a labor organization. The labor leaders would take this to mean that a man could not work under the law unless he was a member of a union. They would read into this clause interpretations that were never dreamt of the same as they are attempting to read interpretations into section 7–A of the National Industrial Recovery Act. No one would think of drawing up a similar clause which would practically force employers to band together and to join associations whether they so desired or not. This would certainly impair the rights guaranteed a citizen under the Constitution of the United States. The practical result would be that every worker would have to pay tribute to some labor organization in order to earn a living.

Section 5, paragraph 7. We suggest that a paragraph be added to section 5, which would state as follows:

To cause or institute a lockout for any reason whatsoever prior to the submission of their grievances to the National Labor Board for arbitration and prior to the rendering of a decision by the National Labor Board, and without having resorted to every possible peaceful means of settlement of such grievances.

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Section 5–A. We also suggest that a section should be inserted before section 6, which would read as follows:

It shall be an unfair labor practice for a labor representative or labor organization or anyone acting in their interest directly or indirectly, to cause and/or institute and /or incite a strike for any reason whatsoever prior to the submission of their grievances to the National Labor Board for arbitration and prior to the rendering of a decision by the National Labor Board, and without having resorted to every possible peaceful means of settlement of such grievances.

Section 202 (b). This section should be changed to read:

All the expenses of the Board, including all necessary traveling expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose and properly audited as per rules and regulations applying to all Federal governmental departments pertaining to traveling expenses.

There is no reason why this Board's expenses shall not be subject to the same rules of checking as other Federal agencies.

Section 204: This section should be eliminated entirely as it has been taken care of in previous sections of the bill.

Section 205 (a): This section should read:

The Board is empowered to prevent any person from engaging in any unfair labor practice that burdens or affects commerce or obstructs the free flow of commerce, or has led or tends to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce, or that causes a lockout or that institutes or causes a strike in violation of this act.

Section 205 (b): The words on page 9, line 23, "General nature of the charges" should be changed to read: "Specific nature of the charges."

On page 10, line 7, the clause "and the original complaint shall not be regarded as limiting the scope of the inquiry" should be eliminated.

The word "not" in line 17 on page 10 should be stricken out.

It is only fair and just that the person accused of an unfair labor practice should have the right to know the specific nature of the charges brought against him and thus be prepared to defend himself properly, as is his due right, against said charges. If the complaint simply states the general nature of the charges, then the employer cannot adequately prepare his case.

There is also no reason why the original inquiry should embrace more than the specific charges in the complaint. This Board should not be a board of inquisition, having the right to start a so-called "fishing expedition" to obtain evidence of any nature whatsoever against an employer. There is also no reason why this Board should not be bound by the same rules of evidence prevailing in courts of law or equity.

Section 205 (c): The clause starting in line 12, which reads: "the board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it", should be stricken out. There is no reason why the order or findings of the Board should not be final in character.

Section 205 (d): The sentence starting on page 12, line 12, should be changed to read: "The findings of the Board as to the facts, if supported by the evidence presented, shall be conclusive."

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Section 205 (e): In line 18, page 13, the words "determined to have been" should be inserted after the word "was" and before the word "engaged".

Section 205 (h): Subdivision 4 should be stricken out, as a telegraphic copy of an order or message contains no proof of the authenticity of the sender and would not prevent a person bent upon mischief from sending a telegram in the name of the board to an employer and causing him unjust worries and trouble.

Section 206 (a): This section should be changed to read:

The board shall have the power to act as arbitrator in labor disputes. Both of the parties to a labor dispute must agree to submit the whole or any part thereof to the arbitration of the board and if the board accepts such submission, the agreement shall be valid, irrevocable and enforceable as to the submitting parties, save upon such grounds as exist at law or in equity for the revocation of any contract. In any case accepted by it for arbitration, the board shall have power to issue an award applicable to the submitting parties.

Section 207 (a): This paragraph should be changed to read:

In any dispute as to who are the representatives of employees, the board, if the dispute might burden or effect commerce or obstruct the free flow of commerce, may investigate such dispute and certify to the parties, in writing, the name or names of the individuals or labor organizations that have been designated or authorized by the employees to represent them. In any such investigation the board shall take a secret ballot of employees or utilize any other appropriate method to ascertain their representatives.

Section 208, paragraph 4: This paragraph should be changed to read as follows:

Witnesses for both employee and employer summoned before the Board or any of its examiners shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

This will give the small employer protection and enable him to produce witnesses in his behalf. We see no reason why labor should be allowed to call as many witnesses as they desire at the Government's expense, whereas the employer should be forced to pay that out of his own pocket.

Section 208, paragraph 5: This paragraph should be changed to read as follows:

The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession except that information which was furnished to the several departments and agencies of the Government as confidential and protected by express statutory provisions relating to any matter before the Board.

There is no reason why data given to the Bureau of Internal Revenue, such as income-tax reports, and so forth, or to the Census Bureau pertaining to statistical information on manufactures, should be made public or available especially when they have been given in confidence with the understanding that they would not be made public.

Section 210: The words "and unlawfully" should be inserted after the word "willfully" and before the word "assault" in the first line of this section.

There is no reason why an individual should be deprived of lawfully resisting what may constitute an unlawful act on any member of the Board or any of its agents.

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Title III, section 301 and section 302: These sections should be eliminated as previous articles provide for compulsory arbitration before the National Labor Board.

Section 303: This section should be deleted as it is prohibited in a previous section which outlaws strikes and lockouts.

Section 304 (a): This section should be eliminated for in former clauses section 7 (a) of the National Industrial Recovery Act is upheld and supported. If the changes here suggested are adopted, then the act entitled "An act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U. S. C., title 29, secs. 101–115), would automatically die, as there would be no cause for injunctions since strikes are prohibited.

Section 304 (b): This section should be changed to read:

> Any term of a contract or agreement of any kind entered into after the passage of this act which conflicts with the provisions of this act is hereby abrogated, and every employer who is a party to such contract or agreement shall immediately so notify his employees by appropriate action.

There is no reason why existing contracts between employee and employer, mutually agreed to, should be outlawed. Unless this clause is changed to read as suggested, this act would be retroactive, which certainly is objectionable and would set a precedent for canceling any contract by passing an act designed for such purpose.

The CHAIRMAN. We thank you, sir.

Senator DAVIS. If the amendments that you suggest to the bill were accepted by the committee, would you then be in favor of the bill?

Mr. BALLEISEN. Yes, sir. We believe there should be a National Labor Board which should have power, but it should be fair, it should be equitable, to both sides. I am sure you would not want to go into a football game when the night before the umpire would say that your team was unscrupulous, that they were muckers or dirty players, or anything of that sort. The Board should be fair, absolutely impartial; it should be fair to the employer and it should be fair to the employee. Strikes and lockouts should be eliminated. There is no reason for it any more than there is reason for war among nations. A few instances that happened in Brooklyn during the past week show what would happen under this bill if the bill was passed.

The CHAIRMAN. I am sorry we haven't enough time to go into that. If you desire to put it in the record you may do so.

Mr. BALLEISEN. I appreciate that.

The CHAIRMAN. If you care to put any illustrations in the record you may do so.

Mr. BALLEISEN. I appreciate that.

The CHAIRMAN. Mr. Young.

STATEMENT OF JAMES T. YOUNG, TEACHER, UNIVERSITY OF PENNSYLVANIA

The CHAIRMAN. Your full name?

Mr. YOUNG. James T. Young.

The CHAIRMAN. Your residence?

Mr. YOUNG. 3818 Chestnut Street, Philadelphia, Pa.

The CHAIRMAN. Your occupation?

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Mr. YOUNG. University teacher.

The CHAIRMAN. What university?

Mr. YOUNG. University of Pennsylvania.

The CHAIRMAN. Whom do you represent?

Mr. YOUNG. I do not represent anybody but myself.

The CHAIRMAN. You are here in your individual capacity?

Mr. YOUNG. Yes, sir.

The CHAIRMAN. What subject are you instructor in?

Mr. YOUNG. I am an investigator and teacher of labor legislation and American government.

The CHAIRMAN. How long would you like to address the committee?

Mr. YOUNG. I think you have given me 15 minutes, Mr. Chairman, which I will try to keep within.

The CHAIRMAN. All right, sir. Proceed.

Mr. YOUNG. With the committee's permission I think I ought to confess to a bias in this matter. It is a bias against a book, or a picture, or a play, or a proposed law which seeks to divide, very shortly, the entire people into two broad classes, as it were, because of the investigation I have had the opportunity of making in the last 25 years or more, which has convinced me that the people cannot be divided into heroes and villains, as this bill attempts to do. Therefore, I think that one of the main services which I can offer to the committee, if I can offer any, would be to try to propose what we should do, what is the first step that we ought to take.

Now, concurring heartily in many of the changes which Mr. Balleisen has proposed, and which have apparently been worked up with a great deal of care, I would like to suggest at the outset we ought to have the facts in a much more full and complete extent than we have at present.

The CHAIRMAN. What facts?

Mr. YOUNG. The facts on certain salient features of the bill, which I should like to call attention to immediately. If this bill is to be pressed for action, for example, in an amended form or in its present form, we should have facts of the following provisions which seem to be outstanding and quite sweeping changes in our fundamental law. Of course, we might say, Mr. Chairman, that the way to get the facts is to have an impartial Congressional committee hearing, such as this, but are there any facts which can be developed from such a hearing? After all, this is a contentious hearing in which each side seeks to present its case. Naturally, both sides want to give as fair and impartial statement of their case as possible, but it is too important a matter, I think, to depend on the presentation of the case. In presenting a case you are attempting to be, shall I say, clever, adroit, or skillful in presentation. Well, are there facts which cannot be developed in that way by presenting a case? I think there are.

The CHAIRMAN. We seem to be getting here divergent philosophies of what the relationship should be between employers and employees, rather than very many facts.

Mr. YOUNG. Precisely. In fact, if you close my remarks right now, that would be about all that I have said. I must, therefore, ask your indulgence for repeating what you have just said.

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If this were a bill, Mr. Chairman, to abolish closed-shop unions, it would be no more drastic than the present bill. Everyone here would at once say, "Well, if you are going to do anything like that you ought to convince the committee with an overpowering array of facts, derived from an impartial inquiry, that closed-shop unions have certain definite advantages, A, B, C, and D, and that through experience, through a comprehensive survey certain evils A, B, C, and D have been found to exist." We could then decide whether we want to make such a drastic step.

Now, I am going to try, therefore, to pick out from the bill certain things on which we have got facts, and I am afraid I must add, on which we have got a conclusive array of data. What are they?

Section 5, clause 6, facilitates agreements for the closed-shop. Now, such agreements may be made regardless of the desire of 49 percent of the workers in a plant which may wish to be represented by some other union than the closed-shop union, that may have complete confidence in this other union, but they are wiped out, they have no representation. And, Mr. Chairman, this happens, strangely enough, just exactly at the moment when all over the world there is sweeping a movement for minority representation. That is quite a contrast. In South Africa, in Australia, in the large American cities, in the large cities of England, in the Irish Free State, in France, in Germany, people are saying it is not an accurate presentation to deny the minority its expression of opinion.

The CHAIRMAN. You have in mind the proportional representation principle?

Mr. YOUNG. Yes, sir. It is gaining very rapidly at this moment, as the Senators know.

Senator DAVIS. Do you favor the minority representation?

Mr. YOUNG. Quite so, Senator.

The CHAIRMAN. Proportional representation is representation in proportion to the vote cast by each party.

Mr. YOUNG. Quite so; yes, sir.

The CHAIRMAN. For instance, in Massachusetts, if you elected all the Congressmen at Large and the Democratic Party polled a million votes and the Republican Party polled 800,000 votes and there were 18 congressional districts, the Republicans would have 8 Congressmen and the Democrats would have 10.

Mr. YOUNG. Yes, sir. Isn't it apropos too, Mr. Chairman, that just at this moment the next constitutional amendment proposed for the consideration of the Senate is to be a minority representation of Presidential electors? That is Senator Norris' proposal, as I understand it. The theory being that it is utterly unjust, in such a condition as Senator Walsh has described, for the Democrats to get all the Presidential electors from the State of Massachusetts.

The CHAIRMAN. I have been a believer of proportional representation for some time.

Senator DAVIS. You know there is a wide difference or opinion by men who work; I mean the laborers themselves. For instance if you set up a works council, say there were 10 in the work council, and the American Federation of Labor, by this proportional vote, would have, say, 6 of the 10 votes, and say that what we call the "company union" would have 1 vote, and then say that the Communist organization would have the other 3 votes, there never would be, with that group, any peace at the work council meeting, because there is

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a wide difference of opinion as to the operation of industry between those particular groups.

Mr. YOUNG. Yes, sir.

Senator DAVIS. And the responsibility would not be centered anywhere other than with the majority. It just gives the ones who have the proportional vote the right to express themselves.

Mr. YOUNG. But, Senator Davis, does not it give the minority representatives a chance to offer their views and have them heard? That is very valuable as a pacifier, if it does not lead to legislation.

Senator DAVIS. But would not there be turmoil all the time? Would not the extremist always be presenting his views?

Mr. YOUNG. Always, yes, sir. Undoubtedly you are correct.

The CHAIRMAN. Of course, one of the answers to that, Senator Davis, is if employers deliberately, knowingly, and intentionally hire Communists they ought to have a communistic organization.

Senator DAVIS. If the employers only have the men in their organization that they employ.

The CHAIRMAN. But every employer has a right to look into the history of the men and women he employs, to find out their past history, find out what their views are. When he chooses to get men whom he does not investigate, who have radical views, I do not know as the Government ought to be especially concerned in preventing a radical labor organization among his employees.

Mr. YOUNG. Senator, would not you think in case there were 40 percent of the workers who belong to one union, which might be the Federation of Labor union or a company union, that they should have a voice in the deliberations of the association?

Senator DAVIS. I am a great believer in the majority rule.

Mr. YOUNG. Of course, there is a school of thought which argues that way, that the majority is the only way that can get us anywhere, "Let us sit on the minority," but I am unfortunately of the opposite opinion.

It has been very interesting, Mr. Chairman and Senator Davis, to see the results in Cincinnati, where this has been tried on a very, very broad scale and it has worked out very satisfactorily.

The CHAIRMAN. Just speaking of it as a political agency rather than an industrial agency, Senator Davis. He is discussing it more from the angle of how it has worked out in political representation.

Senator DAVIS. Then, following the proportional representation as suggested by the chairman, in a particular community only a certain kind of people can get a job. They will not hire anybody other than those who are subservient. It is a new way, as I would see it, for putting into effect what is termed as "yellow dog" contract. That would be, to my mind, the silent yellow dog contract of having a man sign all his rights away before he goes in, and I know that the chairman himself has no such thought as that.

Senator DAVIS. And there is the other feature too, that they would pit one racial group against the other. I have seen advertisements myself of great corporations advertising for men to come to work for them and practically saying, "No English-speaking workers need apply."

Mr. YOUNG. Yes, sir.

Senator DAVIS. That is a contributory cause of current industrial trouble. Shiploads of labor from certain particular countries were

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dumped here early in the present century, and the second generation is coming on in our mills and factories now who know the treatment that was accorded to their parents, and they do not just stop to think what a strike means. They will quit in the midst of a heat that will waste more than the pay roll of that particular mill worker for a week.

Mr. YOUNG. May I add just one thought to your statement about the probable turmoil that would arise in the work council? It has been found in as radical a country as Russia, just before the Kerensky revolution broke, that if they took three or four of the most radical men on the staff, elected them to a position on the Board of Management, that those men became so much interested in the success of the plan that they were turned out by the workers at the next election on the ground they had been subsidized, and they took three more men and put them in—this was done in the shipyards of the Black Sea—they took them in and they in turn became so sympathetic with the aims, needs and necessities of the company, that they were deposed, and the third set of men, Senator Davis, was just about to be elected when the Kerensky revolution broke.

Senator DAVIS. The statement I am going to make only applies to just a few, but I have seen the same thing happen in industries in America where a worker, because he was skilled and a very fine man, was promoted to the position of manager, and he became a tyrant.

Mr. YOUNG. Yes, sir.

Senator DAVIS. That happens with a good many people when they get power, they just do not know how to use it.

Mr. YOUNG. Precisely so.

The CHAIRMAN. You may proceed.

Mr. YOUNG. I am under obligations to both Senators for their kindness in sending to me material and it seems rather a poor return to bore them for 15 minutes.

The CHAIRMAN. I am sure your presentation is going to be helpful, because you are putting your case in a new way.

Mr. YOUNG. If we are going to make an intelligent decision on this question as to whether a 49 percent shall be outlawed, as it were, in the management of the labor affairs of the company, then it seems that we ought to know, first, before we do that, from some impartial direct governmental inquiry rather than from a contentious hearing.

Now, where are we going to get the facts about the closed shop which this section facilitates? We are going to get them, I think, chiefly from the employer who complains against the abuses of the closed shop. We are going to get, so far as the advantages are concerned, we are going to get them from those who claim, as a great many people sincerely claim, that the closed shop is the only way by which you can represent labor, it is the only faithful representation of labor's desire.

Now, I want to offer as a possibility an inquiry into what have been the practical benefits and disadvantages of the closed shop, not what we would write in a book might be disadvantages, not the recounting of individual instances. For example, I could recount to the committee this morning that Robert P. Brindell in the New York building trades, made over a million dollars in 18 months, and people in town had to eventually put him into retirement. Mr. Brindell had a tyrannical power such as you have described, Senator Davis.

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Senator DAVIS. I am familiar with that, because I was Secretary of Labor at that particular time. I do not think that any labor leader, or anyone that I know of, was in sympathy with that way of doing business.

Mr. YOUNG. Precisely. Is it an unfair inference from that to say that since that may occur in a way which all labor leaders repudiate, that we ought to know how often it does occur?

What are the counter-balancing advantages of the closed shop? One thing that occurred in Mr. Brindell's union, I am sorry to say, was repeated in two other unions. Two men expressed their views in a union meeting in an orderly way against something that Mr. Brindell wanted. They said that ought not to be the action of the union, in their judgment, and they were excommunicated, that is, I mean they were put out of the union, their union cards were canceled, and as nonunion men they went up and down the Atlantic coast looking for work. Their job was piling and docking, they were specialists in wharf construction. They finally found employment in Mexico. They had to go through all this for no other reason at all than that it was a closed-shop union which excluded nonunion men. Their case could not even be heard in other places. They were nonunion men. This is the kind of a thing that the public apparently does not realize.

One of the greatest statesmen developed by the labor movement was Warren S. Stone. Mr. Stone, in a moment of weakness, took a dislike to a man who was called before the Interstate Commerce Commission as a mail car inspector, a man named Rother. The Senators will find this referred to in 183 Northeastern Reporter, in the Supreme Court of Indiana. Stone said to Rother that he must not testify concerning the disadvantages of the carbon-electrode lamp, a headlight lamp which was being considered by the Interstate Commerce Commission. Rother said he testified under the summons of the Commission, and Stone ordered his union to expel him. The union held a fair hearing and decided he had done nothing worthy of expulsion.

Senator DAVIS. The union was right.

Mr. YOUNG. The union was right. What happened to the union? Stone had the charter of the union canceled and he had a new union formed in which Rother and his friends could not be admitted.

In my judgment, Senator, that is not a reason for outlawing the closed shop by law, we ought not on such evidence as that, but it is a very strong reason why we should hunt up the facts on that and disclose whether there are counter-balancing advantages and whether there are other cases of this kind.

For example, at this moment in my home city, the city of Brotherly Love, we have a very interesting habit of counting the votes, when you want to get 51 percent for a closed-shop union. Our theory is a man's mind is open to new ideas if you make an opening in his skull. So a great many people have been found in Philadelphia recently with their skulls fractured, lying senseless on the pavement, outside the Budd plants in the Philadelphia taxi strike, for nothing at all except they wanted to join a closed-shop union and said so.

Therefore, I think we ought to be a little willing to make an impartial and a very comprehensive survey of the data on the merits and demerits of the closed shop. Personally, I know of closed shops that are highly successful and I know of some that have led to tyranny,

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and I would not like to see legislation made on the subject without a full disclosure of the relative merits of the two forms.

Senator DAVIS. After all, this question of management and worker is just a question of cooperation.

Mr. YOUNG. Quite right.

Senator DAVIS. We know that there has been ill feeling between the two in the last 15 or 16 years. If both sides had put in as much time, or expended as much energy and money in getting together and ferreting out these illegal positions that are taken, and getting closer together, don't you think we would have been better off?

Mr. YOUNG. Unquestionably.

Senator DAVIS. Rather than have both of them stand on opposite sides of street and banging away at each other?

Mr. YOUNG. A lot of these things cannot be fixed by legislation at all, they have to be fixed by education.

Senator DAVIS. I do not think you can make a company union man or any other kind of a man by legislation.

Mr. YOUNG. No, sir.

Senator DAVIS. Anymore than you can make a man's appetite or fix his religion by legislation.

Mr. YOUNG. I subscribe to your view entirely, Senator.

Senator DAVIS. I think it is all a question of education.

Mr. YOUNG. Yes, sir. Section 5, clauses 3 and 4, Mr. Chairman and Senator Davis, forbid the employer to initiate, advise, or assist in the formation of a labor union. Now, regardless of what may have been the original intent of this clause, its real effect seems to be to destroy the company union. Senator Wagner has repeatedly said, since his first interview in the Times, and since his talk over the radio a couple of weeks ago, that he does not want to abolish all company unions, but he does want to abolish the employer-dominated company unions only, and I think I am not misquoting him there, or doing him an injustice. My thought is if we are going to do that it must be done by some means of getting the available data as to those which we want to discriminate against, and as to just which acts are to be forbidden. As the thing stands here, in the clauses which I have referred to—I will not bore you by reading them—which simply state that he must not help financially and he must not advise, aid, or encourage in the formation of a labor union. Well, as they stand there, they are so broad, so sweeping and drastic, that they would have the effect of destroying the company unions even where the employees heartily desired them, and there have been several instances brought to the attention of the committee where that is so.

Now, I should point out if we are going to do that it ought to be after most convincing presentation of evidence, which has not been presented here, in an impartial way, but has been presented from one side or another rather than by inquiry.

The sponsor of the bill points out that 70 percent of the cases—and this to me seems very important—70 percent of the cases coming before the National Labor Board have been based on some interference by the employer with the right of self-organization. But, of course, this means 70 percent of those cases in which there has been sufficient abuse to come before the Board. What proportion of cases have been worked out peacefully and satisfactorily in the spirit which you mentioned? That is not before this committee, that evidence

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has not been presented. Employers say in a general way the company union is a good thing, and the closed-shop union, in a general way, says it is a bad thing. Senator Wagner first begins by wiping it out and now says he wants only wiped out those which are dominated by the employer.

In my estimate of the situation we seem to be in more or less of a fog or confusion, which ought to be cleared up again by a very accurate and intensive survey.

Now, section 6 provides that an injunction may be secured against an employer and against him only, and only on application of the Labor Board.

Senator DAVIS. I might say to you here, it comes to my mind now, I recall asking for an appropriation, or asking to use certain particular funds for the purpose of making a survey of the country to get such information as you now say would be very useful to this particular committee.

Mr. YOUNG. Vitally, vitally, yes, sir; and, Senator, I do not see how we can legislate intelligently without the data that you wanted.

Senator DAVIS. Those that opposed that particular appropriation were employers.

Mr. YOUNG. Yes, sir. On economic grounds, I presume.

Senator DAVIS. I presume so.

Mr. YOUNG. Section 6 provides that an injunction may be secured against an employer, and against him only, and only on application of the Labor Board. Well, now, the act of 1932, which was pointed out by Mr. Balleisen, practically abolished injunctions in peaceful labor disputes, when issued against either employer or employee. Now, if we are to take more drastic action, as this bill proposes, if we are to reverse our policy laid down in the law of 1932 and to issue injunctions against one side only, leaving the other side free of injunctions, ought it not be after some impartial showing of data as to why we should do so? Well, that was not presented to the committee. We are told:

> Strait jacket the employer with an injunction, make it an injunction only on the application of the National Labor Board, let the employee or the union go free from all injunctive restraint.

Mr. Chairman, suppose, by a wild dream of the imagination, that someone other than the employer were to violate the spirit of this law, why should he be exempt from an injunction? He is under this bill. Coming to section 5, clause 2, we have a very interesting thing here.

Senator DAVIS. If I remember correctly, Senator Wagner has said that he wants the law to apply to both sides.

Mr. YOUNG. Yes; as it now stands, it does not.

Senator DAVIS. That is right.

Mr. YOUNG. Clause 2 of section 5 declares that the employer must recognize, must deal with, must make every reasonable effort to reach and to maintain an agreement with the employees and their representatives, under pain of a $5,000 fine, 1 year imprisonment, and so forth. Aside from the interesting problem of putting a man in jail, Senator, for not making what is called a reasonable effort, or a very reasonable effort, which is still more remarkable, putting a man in jail for not making a very reasonable effort to arrive at an agreement and to maintain an agreement, this clause raises one further question.

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What does the law require the employees' representatives to do? What penalty does it visit on them if they do not do it? Nothing, absolutely nothing.

This is the most remarkable piece of legislation that is proposed for action that I recall having seen. Has any effort been made to ascertain the number and kind of disputes? Often the first notice of discontent is when the strike take splace. An employer told me that he had no notion whatever of discontent until a man came into the shop and said that the boys had been called out. He came in 24 hours after the boys had been called out. There had been no demands made on him. After the boys went out then comes the representative from the outside union and says, "We must have these changes made." This law makes no requirement whatever, this proposed law, that the emplyees' representatives should even present demands. They can strike.

Has any inquiry been made as to the number of cases, for example, in which demands are presented as an ultimatum, not for negotiations?

This bill represents the employer as coming, hat in hand, as it were, to the representative of the employees, saying, "Cannot we negotiate? Cannot we make an agreement? Cannot we maintain an agreement?" Whereas the proposed law represents the employees' union representatives as saying, "Here is what you are to do. If you do not do, there is a strike."

Mr. Chairman and Senator Davis, in order to show that I am not drawing on my imagination here, may I refer to section 205 in which this remarkable language occurs:

> This law shall not be interpreted to impede or to interfere in any way with the right to strike.

So, that while one side is required to go almost pleading, saying, "We made every reasonable effort to provide and maintain an agreement," the other side is told, "You can strike with or without demands, you can present your demands like a declaration of war." Now, even in international practice that is considered a trifle questionable. The Japanese did it after they attacked Russia first and declared war afterward. It is considered very questionable even among nations, where the rule is usually catch-as-catch-can.

I do not see why that rule should prevail, where one side is straitjacketed and the other side is absolutely free.

SENATOR DAVIS. Going back to the proportional representation, I have always maintained in the association that I have been very active in, that the minority must always present the minority side of the case, and that all of the information gathered by the majority side that is of interest to the man who is going to present the minority side must be turned over to him, and nothing should be taken away from him. I think in most mutual organizations the thing they are striving for is the best for all concerned.

MR. YOUNG. That is quite so. May I correct the number of the section? I said 205, it should be 303. The section of the bill is 303 which maintains the right to strike. This language is most emphatic.

May I say, in leaving, that the general picture presented by this bill is not at all the picture of fact which many of us know at first hand. The bill presents a picture of many large employers, so many and so large that a Federal law must be made and the compulsion of

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Federal force must be put back of it, who seek to destroy the rights of their employees; to ignore these rights; to reduce the standard of living, in the words of many of the witnesses. The picture that many of us know at first hand is one or two groups of employers, a great host, Senator, of small employers, as you know better than I can say, many of whom are in the red and are struggling to get out, many of whom have kept a larger plant, have borrowed money to finance a larger number of employees than they needed at the moment. These people are now beginning to get their noses above the surface, they are beginning to feel more optimistic and they are beginning to try more earnestly to comply with the recovery program, and just at this moment those people are told by this bill that conditions which will not fit their shops at all are to be enacted by law. A restaurant keeper in Philadelphia told me just last week that if this bill were enacted she, who has about 32 or 33 employees, would be put out of business because, she said:

> My relations with my employees are friendly, we have no bickerings at all. If an outside agent were to come in and stir up trouble, increasing my cost, when I am just getting out of the red, I have just been paying off the mortgage on my home that I have put on in order to carry on the business for the last 6 months, if this thing would occur to me, I would be out; I would have to close up.

Another picture that most of us know, some at first hand and some at second hand from the newspapers, is that in recent weeks a number of the larger employers have not yet increased their dividends, many of them have not declared any dividends at all, but they are reducing their hours and increasing their wage rates. So that the picture here again is a question of fact. The picture represented by the bill is one of tyranny by the employer on such a large scale that it requires national law, and the picture that we know at first hand is one of people trying their very best to finance themselves out of the hole, keeping the workers employed, and in the meantime increasing wages and reducing hours.

Mr. Chairman and Senator Davis, in closing may I say the bill seems to commit all the worst mistakes of the prohibition law. It does not seem possible that we can consider this kind of a bill within 4 months of the repeal of prohibition. We have here the Jones 5-and-10 feature in section 310, $5,000 fine, a year in jail, and as it euphoniously adds, "or both" to the man who is not an employee, not a representative of the union, but a man who is an employer, he must obey the law quickly, he must obey quickly the National Labor Board orders.

Thank you very much for the opportunity you have given me to make my statement.

Senator DAVIS. Thank you, sir. Mr. Edgar Woolford.

STATEMENT OF EDGAR WOOLFORD, PRESIDENT UNITED RAILWAYS EMPLOYEES' ASSOCIATION, BALTIMORE, MD.

Senator DAVIS. You may state your name for the record.

Mr. WOOLFORD. Edgar Woolford.

Senator DAVIS. You are president of the United Railways Employees' Association?

Mr. WOOLFORD. That is correct.

Senator DAVIS. Your residence is at 4032 Park Heights Avenue, Baltimore, Md.?

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Mr. WOOLFORD. Yes, sir.

Senator DAVIS. All right. You may proceed. Are you opposed to this bill?

Mr. WOOLFORD. Yes, sir; I am.

Senator DAVIS. You may proceed.

Mr. WOOLFORD. Mr. Chairman, I am appearing here today in the name of 4,000 members of the United Railways Employees' Association of Baltimore. I am accompanied by 29 members of the general committee, which is the entire committee. With your permission I would like to outline our benefits, and then my statement will be brief.

We have 665 members in our 25-year club, which I think is an indication of good relationship between the management and the men. We have a group-insurance plan. This is for the year 1933. Bringing it right up to date, the beneficiaries of our members received $41,500. We have a company insurance, which the employees pay nothing for, the company pays all of the expense of this company insurance, and that amounted to $25,550. We have a pension system. The pension pay roll for 1933 was $103,806.92. We have a sick benefit. If any member of our association is off sick he is paid $10 a week. That pay roll last year amounted to $41,806.77. We have our own doctors, surgeons, specialists. If an employee, or if any member of our association is taken sick, he gets a free doctor; it does not cost him anything. Then we have hospitals.

Senator DAVIS. You say the doctor does not cost him anything?

Mr. WOOLFORD. He gets that through our association.

Senator DAVIS. What are the dues in the organization?

Mr. WOOLFORD. Twenty five cents a week. Then we have hospitals.

Senator DAVIS. Just a minute. And you pay for your services from the dues collected from the membership?

Mr. WOOLFORD. And company contributions. I will reach that a little later.

Senator DAVIS. All right.

Mr. WOOLFORD. The 25 cents a week covers it all, so far as the member is concerned. Our hospital expense was $11,918.75. It does not make any difference how major the operation may be or how small. That is taken care of through our association. Then we have nurses. If any member of our association reports sick, the nurse calls on him, or members of his family, if he makes a request for it, they will go down and attend the family. That expense was $5,107.48. Then we have the contribution fund. Our association makes contribution to employees who are sick and cannot get along on the $10, they may need a ton of coal, or anything they may need, if the committee sees that they need it. That amounted to $1,491.25. We have a death benefit. If the wife of a member of the association dies, he gets $100. If a child or any relative that is solely dependent on this employee dies, he gets $50.

If you are interested, I would be glad to tell you where we get that money.

Senator DAVIS. Go right ahead.

Mr. WOOLFORD. Our dues for the year 1933 amounted to $42,569. The United Railway contributions to our association was $26,500. Our commissions on coal—we have a coal proposition where the em-

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ployees can buy coal at 75 cents a week, where he gets a cash price and he pays for the coal at 75 cents a week.

Senator DAVIS. Does he get coal at lower prices than anyone else in Baltimore?

Mr. WOOLFORD. He pays the regular market price. The coal dealer gives us the salesman's commission. That amounted to $2,552.52. Then we have some money in our building association. Our dividends on that money were $652.50. We sell Christmas candy.

Senator DAVIS. Christmas what?

Mr. WOOLFORD. Candy during Christmas. Our commission on that Christmas candy was $699.16. We carry a balance in the building association, we pay interest on that money. That was $25.85. We had a moonlight excursion—these are the figures for the year 1933—that amounted to $301. The total amount of money that our association was able to raise through this one contribution of the company was $73,359.76. I will give you these figures. I did not give you the total, but the total amount of money that was spent for pensions, doctors, and all these things was $254,848.92. All of that money was contributed by the company, all except the $72,000. In other words, they paid all of the pensions, all of the company insurance, and they give contributions, while some of our other contributions are not listed, they might even give a ton of coal and make no report of it.

Senator DAVIS. Does the president get a salary?

Mr. WOOLFORD. The president of the association?

Senator DAVIS. Yes.

Mr. WOOLFORD. No, sir. We are paid by the company for attending meetings, and he gets paid his regular salary when he is on the job. I would be very glad to distribute those cards with you.

I think that about covers the welfare end of our organization. I would like to go into the election, as to how we elect our representatives.

When we get ready for election we post this bulletin, which I would like to offer for the record.

Senator DAVIS. That is all right.

Mr. WOOLFORD. It tells who is eligible and who is not eligible on the committee. Any foremen, active foremen, dispatchers, or starters, are not eligible to run for office on the general committee, no one in a supervisory capacity at all. If they are only acting they can vote, but even they have been acting within 6 months of the election, they cannot run for office.

(The paper referred to by Mr. Woolford is as follows:)

ELECTION NOTICE

In accordance with the bylaws of the United Railways Association of Baltimore, the election of the general committee will be held on Tuesday, August 1, 1933, at the usual polling places.

To be eligible for election to the general committee, a member must have been in the employ of the company continuously for 3 years or more. Officers, superintendents, and foremen have no voting rights, and are not eligible for election to the general committee. Acting dispatchers, acting starters, acting foremen, lead men, and such persons in like capacity in all departments are permitted to vote in the general elections, but they are not permitted to hold office on the general committee; provided, that an employee serving in such capacity in an emergency for 24 hours, and/or an employee who has not served in such capacity during the 6 months preceding an election, is excepted from this rule.

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Any eligible member may become a candidate for election by obtaining the signatures of 10 members of the association from his department or car house to his nominating petition. Nominating petitions will be furnished by general committeemen.

No member shall nominate more candidates than his group or car house is entitled to.

All nominations must be in the hands of the secretary of the association before midnight, Monday, July 17, 1933.

The Secretary will certify to all names properly nominated and post these names on the bulletin boards 10 days before the election.

Ballot boxes and blank ballots will be provided. Two tellers and a judge of election, satisfactory to all candidates at the location in question, will be appointed by the general committeeman at each location.

DWIGHT BURROUGHS, *Secretary.*

---------- car house is entitled to -------- general committeemen.

Mr. WOOLFORD. That is the first thing we do. We put that on all the bulletin boards. Then I would like to offer this. This is the committeeman's application blank. He is required to get the signers of 10 of the people that he will represent if he is elected. If there are a hundred people in the group you can have 10 candidates, of which I have a ballot. I think there are about 12 on that. I would like to offer that for the record, if you care to have.

Senator DAVIS. That is agreeable.

(The paper referred to by Mr. Woolford is as follows:)

THE UNITED RAILWAYS ASSOCIATION OF BALTIMORE, NOMINATING PETITION

We, the undersigned employed ---------- car house or department request ---------- to become a candadate for committeeman of the United Railways Association of Baltimore, to represent the employees of this car house or department for the ensuing year—1933–34, to be voted on Tuesday, August 1, 1933.

An eligible employee may be nominated by having 10 or more employees of his car house or department sign this nominating petition,

No employee may sign more petitions than there are committeemen to be elected from his car house or department.

---------- committeemen to be elected from here.

Present committeeman to sign here.

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(Ten signatures necessary)

This petition should be returned to the secretary as soon as possible, and he will give a receipt therefor. If the receipt is not received promptly, please call the secretary. Under the bylaws no nominating petition will be received after midnight, Monday, July 17, 1933.

Mr. WOOLFORD. Then comes the election day. A bulletin similar to that is put on all the bulletin boards, with a sample ballot. It tells the voters how to mark it. They mark the ballot with the cross, they mark it, of course, the same as in a Government general election. I will offer this for the record.

(The paper referred to by Mr. Woolford is as follows:)

UNITED RAILWAYS ASSOCIATION ELECTION, AUGUST 1, 1933

To vote for general committeeman.—Place an X in the space following name of candidate for whom you wish to vote. If you place an X mark after more than three names your ballot will not be counted. Make no other marks on ballot:

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Do not write your name or initials on ballot. After marking ballot, fold it, and it should be placed in ballot box without being unfolded. No one has a right to see your ballot after you have marked it. No vote may be cast by proxy, by letter, or by telephone.

To vote on the amendments.—Every member of the association is entitled to vote on amendments to the constitution, and it is desirable that they do so. If you are in favor of amendment place an X mark in the space under the word "For." If you are opposed to amendment place an X mark in the space under the word "Against." Do not make any other marks on the ballot.

DWIGHT BURROUGHS,
Secretary United Railways Association.

OFFICIAL BALLOT OF THE UNITED RAILWAYS ASSOCIATION OF BALTIMORE, ELECTION AUGUST 4, 1931—PARK TERMINAL

VOTE FOR THREE

Herbert Miles	Anthony Lehman
Jacob Zimmerman	George T. Mitchell
Ignatius E. Brown	John Raycob
Veryl L. Buxton	Samuel C. Schamel
Thomas H. Dunn	Irwin Schlegel
Leland R. Gardner	William E. Walker
Lawrence R. Hale	

Place cross (X) mark in space following name of candidates for whom you wish to vote.

Mr. WOOLFORD. We have locked ballot boxes. There are two tellers and a judge appointed by the member of the general committee at that particular location, and they have to be satisfactory to all of the candidates.

Then there is still another bulletin. That is not put up as a bulletin, it is not posted, but each of the tellers and the judge are given a copy of this. These are their instructions as to how to carry on the election, to see that no one interferes with the voters, to see that each voter is given a chance to vote secretly, that there shall be no marks on the ballot, that the foreman and superintendent are not allowed in the room where the voting is going on, no one to influence the voters whatsoever. I will offer this for the record if you want it.

(The paper referred to by Mr. Woolford is as follows:)

THE UNITED RAILWAYS ASSOCIATION OF BALTIMORE ELECTION, AUGUST 1933

To all Election Officials:

Officers, superintendents, and foremen are not entitled to vote for general committeemen, but are entitled to vote on the amendments.

Acting dispatchers, acting starters, acting foremen, lead men, and persons in like capacity are entitled to vote.

All other members of the association in good standing who are part of groups, which, under the constitution are entitled to representation on the general committee, may vote.

Every member of the association should be given a ballot on the amendments to the constitution, and it should be explained to them that it is desirable for them to vote for or against.

Association members must vote with those lines, or those departments, in which they are employed.

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A car man, who is temporarily assigned for work on a line other than his own, must vote with his own line, and is not entitled to vote elsewhere.

Every facility must be given voters to insure the secrecy of their ballots.

No marks must be placed upon any ballot by the election officials that will identify the voter.

The voter should fold his ballots after he has marked them, and they should then be deposited in the box.

In marking his ballots, a voter must make an X or check mark in the space following the name of the candidate, or candidates, for whom he wishes to vote, and an X mark for or against the amendments.

He must make no other marks on the ballots.

If he makes an X or check mark after more names than are to be elected from his group, that ballot must not be counted.

All votes must be cast in person. No vote may be cast by proxy, by telephone, or by letter.

There is no objection to candidates being present when the votes are counted, provided they do not inconvenience the election officials.

Candidates must not interfere with the count of ballots, nor proffer suggestions to the election officials. Any objection they may have, may be put in writing and submitted to the secretary of the association within 24 hours.

When the count of ballots has been completed the election officials shall replace the ballots in the box and send same to the secretary together with a statement of the result, giving the name of each candidate and the number of votes received by each, and the number of votes for or against the amendments. All the officials shall sign this statement and it shall be forwarded at once to the secretary. If there are any defective ballots the statement shall indicate the number of such.

If any question arises, notify the secretary at once. He will be in his office (907 Court Square Building, Plaza 5000) from 8:30 a.m. to 5 p.m. the day of election, and at his home (Libertv 2179) after 5:30 p.m.

DWIGHT BURROUGHS,
Secretary United Railways Association.

Mr. WOOLFORD. If you want this for the record you are welcome to have it. This gives a complete list of all the candidates for 1933. I notice one candidate, Joseph J. Rilev, happened to be on the Gilmor Street line, and he received 1 vote. He may have been the one who cast it. The winner of that group happens to be in the room. He received 41. There were three candidates. I will gladly offer that.

Senator DAVIS. That is all right.

Mr. WOOLFORD. I do not have any prepared speech. I am simply giving you the facts. I would like to give you a copy of the application for membership blank in the United Railways Association of Baltimore. We do not use any high-pressure salesmanship. Of course, he is told about the association.

Senator DAVIS. Who informs him about the association?

Mr. WOOLFORD. His foreman will see to it that he is told about it, or perhaps the clerk, if there happens to be a clerk in the office, or it would be the committeeman's job. If there is a new man in, the committeemen ask him if he has joined the association, and if he says, "No", he would tell him about the benefits. This is the application that he makes out. I would like to offer that.

Senator DAVIS. That is all right.

(The paper referred to by Mr. Woolford is as follows:)

THE UNITED RAILWAYS ASSOCIATION OF BALTIMORE

APPLICATION FOR MEMBERSHIP

To the United Railways Association:

I, ———, employed in the service of the United Railways & Electric Co., of Baltimore, at ——— as ——— hereby, by reason of such employment, apply for membership in the United Railways Association of Baltimore, and consent

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and agree to be bound by the provisions of the constitution, rules, and regulations and/or bylaws of the association heretofore adopted and as approved by the general committee of said association, and also by any other rules, regulations, and/or bylaws hereafter adopted by the said general committee, and understand that when this application has been approved by the secretary, I will forthwith become a member thereof, entitled to full benefits.

I also agree that the United Railways & Electric Co. of Baltimore, by its authorized agent, in the manner provided by the constitution and bylaws of said association, shall apply, as a voluntary contribution from my wages earned, by me under said employment moneys for dues for the purpose of securing benefits, as provided for in the constitution, rules, regulations, and/or by-laws of the United Railways Association.

I also assent and agree that any untrue or fraudulent statement made by me to the medical examiner or any mis-statement herein or in any application for benefits hereafter made, or my being relieved from the employment and pay of the United Railways & Electric Co. of Baltimore, shall at once forfeit my membership in the association and to all benefits, rights or equities arising therefrom, except that my leaving the service of the company shall not deprive me of any benefits to which I have become entitled by reason of sickness previous thereto.

In witness whereof, I have signed these presents in the city of Baltimore, State of Maryland, this ——— day of ———, 193—.

———.

Home address ——— ———.

In the presence of ———.

The foregoing application is approved at the office of the secretary of the United Railways Association, in the city of Baltimore, State of Maryland, this ——— day of ——— 193—.

———, *Secretary.*

Mr. WOOLFORD. This shows that there isn't any condition or contract there that he is not allowed to join any other organization.

Senator DAVIS. Out of the 4,000 members?

Mr. WOOLFORD. I tried to find out exactly how many we had. There is no preference shown to members or nonmembers of the association. I asked the paymaster to tell me how many people he was not collecting dues from, and he said he thought there were 30. He said out of the 30 he was sure there were not more than 5 of the rank and file who would need help if they were off sick; the other people were possibly employees that were making a little better salary. A lot of our people never make application for sick benefit when they get off sick.

Senator DAVIS. Is there any discrimination against an employee for joining an outside organization?

Mr. WOOLFORD. Absolutely none. And I don't know as any of them have ever joined. The question is not brought up. We hold our meetings free from any attempt on the part of the company to influence or to dominate in any way. We hold our meetings when the officials of the company are not present, quite often. At our regular welfare meetings we do have them there, because we bring up questions and we want an answer then, and quite often they answer right off the bat as to whether we can go through with it or whether we cannot. If we fail to agree, which has happened, we have always been able to iron it out before we went too far with it, but if we should fail to agree the committee has the privilege of appointing or calling for a board of arbitration. The committee will appoint one, the company will appoint one, and the judge of the Supreme Court of the State of Maryland will select the third member. They will hold a meeting, and we have agreed to abide by the ruling of that committee or that board. Of course, if the company would differ on that point I would say we have a perfect right to walk out.

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If the 4,000 employees care to call on the president, his office would be pretty well crowded, I know, but they are at liberty to do it, and they do it. The members of our association go down, I have known them to go to the president. Just a few days ago there was an employee who did not care to tell his committeeman—the general manager told me about it, I think, because I was president of the association; I am sure he did not tell the committee about it—but this employee went to the general manager's office and he says, "I am in trouble. I borrowed $200 from a loan shark. I cannot pay the interest, much less pay the principal." The general manager took him down to our building association and the secretary of the building association made a proposition with this loan company to settle that bill. I think they canceled the interest and they made plans for him to pay so much a week until he had it paid off. I think that is just an indication of the employees' feeling free to go to the management, and they do go.

I do not know how much time I have taken, but I would appreciate it if you would allow the vice president to say a few words.

The CHAIRMAN. Is the vice president here?

Mr. WOOLFORD. Yes, sir.

STATEMENT OF GEORGE E. WOLF, VICE PRESIDENT UNITED RAILWAYS ASSOCIATION OF BALTIMORE

The CHAIRMAN. What is your full name?

Mr. WOLF. George E. Wolf.

The CHAIRMAN. Where do you reside, Mr. Wolf?

Mr. WOLF. 1304 Hollins Street, Baltimore, Md.

The CHAIRMAN. What is your occupation?

Mr. WOLF. Vice president of the United Railways Association of Baltimore.

The CHAIRMAN. That is an organization that is located in Baltimore?

Mr. WOLF. The United Railways of Baltimore.

The CHAIRMAN. What is that?

Mr. WOLF. The United Railways and Electric Co. of Baltimore.

The CHAIRMAN. Does that include the persons working on all the roads of the Pennsylvania Railroad and the B. & O.?

Mr. WOLF. Just the railways in Baltimore.

The CHAIRMAN. Is there more than one railway in Baltimore?

Mr. WOLF. No, sir.

The CHAIRMAN So you are all employees of one railroad?

Mr. WOLF. Yes, sir.

The CHAIRMAN. The committee will hear you.

Mr. WOLF. The only thing we are opposed to in this bill is section 5, article IV. We receive about $200,000 contributions to carry on our welfare work and we do not want to lose it. In every other respect our organization complies with all terms of this act, and we are not opposed to it.

I can easily understand the object of this bill, and I am in complete sympathy with it; but whether it is called paternalism or fraternalism, or any other kind of "ism", we want to keep that $200,000, and I would like to say that that is our whole objection to the bill. If article IV, section 5, is stricken out, we are in favor of the bill.

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I thank you very much.

The CHAIRMAN. Thank you, sir.

Mr. WOOLFORD. May I be permitted to ask Senator Davis one question?

The CHAIRMAN. If he is willing to answer it.

Mr. WOOLFORD. I would like to know in what way this bill will affect our association.

Senator DAVIS. Well, I am trying to find out how it is going to affect your association.

The CHAIRMAN. Is your association an independent one?

Mr. WOOLFORD. Yes, sir. We get contributions from the company. That is the part we are worried about.

The CHAIRMAN. You get contributions from the company?

Mr. WOOLFORD. Yes, sir.

Mr. WOLF. It is not in any sense dominated by the company?

Mr. WOOLFORD. I think we have shown that, or tried to.

The CHAIRMAN. I think the terms of the bill are such as to give rise to the claim that your company organization is not a free and independent association because of the contribution from the employers. Of course, provision might be made, in some form of an amendment perhaps, to permit contributions to be received by an organization such as yours.

Mr. WOOLFORD. If that is done, we will be in favor of it.

Senator DAVIS. They have freedom to elect their officers and they have the right to accept or reject contributions, as I understand it.

STATEMENT OF FRANCIS C. MALONEY, CHAIRMAN EMPLOYEES' AREA COMMITTEE, UPSTATE BRANCH DEPARTMENT, NEW YORK TELEPHONE CO.

The CHAIRMAN. Your full name, Mr. Maloney?

Mr. MALONEY. Francis C. Maloney.

The CHAIRMAN. You reside where?

Mr. MALONEY. Olean, N. Y.

The CHAIRMAN. What is your official capacity?

Mr. MALONEY. I am a telephone-cable splicer.

The CHAIRMAN. You are what?

Mr. MALONEY. A telephone-cable splicer.

The CHAIRMAN. Are you representing an organization?

Mr. MALONEY. Two thousand and two hundred plant employees, construction and maintenance employees.

The CHAIRMAN. Over what area do these employees operate?

Mr. MALONEY. All of New York State, with the exception of New York City.

The CHAIRMAN. Very well, Mr. Maloney; we will be pleased to have your views.

Mr. MALONEY. Honorable chairman of the Senate committee considering hearings on the Wagner bill, I, as representative of 2,200 plant employees of the New York Telephone Co., Upstate Plant Department, wish to object to the Wagner bill, especially section 5, article IV.

Employees have had much discussion over this bill and committees of representatives have had meetings with the employees on this subject and are very much opposed to any law or section of any law

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that would cause them to give up their present plan of employee representation. Our plan has been in operation since July 19, 1919; a few amendments made since then and up to March 12, 1934, when a revised plan was adopted by an affirmative vote of 98.5 percent of voter employees.

Attached to this brief you will find a complete set-up of the voting results of each district council. This plan has been in operation for nearly 15 years without any labor trouble or cost to the employees. Employees are contented with their working conditions and feel that they should not be prevented from having the kind of an organization which they believe is best suited for their needs. Our company does not interfere with our elections or other operations of the plan.

We understand that there is some objection to the New York Telephone Co. paying for the operation of this plan. If it should be made illegal for us to have our present plan, we are going to ask for an increase in wages and a check-off system in order to support some other form of organization which will cost the company as much as it does now.

Our present plan was written by an employee committee according to their own ideas, based on years of experience and knowledge of what they wanted to fit their conditions and without any interference from the management.

Committees of employee representatives have their own meetings free from management and are also free to meet in their respective voting sections whenever they desire.

Joint conferences between employee representatives and management representatives are provided for in a signed agreement with the management. The New York Telephone Co. assures freedom of speech and action and guarantees no discrimination against any employee or employee representatives serving or acting under the provisions of the plan.

Under the signed agreement with the company all proper and necessary expenses of operation of this plan are paid for by the company. The plan gives employees full freedom of expression of opinions and every chance for collective bargaining.

Some examples of collective bargaining: Traveling time to and from the job, board and lodging differentials, holiday allowances, revision of plan and agreement between employees and management, application of part-time working conditions, week-end emergency calls.

Our rates of pay compare favorably with skilled workers in other crafts, and the company has tried to keep in line with changing conditions. There have been no cuts in the basic rates of hourly pay for plant workers since the depression started. The company furnishes good tools and materials and maintains safe and healthful working conditions.

The New York Telephone Co.'s employees have pension rights, sick benefits, vacation allowances, holiday allowances, pay for compulsory incidental absences based on length of service, and medical service.

Our hours of work have always been reasonable, and under the temporary code telephone workers are limited to a 40-hour week. Plant workers in upstate New York are actually on a 35-hour and

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36-hour week, and both the company and employees have contributed to the "spread the work movement."

We, as an organization of telephone workers, have no fault to find with other labor organizations, and we think it would be a benefit to all workers and industry if they had as good conditions as we have.

The average term of telephone plant workers would average about 15 years, and there is an interest on the part of the company in its employees, and an interest on the part of employees in their company. Our plan was built and has been operated in a spirit of cooperation and not opposition.

We respectfully ask this honorable Senate committee to be left alone to work out our own problems with our employers in our own way.

All of which is respectfully submitted.

The CHAIRMAN. We thank you, Mr. Maloney. Mr. Fullmer.

STATEMENT OF G. L. FULLMER, FOURTH GENERAL EXECUTIVE BOARD, ASSOCIATION OF EMPLOYEES LONG LINES DEPARTMENT, AMERICAN TELEPHONE & TELEGRAPH CO.

The CHAIRMAN. Your full name?

Mr. FULLMER. G. L. Fullmer.

The CHAIRMAN. And your residence?

Mr. FULLMER. Collingswood, N.J.

The CHAIRMAN. You are listed as chairman of the fourth general executive board of the association of employees, long lines department, American Telephone & Telegraph Co. Is that correct?

Mr. FULLMER. That is not correct. I am not chairman, I am just a member.

The CHAIRMAN. How many employees in your association?

Mr. FULLMER. Approximately 10,000.

The CHAIRMAN. In what section of the country are they located?

Mr. FULLMER. All over the United States, sir.

The CHAIRMAN. You have a national organization?

Mr. FULLMER. Well, it is an industrial organization but it takes in everybody in our employ with the exception of New England, certain parts of New England.

The CHAIRMAN. Are you employed by the American Telephone & Telegraph Co.?

Mr. FULLMER. Yes, sir.

The CHAIRMAN. In what capacity personally?

Mr. FULLMER. I am in training work in division 2.

The CHAIRMAN. You are an officer of this association of employees?

Mr. FULLMER. Yes, sir.

The CHAIRMAN. We will be pleased to have your views.

Mr. FULLMER. I represent an organization of approximately 10,000 employees, known as the "Association of employees, long lines department, American Telephone & Telegraph Co," and have been authorized to propose to this committee a change in paragraph 4, section 5, title 1, of the proposed bill, S. 2926.

It is not our desire as an organization of employees to oppose or to discuss any other provisions of this bill. Quite naturally our individual members have varying opinions concerning each part of the bill and it would be difficult to ascertain and present a majority opinion

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concerning each item and particularly concerning any provision that may have political significance.

Concerning the discussion of the relative merits of company unions versus other unions, it is not our desire to oppose or criticize the so-called "regular union." I may say that the majority of our people believe that those organizations are not only desirable but quite necessary, in a large number of cases, to adequately safeguard labor. We do, however, believe that our organization meets our needs and we do not wish to see enacted any legislation that would seriously interfere with our method of handling our problems.

I wish to outline the set-up and the history of the functioning of our organization in order to provide the background for our satisfaction with our present plan and to satisfy this committee that we are doing what is expected of a conscientious labor organization, which, as we see it, is to constantly improve our members' standard of living and in doing so exercise a real appreciation of our responsibilities affecting our industry and the industrial health and peace of the Nation.

The Association of Employees was formed December 31, 1919, by employee representatives chosen by the employees. Membership in the association has never been a condition of employment nor of participation in our pension and benefit plans.

It has been, from time to time, constitutionally developed and strengthened at our own initiative to more effectively serve the employees.

In order that insofar as possible our dissatisfactions may be settled at their source, our organization closely parallels the management organization. Local branches, our basic unit body, are established in the communities where our employees are located, higher bodies being successively district, division, department, and general boards. Officers are elected by each body.

Representatives are sent from each body to the next higher body, composed of such representatives, and are elected from and by the members of the body being represented. Management people (roughly defined as those having the right to hire and fire), are not permitted membership and may not attend or participate in the elections or business meetings of any bodies.

I have never known or heard of any attempt on the part of the management to influence any election of officers or representatives. We constantly use a provision made for carrying cases progressively to higher bodies when agreements satisfactory to employees are not reached with the management in lower bodies.

There are no restrictions within our own organization as to what type of question we may negotiate with the management, nor has the management ever shown any reluctance to negotiate any type of case with us.

Association members are responsible only to the association for their acts in connection with the functioning of the association. Meetings are regularly scheduled monthly for the branch executive committees and annually and semiannually for the higher bodies. Special meetings are called at the discretion of the association. The officers and representatives are excused without loss of pay to perform their association duties.

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The association annually negotiates with the management a budget covering the succeeding year's association expenses and is responsible for the administration of the association's financial expenditures.

We believe that this organization can continue exactly as at present should this bill be passed as proposed with the exception of the proposed paragraph 4 of section 5, title I. It is our conviction, based on our experience, that an employer can financially support an employee organization without violating any of the other provisions of this section. We therefore recommend that paragraph 4 of section 5, title I, of this bill be changed to read as follows:

To contribute financial or other material support to any labor organization by compensating anyone for services performed in behalf of any labor organization, or by any other means whatsoever, except that it shall not be an unfair labor practice for any employer or anyone acting in his interest to contribute such financial or material support provided that an agreement is made between the employer and the labor organization covering such material support by the employer for a definite period of not more than 1 year subsequent to the date of making the agreement.

We do not believe that the act of financial support has of itself any subversive effect on the functioning of any labor organization or on the members of such an organization. The controlling effect of such support could be brought to bear if the labor organization had to obtain their company's approval for expenditures on each action they desired to take as the need for such action presented itself. With a prior agreement covering expenditures, this controlling effect is eliminated to just the extent the labor organization feels is essential. By this I mean that under the other provisions of the bill and under section 7–A of the National Industrial Recovery Act the employees are free to organize as they choose and if they cannot obtain a financial support agreement suitable to their needs they may organize in any manner they desire.

I do not believe any useful purpose would be served by my presenting here any of the arguments for company unions as opposed to craft unions. I do wish to state, however, that we are in agreement with the idea as expressed before this committee by Mr. W. E. Hotchkiss, president of Armour Institute, that in certain cases an industrial union might be required and we believe that ours is one of the cases.

For 14 years we have handled the problems of our members scattered in groups of various sizes throughout practically the whole of the United States. In this period we have constantly improved our standard of living, have settled our cases peacefully, and have been a real asset to ourselves, to the industry, and to the Nation. We know that we have the necessary ability within ourselves to handle our problems and have the intelligence to decide for ourselves the type of organization we want for collective bargaining. We have no feeling of asking for a paternalistic favor when negotiating our annual expense budget with the management and handle that detail with the same freedom as any other case furthering our interests.

Our record seems to justify by those responsible for the guidance of our country, a careful consideration before eliminating such organizations as ours from their very evident field of usefulness and we ask a continuation of our right to make for ourselves those decisions affecting us as to those matters covered by this bill.

The CHAIRMAN. Thank your. Mr. Vickers.

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STATEMENT OF LESLIE VICKERS, ECONOMIST, AMERICAN TRANSIT ASSOCIATION

The CHAIRMAN. What is your full name?

Mr. VICKERS. Leslie Vickers.

The CHAIRMAN. Where do you reside?

Mr. VICKERS. Norwalk, Conn.

The CHAIRMAN. What is your occupation?

Mr. VICKERS. Economist of the American Transit Association.

The CHAIRMAN. What is the Transit Association?

Mr. VICKERS. That is a national association of street railway and motor bus companies.

The CHAIRMAN. You are here representing that association?

Mr. VICKERS. Yes, sir.

The CHAIRMAN. We will be pleased to have your views.

Mr. VICKERS. This appearance is made on behalf of the American Transit Association, a national organization of electric railway and bus operators. This organization sponsored and prepared the code of fair competition for the transit industry which employs approximately 190,000 men, and which was approved by the President of the United States September 18, 1933. Of these employees about one third are organized in a national trade union known as the "Amalgamated Association of Street and Electric Railway Employees of America" affiliated with the American Federation of Labor, another one third are included in various forms of employee-representation plans, and the remaining one third have no definite form of collective bargaining. The Amalgamated Association referred to above has represented a varying number of employees during the history of the local transportation industry. In the passage of time some of the groups of employees who were organized under the Amalgamated Association have chosen employee-representation plans as their means of dealing with management, or have chosen to dispense with any form of labor organization to represent them.

On the other hand, employees of some of the companies formerly having no union affiliations have organized new locals of the Amalgamated Association and have had recognition by management. During the past decade the industry has only on rare occasions found difficulty in dealing with its employees whether unionized or nonunionized in an amicable way, and unusually peaceful conditions have prevailed. The yearly earnings received by employees in this industry, not only during the years of prosperity but also during the past 4 years of depression, provide adequate testimony of the fairness of the treatment which labor has received. It will be of further interest to this committee to state that during the preparation of the code of fair competition sponsored by the American Transit Association, there was full and complete cooperation between the Amalgamated Association and the industry's code committee. The former organization participated in the actual drafting of the labor provisions of the code and formally approved the code before it was submitted to the National Recovery Administration. When the Transit Code Authority was set up the international president of the Amalgamated Association and one of the outstanding representative of an individual company-employee representation plan were, on the initiative of management, invited to become full voting members.

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This industry is a public utility in which management has direct obligations not only to capital and labor but also to the general public which it serves. Public transit is an essential industry and no stoppage of its operations is possible without immediate disruption of all industries, trade and businesses within the communities served. We believe that it is to the credit of our labor as well as our management that the necessity for continuity of service in the interest of the public, and not merely in the interest of capital and labor, has been thoroughly recognized in almost every situation where differences of opinion as to the treatment of labor have arisen. Both the lock-out as a means of enforcing the demands of management and the strike as a means of enforcing the demands of labor, are equally obnoxious either to us because procedure is a denial of the rights of the public which we serve.

This bill seems to assume that there is a divergence and not a similarity of interest between management and labor. This is directly contrary to the concept of this relationship which has existed in this industry, which labor and management alike have come to recognize. The industry has therefore over many years encouraged the settlement of its disputes as to wages and working conditions by arbitration at the hands of some disinterested party definitely and completely representing the public.

Consequently, we look with grave concern upon the bold provision in section 303 of this bill, that nothing therein shall interfere with the right of employees to strike. There is no recognition given in the bill to the fact that the use of this weapon under unwise leadership may be highly detrimental not only to the interests of the public but of the employees themselves. Certainly in such a bill as this purports to be "to encourage the amicable settlement of disputes" every possible safeguard should be thrown around this "right to strike", which, in the bill is left with no qualifications whatever as to the conditions under which this potent economic weapon may be used. As far back as 1926 Congress recognized in the railroad labor act that sound public policy demanded that use of the strike in essential industries should be surrounded with safeguards and mediation machinery designed to protect the public interest. Certainly it is a step backward and not forward, in 1934, to include in a national labor bill such unqualified recognition of the right of labor to revert to industrial war.

The introduction of employer-representation plans to our industry was not an accident but was one means for setting up machinery through which the whole group of employees on any one property could learn the importance of their function as public servants, could be brought to recognize the peculiar and essential public nature of the business which is conducted with their assistance. With the growth of street congestion and the increasing responsibility resting on both management and labor in this industry to operate vehicles carrying passengers in city streets, the element of public safety has become paramount, and these organizations of employees have served as vehicles for impressing on the employee the importance of the safety factor in their work. The safety records of the industry during the past decade have furnished ample evidence of the results thus achieved.

These employee-representation plans have also frequently served as a means of administering employee benefits of many kinds, among

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which may be mentioned old-age pensions, group insurance, accident insurance, medical benefits, nursing services, etc. It is indisputable that these benefits have in many instances been made available to employees at a cost very considerably less than would have been possible had the labor group itself attempted to accomplish the same end.

To be sure, management has, through these employee-representation plans, fostered the thought that ultimately, in any local transportation organization the interests of management and labor are identical and the prosperity of the one is inextricably bound up with the prosperity of the other. During the years that these employee-representation plans have been in existence, there has been a growing realization of this fact on the part of employees, and furthermore, the intimate and friendly contacts which management has had with its employees through this device have contributed much to the understanding of the problems of labor on the part of management. To assume from this that labor has been coerced, that it has been granted so to speak, greater demands, that it has discouraged the free expression of opinion with regard to the rights of labor, or that it has in any sense discouraged the employees from asserting what they believe to be their rights, is not justified by experience.

Where our operating companies have dealt with the Amalgamated Association of Street and Electric Railway Employees of America, contacts of management with labor have, on the whole, been eminently friendly and satisfactory. Our experience with the difficult problem of drawing up and submitting a code of fair competition is indisputable proof of this.

Consequently, we feel that we have no brief to offer for the employee-representation plan as opposed to the trade-union plan but we are certainly not of the opinion that it is desirable that employee-representation plans be made impossible and this we feel will be the inevitable result of the passage of this bill in spite of all opinions that have been expressed by its author and others to the contrary. To debar management from any suggestion or aid in their organization, even though safeguarded to prevent subsequent domination by management, is, in effect, practically to prohibit the independent company organization. The immediate effect will be to broaden rather than to narrow the gulf that has existed between management and labor, and to prevent, rather than encourage, those friendly advances between labor and management which are necessary to industrial peace.

It is our judgment, after mature consideration of the provisions of this bill as it was submitted to your committee, that it would, in effect, create exactly the reverse result from that stated as its purpose in the preamble, viz:

> To equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees. * * *

We are convinced that it would encourage disputes and strife rather than the amicable settlements which have characterized the conditions existing in this industry for the past decade. It would set up entirely artificial barriers between management and labor which the former may not cross under the penalty of using "influence" upon its employees.

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The late Prof. Henry Rogers Seager, a man who was known for the breadth of his sympathy with labor and for the clarity of his thinking on labor problems, in his presidential address in 1922 before the American Economic Association stated:

> The very form of the organization which they (the trade unions) represent precludes them from being as cooperative in their practical attitude as the representatives of company unions. Since they deal with many competing employers, some considerate of their employees, some hard-faced exploiters, they necessarily conceive of the interests they represent as on the whole opposed to the interest of the employer and deem it their principal business to force employers, through the pressure that organization enables them to exert, to grant more favorable conditions that these would voluntarily concede. It requires no argument to prove that company unions are likewise more conducive than trade unions to the continuous operation of the industry with which their members are connected. When not pledged by their constitutions to refrain from strikes, as are many of the railroad company unions recently organized, they are deterred from such activities by the lack of outside support.

We hasten to assert here the fact that the Amalgamated Association as it exists in this industry has gone far beyond the philosophy of most trade unions as expressed by Prof. Seager in the recognition of the two vital requirements of employer-employee relations, namely, (1) Cooperation in the solution of common problems and (2) the provision of definite machinery to avoid strikes and service interruptions. The international president of the Amalgamated Association, Mr. W. D. Mahon takes justifiable pride in the form of the Amalgamated contracts and the provisions which they make for the settlement of disputes. He is justified in regarding these as an outstanding achievement in the field of organized labor. It is due to the fact that this bill as written would tend to break down and destroy that concept that we raise so serious an objection to its provisions.

If, as the author of this bill has stated, it is only the harmful influence of management which he seeks to have removed from management-employee relations, the language of section 5, paragraph 1, should be changed. As it now reads, "To attempt, by interference, influence, restraint, favor, coercion, or lockout, or by any other means, to impair the right of employees guaranteed in section 4", is an unfair labor practice. We suggest that this subsection by changed by the elimination of the word "influence", and by the insertion of the word "coercive" between the words "other" and "means" and the insertion of the word "whatsoever" after "means" so that this sub section would read, "To attempt, by interference, restraint, favor, coercion, or lock-out, or by any other coercive means whatsoever, to impair the right of employees guaranteed in section 4."

We believe that both employers and labor organizations should be permitted to exercise any reasonable means of bringing to the attention and minds of employees the facts in regard to a given situation. This would not involve the use of any elements of intimidation, interference, restraint, or coercion, or other unfair means. It would merely leave free both employers and labor organizations to profit alike by education and information, but would outlaw other methods set out in the paragraph.

Along with this amendment we would suggest the elimination from subsection (3) of section 5 the words "to initiate, participate in, or influence the formation", making the subsection read "to supervise the constitution, by-laws, other governing rules, operations, policies, or elections of any labor organization".

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We subscribe fully to the letter and the spirit of section 4, but we maintain that as a practical measure such rights to organize and bargain collectively will not be achieved unless management has the right to bring to the attention of its employees by other than coercive measures, the relative merits of the different forms of organization which might represent them. But at the same time we believe that the same rights which are granted to management should be granted to labor organizations and that the same restrictions put upon management should also be put upon labor organizations. However, under the bill, a labor organization even though it grew and expanded to the size comparable with industrial organizations would not be an employer, and therefore could indulge in any and all of the practices prohibited by section 5.

This exclusion of labor organizations as employers is unfair per se if the philosophy of the bill itself is consistent with justice. It is, no doubt, based upon the erroneous assumption that anyone working for a labor organization is perforce guaranteed the same treatment as is provided for in the bill. The history of labor organizations becoming rich and powerful and entering into business is too recent to disregard in connection with this subject. It is difficult to understand why the employees of a labor organization should not be granted the same rights and privileges as are granted to the employees of industry. Inasmuch as there are in many labor organizations numerous employees, they should be accorded the same treatment in this bill as employees of industries, and especially is this true if the final result of the bill over a period of years is to be what is obviously intended, and that is, a strengthening and expansion of the size and power of labor organizations. Under the exclusion as now contained in the bill it is entirely conceivable that labor organizations in temselves will displace industrial organizations, and if and when they do they will not be required under the language of this exclusion to comply with the provisions of this act.

Furthermore, in the absence of a prohibition in the law it would appear that what an employer does in the nature of coercion, intimidation, interference, or restraint that is expressly declared illegal, may be indulged in by all labor representatives to any extent without incurring penalties under the law. It is difficult to understand why coercion, intimidation, interference, or restraint when practiced by an employer is of such a different character as to require legal penalties than when practiced by labor representatives, which may be done with impunity. As a matter of fact employer coercion, intimidation, etc., are frequently mild in comparison to labor coercion and intimidation. This is common knowledge among all persons who are at all familiar with the dealings, activities, and conduct of labor representatives. An impartial investigation would bring to the surface innumerable instances in almost every city of consequence in the United States where terrorizing brute force has been used by labor to accomplish its purposes. Nowhere is this more apparent than in intra-labor disputes where the issue is between rival labor organizations, and where management has no interest whatsoever except the maintenance of industrial peace.

We cannot, therefore, agree to the implications in the bill of the lily white purity of labor's methods as compared to the deep, dark, sinister purposes of industry. In all fairness, the same elements of

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coercion, intimidation, interference, and restraint should be declared unlawful if indulged in by either labor or employer.

In his address before the Conference of the Code Authorities and Trade Association Code Committees under the auspices of the National Recovery Administration, President Roosevelt stated:

> Somebody, of course, must strike the equitable balance between conflicting interests and especially must protect the third group—the consumer—and that word "consumer" means the whole American people.

The President further said:

> In a word, we cannot tolerate abuses of economic power—abuses against labor abuses against employers, or abuses against the consuming public, when they persist either with the aid of codes or despite their prohibitions.

We reecho the President's word and we respectfully suggest to this committee that the most serious abuses of economic power will be possible unless all organized groups of employers, national trade unions affiliated with the American Federation of Labor, and other national or local unions not affiliated with the American Federation of Labor, independent unions or societies not excluding the Communist and anarchist groups, or any other group whatsoever is restrained from intimidation or coercion by the same language in the same bill.

We would also like to record our views regarding subparagraph (3) of section 3, defining the term "employee." This paragraph eliminates from such category a person who has replaced a striking employee and includes in the classification an individual formerly employed whose work has ceased as a consequence of a current labor dispute or on account of any unfair labor practice.

In order to determine the effect of this definition of employee it should be considered in connection with section 207 (a) of the bill, which allows the National Labor Board to certify who are the representatives of employees and to conduct an election in order to ascertain such representatives if in the Board's judgment it is desirable. If any employee is one who may have left the service on account of a labor dispute and he is considered as a continuing employee of an industry for an indefinite period of time, it follows, therefore, that if all of the workers in a given plant went out on strike, and years thereafter, if an election was conducted in said plant, none of the persons employed in the plant at the time of the election would be eligible to vote because they would not be employees as defined in the bill; and on the other hand, all of the employees who had left the service years before and scattered over the face of the United States would have to be located and would have to vote in order to determine the lawful representatives. This absurdity and its many obvious ramifications should be corrected in the bill.

Likewise, we are gravely concerned with the point of view and political philosophy underlying the provisions of section 207 (a). This section gives the most amazing powers to representatives of the Board. We do not understand why under a democratic form of Government, the identity of those who claim to have a right to vote need be so completely hidden. We contend that the extremely broad powers conferred upon the Board and its representatives in section 207 (a) is dangerous, is un-American, and will place in the hands of a Government organization powers which will breed discon-

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tent and dissatisfaction and eventually undermine the influence and respect of the Board itself.

Much emphasis has been placed by this Administration upon plans for industry and labor to settle their own disputes. The National Recovery Administration has urged upon all industry operating under codes to set up adjustment machinery within the industry itself for the purpose of settling labor controversies. It would seem quite obvious that such a committee functioning within an industry would be more able intelligently to pass upon the problems of the employees and employers within the industry than any national board constituted as the board in this bill will be constituted.

Therefore, as a constructive modification we suggest provision for the creation of industrial relations committees within any given industry. Such adjustment machinery in each instance where set up within an industry should of course be composed of either an equal number of representatives of employees and employers, or an agreed-upon number of totally neutral persons of outstanding reputation. They should be given jurisdiction to mediate and, with the consent of both parties, to arbitrate all controversies arising within such industry. It would seem possible to provide for this machinery by making it permissive for any industry and its employees to agree upon the creation of such a committee. Any such plan should contain the provision that if, when, and as, industrial-relations committees within an industry have been created, their jurisdiction shall attach and the provisions giving jurisdiction to the National Labor Board should thereupon become inoperative.

Such a committee within an industry could also properly handle all questions of unfair labor practices both as to employer practices and labor-organization practices, assuming that your committee will eventually balance up this bill by specifying unfair labor practices on the part of labor organizations or their representatives.

The whole scheme of industrial relations committees within an industry of course is merely extending and expanding the present scheme of arbitrating disputes between employers and employees. In the transit-industry arbitration is a commonly used provision of agreements between employers and employees, and the adoption of a national plan for committees of this character within an industry would be in harmony with the program which has been so vigorously urged on the part of the National Recovery Administration.

Relief from the jurisdiction of the National Labor Board on account of an agreement on the part of employers and employees to submit to the jurisdiction of an industrial committee would be a great incentive for both employers and employees within a given industry to provide for the creation of an industrial committee. It is quite likely that should this machinery be provided in the bill it would be possible to have a very large percentage of employers and employees in any given industry enter into a written agreement for the creation of an industrial committee such as is suggested. Of course those members of the industry and employees in the industry that would not consent to such an agreement would be subject to the jurisdiction of the National Labor Board. We urge you to give consideration and study to this suggestion and if an amendment can be designed to effectuate the purpose suggested it is our judgment that it would be very helpful.

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The CHAIRMAN. Thank you. We have a telegram from Lee C. Moore & Co., dated April 3, 1934, which will be included in the record.

(The telegram referred to is as follows:)

APRIL 3, 1934.

Senator DAVID I. WALSH,
Chairman Senate Committee on Labor,
Washington, D.C.:

Referring to your telegram of March 31 in reply to our telegram March 28. We deeply regret inability of any of our officers to attend the meeting set for April 4 at 10 o'clock. In lieu of personal appearance we respectfully request consideration of our views as follows: We feel very strongly that the Wagner bill in its present form would go far to destroy the friendly relations that have always prevailed between labor and management in our company in particular and in our industry generally. Since our location here in 1923 there has been no differences of any consequence between our employees and our management. Our men have felt perfectly competent to deal with the management without any outside help and we believe that far from welcoming such outside interference they would actually resent it. We are certain that the passage of the Wagner bill as it stands would shortly bring about friction and ill feeling to which neither our men or management are accustomed and would therefore cause trouble where no trouble had previously existed without accomplishing any material betterment of conditions for either. Hoping that this telegram may carry any influence to which it is entitled we are respectfully,

LEE C. MOORE & Co.

The CHAIRMAN. The committee will meet at 2:30 this afternoon to hear the remaining witnesses.

(Whereupon, at 12:10 p.m., a recess was taken until 2:30 p.m., of the same day, Wednesday, Apr. 4, 1934.)

AFTERNOON SESSION

(The hearing was resumed at 2:30 p.m., pursuant to recess.)

The CHAIRMAN. Mr. Brooks? Your full name?

Mr. BROOKS. S. G. Brooks.

The CHAIRMAN. Your residence?

Mr. BROOKS. Columbus, Ohio.

The CHAIRMAN. And what is your occupation or business?

Mr. BROOKS. I am vice president and general manager of the D. L. Auld Co., of that town.

The CHAIRMAN. What do they manufacture?

Mr. BROOKS. Metal embossings; articles of that nature.

The CHAIRMAN. Whom do you represent here?

Mr. BROOKS. I am representing my own company, the Ohio Manufacturers' Association, the Columbus Metal Trades Association, and the particular industries which I have on this list.

The CHAIRMAN. Thank you. We will be pleased to have your views concerning this proposed bill.

STATEMENT OF S. G. BROOKS, VICE PRESIDENT AND GENERAL MANAGER D. L. AULD CO., COLUMBUS, REPRESENTING THE D. L. AULD CO., COLUMBUS, OHIO MANUFACTURERS' ASSOCIATION, THE COLUMBUS METAL TRADES ASSOCIATION, AND THE PARTICULAR INDUSTRIES LISTED BELOW

The American Rolling Mill Co., the Banner Die Tool & Stamping Co., the Brightman Manufacturing Co., the Buckeye Steel Castings Co., the Budd-Ranney Engineering Co., the Capital Die Tool & Machine Co., the Capital Lift & Manufacturing Co., the Columbus

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Anvil & Forging Co., the Columbus Bolt Works Co., the Columbus Brass Co., the Columbus Forge & Iron Co., the Case Crane & Kilbourne Jacobs Co., the J. C. Hearn Machine Works, the Jaeger Machine Co., David Davies, the Columbus Auto Parts Co., the Lape & Adler Co., the Capital City Products Co., M. & R. Dietetic Laboratories, Inc., the Central Ohio Paper Co., the Marble Cliff Quarries Co., the Arrow Sand & Gravel Co., C. B. Tracewell, chairman executive committee representing Employing Printers of Columbus, the Jeffrey Manufacturing Co., the Lattimer-Stevens Co., Lynch Corporation—Miller Machine Division, the Modern Tool Die & Machine Co., the Ohio Elevator & Machine Co., the Ralston Steel Car Co., the Seagrave Corporation, the Superior Die Tool & Machine Co., the Timken Roller Bearing Co., the Miller Foundry Co., the Weinman Pump Manufacturing Co., the Columbus Die Tool & Machine Co., the D. L. Auld Co., the Columbus Packing Co., the J. Fred Schmidt Packing Co., Walter T. Dickerson Co., the H. C. Godman Co., Moores & Ross, Inc., Borden's Dairy & Ice Cream Co., F. O. Schoedinger Co., the Columbus Coated Fabrics Corporation, Fairmont Creamery Co.

Mr. BROOKS. The reason that I was selected is because our company is a small one, with a pay roll of about 700 people. There are many much larger firms, and many smaller, ours being really a cross section.

You have been treated to a thorough and convincing analysis of this bill, showing its unfairness and its injustice. The legal errors have been pointed out, also its academic unsoundness. I am not here to debate, but to show that this legislation, or any modification of it—what this would mean to our company; therefore, what it means to our Ohio employers and employees.

Our company was founded just after the Civil War by Mr. Auld, who had just been mustered out of the service. All these years, growing larger gradually, the employees have enjoyed a personal contact and an interest in their welfare and happiness. Never until this fiscal year has there been friction. Under the N.R.A., which was adopted whole-heartedly August 1, rates were increased and later when the Auto Parts and Equipment Manufacturers Code was approved all regulations were made in accordance with its provisions. The number of employees was increased from 275 to the high-water mark of over 700.

In years past there have been union men in the plant but there was no discrimination against them, nor any concerted demands from them. In December, word was spread around that the plant was organizing; a committee asked me for an appointment and in January presented a contract drawn up between the American Federation of Labor and the D. L. Auld Co. The demands comprised a set of rules and regulations and wage rates. The rates were, in some instances, double the code rates and all were higher than we had ever paid, even in the high year of 1929.

Two meetings were held with these men and item after item gone over.

The CHAIRMAN. Were these your own employees, or representatives of the American Federation of Labor?

Mr. BROOKS. The first committee that waited on me were men from our own plant.

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The CHAIRMAN. Did they state that they had organized and formed a union under the American Federation of Labor?

Mr. BROOKS. Their first visit was simply a question of talking with them.

The CHAIRMAN. Yes.

Mr. BROOKS. The second time, I asked them if they were organized, if so, whom they represented. They then told me that they had joined the American Federation of Labor.

They were told the company was losing money every month, and had lost for the 2 previous fiscal years, starting with a cash balance of $80,000 and losing that the first year, and borrowing the second year and being in debt at that time $135,000.

This committee was informed that under present conditions no further increases could be paid. Then Mr. Hamilton, president of the Columbus Federation of Labor, came into the picture with an opening round of 4 hours in conference; following this the committee was augmented by Mr. Kelsay, national vice president of the Metal Polishers International Union. The position of the company was clearly defined, in that no contract with a union would be signed, but that this company would run as an open shop; that the rights of collective bargaining were recognized and at all proper times the management would confer with any individual or any group of employees or with any duly appointed representatives; that no further increases could be paid as long as the losses continued and to prevent any misunderstanding a set of shop rules was posted.

The contention of the part of the shop committee of our men was that the employees must have more money; the demand of the outside labor organizers was that the company must "under the Recovery Act" sign a contract with the union. During these negotiations an agreement was reached that the company would not discriminate against union members, and that the members of the union would not use coercion, or try to force any employee to join their organization.

February was the first month we broke even. January we lost $10,000, the loss being due to the inefficiency of the new help, the make up time and spoliage. The preceding 6 months of our fiscal year had piled up a loss of $30,000. In spite of this we posted a notice of an increase of 10 percent effective April 1. Most of our people seemed grateful, but this effort on our part was followed by a drive on the part of the union to force every employee into the union on a threat of losing their jobs, and failing to join at once, would cost them an extra $10 if they tried to get in later. Many names were gotten on their roll by this method. There are a few radical unionists, but the big majority of employees have joined because they don't want trouble; don't want to be called a scab; don't want to lose their jobs, which is the threat of the union organizers. There are many others who don't want to and will not join and be dominated by union officials inside or out of our plant.

This, gentlemen, is a statement of our situation and similar conditions exist in all of our industries, and this I know from direct statements from heads of other businesses. Under our code we can continue to run; continue to direct the policy of the company, and have a

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reasonable hope of putting the company back on its feet. If the Wagner bill passes, there isn't a chance; then—

1. If any unreasonable demands are not met and the men strike, any attempt to replace them would make these employed beings not our employees, and we would be guilty of unfair labor practice if we attempted to enter into any kind of an agreement with them.

2. We could not favor or help our loyal employees, in spite of the pressure that has been and would be placed on them by the union.

3. If we agree to sign up a contract with the union, every one of our employees would be compelled to join, regardless of their desires.

4. The men would be encouraged to pull a strike, feeling they would have the Wagner law back of them, while we could not shut up the plant, regardless of continued loss caused by the higher wages demanded, without being subject to the complaint of a lockout.

5. Anyone could accuse us of unfair labor practice, even an outside organizer of a union not in our plant. We would be compelled to defend our actions before a board—influenced by testimony based on a racket, and in an attempt to continue the racketeering to the detriment of the majority of employees and the welfare of the company.

6. We would be subject to fine at the whim of this Board for continuing to conduct the normal and natural intercourse with our employees, as has been done for 70 years.

7. We could be compelled to reinstate employees regardless of whether they were as efficient as other people who had taken their places—or whether they did or would work for the good of the company.

8. We would be compelled to arbitrate with representatives without knowing whom they represent—and employees not enrolled in the union or forcibly signed up by the union would be affected.

9. Every penalty is directed against the employer—what is described as unfair labor practice is so broad that any firm could be found to have transgressed in some manner. Yet with this blanket type of definition adopted against the employer, not one restriction is placed on any labor organization. It is a cold deck stacked for organized labor against any luckless individual who employs one or more of the anointed.

10. Most of us have experienced or seen some form of mob and strike violence. Generally it is caused by men who did not want to work and yet tried to prevent someone else from taking their places.

Section 303 of the Wagner bill encourages strikes, it waves a red flag, flaunting it in the faces of large and small employers alike. It aids and abets the so-called jurisdictional and sympathetic strikes in which the employer is the innocent bystander—and suffers, although he may be so guiltless that he could not be indicted even under the broad umbrella definitions which the bill furnishes to this inquisition board.

It is possible to go on with a dozen or more reasons why no sane man would like to try to operate a business, competing against other firms in his field; competing against his own employees, subject to

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attack from any disgruntled revengeful workman, bound by the verdict of a tribunal, whose word is practically final and guided by the text of a partisan bill, originated and conceived as if a part of the Nazi platform.

The bill claims the purpose of equalizing the bargaining power of employers and employees—nothing could have been created more one-sided—it further purports to encourage the amicable settlement of disputes. This is only comparable to having the operation successful but the patient dying. We are all finding it hard enough to struggle back with the difficulties now existing but we have shown we can take it. We have had to contend with the wrong impressions brought about by the Recovery Act. To now permit the passage of the Wagner bill would breed the exact opposite of its claimed purpose—engendering hatred and friction between employer and employed; between labor organized and those who wish to think and act for themselves.

Calm faith in the future must be assured, if employers are to provide places for our labor—and, working together with employees, to bring a return of a more prosperous era. If you recommend this bill or any modification of it, you will destroy the confidence that is absolutely necessary to recovery.

The CHAIRMAN. Thank you, sir. Mr. Fisher? Your name is Wager Fisher?

Mr. FISHER. Wager Fisher, Senator Walsh.

The CHAIRMAN. And where do you live, please?

Mr. FISHER. I live at Bryn Mawr, Montgomery County, Pa.

The CHAIRMAN. And what is your occupation or business?

Mr. FISHER. I am a professional engineer, property owner.

The CHAIRMAN. Whom do you represent here?

Mr. FISHER. I represent myself, and others that may agree with me. Several have collaborated with me in preparing what I have to say, including Mr. Joseph A. Kean, Esq., of the Philadelphia Bar, a student of group and governmental relations, and of the Constitution; and I hope this will be worthy of your consideration, sir.

The CHAIRMAN. Yes. You are an engineer, carrying on an independent professional business? You are not employed by any plant or concern?

Mr. FISHER. No, sir.

The CHAIRMAN. We will be pleased to hear you, Mr. Fisher.

Mr. FISHER. Thank you, sir. On account of the limited time, and others that wish to speak, I have prepared a brief, which I will refer to, and which the committee may refer to, and my other testimony I shall give verbally.

The CHAIRMAN. Would you like to have us print the brief in full, in addition to your oral testimony?

Mr. FISHER. Well, I think I would; yes, sir.

The CHAIRMAN. That is, assuming that your oral testimony will not be the same as the brief.

Mr. FISHER. Yes, sir.

The CHAIRMAN. Proceed.

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BRIEF AND ARGUMENT OF WAGNER FISHER, CITIZEN, A RESIDENT OF BRYN MAWR, MONTGOMERY COUNTY, STATE OF PENNSYLVANIA, IN HIS OWN BEHALF AND IN THE INTEREST OF OTHER CITIZENS IN PROTEST AGAINST THE ENACTMENT OF S. 2926

Mr. FISHER. In reference to the above titled bill and in protest against its enactment into law, it is respectfully represented, that—

The bill is faulty in that the object set forth "to equalize the bargaining power of employer and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board and for other purposes" does not indicate any object of rightful jurisdiction in Congress, the contracts between citizens of a State in their industrial relations being exclusively within and under the jurisdiction and control of the State laws. Disputes arising therefrom also come under the same authority, that of the States, in the exercise of their police power.

The bill is faulty in that the wording of Title 1, section 2, is vague and general, and highly indefinite in that it raises no duties—and discloses no invaded rights—which are the proper subject for legislation affecting the property and liberty of the people. The wording, for the greater part, represents civil economic hazards that are incidental to all citizens alike and such as arise from the normal and average competition between them as free citizens where they compete with each other for their subsistence, each dependent in a like degree upon their personal qualifications and abilities.

The alteration of this status is not a proper object for legislation. An attempt to do so by such means, i.e., to advance one and impair another (which must naturally follow), would be for Government to arbitrarily deprive the citizens of their rights to the just rewards of their ambitions and abilities.

The bill is faulty in that the purposes which it seeks to serve, i.e., the general welfare and raising the standard of living, will not be furthered nor accomplished by its provisions.

(*a*) Its provisions (gaged by advantages and burdens) do not flow in an equality to all the citizens involved.

(*b*) The effort to raise the standard of living of a group is impractical in that accretions to one group must of necessity be at the expense of others. It is presaged for the greater part on the ability of the favored group to purchase the produced objects and services of others at a lower level of values.

The bill is faulty in that its object would violate the theory of our national, or group existence, by invading the liberty of the individual and impair his freedom to follow his own instincts and conclusions in the use of his property and the exercise of his liberty.

(*a*) With its apparent bias toward organized labor and discrimination toward unorganized labor, it will impair the right of one who does not choose to organize to be his own master as to his services and the right in himself to fix his own compensation.

(*b*) It will place in the hands of others than himself the right to curtail the avenues of and restrict the opportunities for his employment, and confers the right to impose a tax equivalent upon him incident to his employment.

The bill is unconstitutional, in that the objects of it do not come within the granted powers of Congress.

To assume that it serves the general welfare would necessitate the elimination of all those concerned both directly and indirectly and involved in its provisions, against whose interests the burden of its clauses are directed and will lay.

This removes it from the field of generality in the application of the general welfare.

The objectives touched upon by the bill are not such as can be attached to any clearly defined existing power of Congress. To assume to include it under the clause giving the right to regulate commerce among the States would necessitate the broadening of the meaning of that clause to a point that might easily include every act of every citizen.

The bill is class legislation in that its advantages are confined to a group in their civil and contractual relations.

It is obviously designed for the purpose of aiding and furthering the material interests of a group in their civil and contractual relations with the others involved by its provisions, with all the burdens and disadvantages resting upon the other citizens involved.

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It is special legislation in that it indirectly endows a group with the penal authority of government or the right to have it exercised against the others included in its provisions for the enforcement of their private contractual relations and against all others who do not choose to join or are not members of the favored group.

It will vest the right in a group to pervert the theory underlying our existence as a Nation by placing restrictions upon the liberty of the citizen to follow his own instincts and conclusions in the control of and the free use of his property and the free interchange of his services and the right to fix the values thereof with and for whom he may choose of the other citizens.

The penal authority of the Nation is an agency of all the people to be exercised in an equal and like degree and for the equal advantage of all and enforced equally against all in a like degree. Its use cannot lawfully be delegated by Government for the material advantage of a group, even though remote, as against that of the other citizens, in their private contractual relations.

The bill is against public policy in that it assumes to throw the weight of government and the exercise of its penal authority into an interference of and into the private contractual relations of the citizens. If enacted into law it would break down the well-established principles of mutuality and reciprocation which are elemental to contracts—in that it gives advantages to one of the parties involved without any reciprocal and equivalent obligations and places obligations upon the others involved without any reciprocal and equivalent advantages. In the contractual relations imposed by its terms all the advantages accrue to one group without any obligations, while all obligations are laid upon the others without any advantages.

The bill is against public policy in that it would tend to encourage an intermeddling and interference with the relation of master and servant and the well-established rights and liberties, and peace and tranquillity enjoyed by each. It would by the nurturing atmosphere which it radiates encourage the agents—of groups—to aggressive activities for the enlargement of their power and authority to intermeddle with and interfere in the private contracts and contractual or civil relations existing between individuals embracing every avenue where the relation of master and servant exists.

It will consign to oblivion every element of the right to protest or resent and procure redress or damages for the malicious interference of contract where this right presently exists.

It will interfere with and destroy the right of directing supervision over servants, and in this respect it will invade every theory that is elemental to the relationship of master and servant. It will tend to encourage insubordination and inefficiency and this will apply to every employer even with but a single servant.

In those industries producing objects, it will tend to create uncertainty, both as to the quantity of production and its cost so that no man may anticipate with any degree of certainty what his product will cost. He cannot contract for future delivery with any measure of safety. It will hamper industry from every conceivable angle, also employment.

SUMMARY

In a general summary, this bill, reviewed from its various angles and phases, would appear to be an attempt to invade the rights of the States and assume jurisdiction over the contractual relations of its citizens under color of promoting the general welfare and the regulation of commerce between the States.

As to the general welfare the Constitution was instituted by the people to promote it. This was undoubtedly its purpose as set forth in the preamble. The very existence of the instrument with its guaranteed rights of the citizens and its limitations upon management naturally reacting to the general welfare.

The right of Congress to legislate for the general welfare of the people, however, is an independent question. No such expressed power exists. Any right to do so under the power to provide for the common defense and the general welfare of the United States is open to argument. Thomas Jefferson very early, when Secretary of State, gave a most decided opinion that this meant for the welfare of the United States as a union, and to construe it as a general power would nullify all restricted authority in Congress.

To pass on from the merits or demerits of this opinion: The present bill is not designed, by its terms, in the interest of the general welfare, in that its advantages are obviously meant to accrue to one group of citizens with the burden of advantages reacting against and laid upon the others involved by its terms. Since the

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advantages and disadvantages are not given to all citizens in an equal and like degree, and on the theory that an advantage cannot be existent without some resultant servitude from which it must arise, the welfare is not general and this would seem to remove it from that field.

AS TO THE POWER TO REGULATE COMMERCE AMONG THE STATES

To bring the bill within the granted power under this clause of the Constitution would necessitate the broadening of the meaning of it to a point that might easily include every act of every citizen. It is highly questionable whether this was ever intended. It does not seem consistent with State rights.

The question of jurisdiction was apparently raised at an early date on a point similar to the one involved by this bill as to the extent of the authority under this clause and was touched upon by Professor Cooley, of the University of Michigan, a commentator on the Constitution, in which he cites *Veazie* v. *Moor* (14 How. 568–574), on the question—whether such authority attaches because products of domestic enterprise may ultimately become the subjects of commerce outside the State.

In this case it is well said that "A pretension as far reaching as this would extend to contracts between citizen and citizen of the same State, would control the pursuits of the planter, the grazier, the manufacturer, the mechanic, the immense operations of the collieries, the mines, and furnaces of the country, for there is not one of these avocations the results of which may not become the subjects of foreign commerce, and be borne, either by turnpikes, canals or railroads, from point to point within the several States, toward an ultimate destination."

Irrespective of whether this reasoning has been superseded, the soundness of it seems assured when we consider the liberty of the individual. To assume to possess jurisdiction on such slender threads and speculative adventure, would necessitate straying to the greatest possible lengths from the plain wording of the instrument giving the authority—the Constitution.

I cannot conceive from any angle of reasoning the necessity for restating by statute a right which every citizen possesses in common with all the other citizens, or why the arm of the Government should be loaned to a group with a penal clause added, obviously leveled at the other citizens who oppose them.

It inferentially assumes that evil exists in all employers toward their employees, and that none exists in the employees toward their employers. Our experience of the last few years does not support this. Our Nation has been singularly free from labor disturbances. It has been greatly overdrawn by those who have fostered and are actively furthering this measure.

While the present conditions may have warranted some departures of a emergency nature, from the limitations of government, it would seem that the borderline in this direction, consistent with liberty, has been reached. The aspirations of groups may rightfully receive a sympathetic ear, yet, we cannot nurture one without taking the substance from the others. Our larger concern is the whole body of the people and the theory of our Government. This obligation is direct.

With a measure of this sort the law-making power of the people is practically taken our of their hands and given over to those not of their choosing. No authority so broad in scope has ever before been contemplated, spreading as it does over the citizens of all the States. We may well halt with such a measure.

It may be said, possibly not without sincerity, that the authority will be exercised for the best interests of the citizens. While this is no answer if the authority is not rightfully given, even granting it may be so, the power nevertheless remains, to use it to invade the liberty of the people. Under influences which we do not anticipate, this may take place. It is a hazard which should not rightfully be laid upon the people.

I request the committee to reject this bill for the reasons above set forth.

I am contesting the bill, from various angles of its legality and wisdom, from the standpoint of the free American citizen. I have always enjoyed the freedom of our republican institutions, and I have rightfully inherited them from my ancestors, who established them. I believe that the maximum of employment and prosperity follows obedience to the Constitution and its limitations. It has never been proved otherwise, as far as I know.

I would object to the bill in its entirety, amended or unamended, because, no matter how amended, a monopoly against other sections of society is set up thereby. I notice that many of those speaking to the bill this morning seem to acquiesce in the lesser evil of amending it, instead of rejecting it entirely. It

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seems to me that, no matter how amended, its evil still remains. It lends the penal power of government to selected groups to ransack the earnings of other groups, and lends such penal power apparently without restriction, and without permitting other groups, whose earnings may be ransacked, or whose employment may be impaired, anything to say in the matter.

Senator, I do not know what representatives have spoken here from the group to which I belong, but the real-estate owners of this country, I would suppose, contribute ordinarily about 25 percent of the employment of the country to its business, and the percent of employment now contributed by the real-estate owners of the country is very much reduced, because we are squeezed between taxes on one hand and reduced earnings from properties. Now, I listened to gentlemen this morning, talking, and as nearly as I could get it, apparently representing about 1 percent of the total employment of the country. That is, they would represent somewhere between two and three hundred thousand employees. Now, the very labor practices sought to be branded as unfair are, in my opinion, essential to the general and full employment of the country. The bill assumes no variation in distributable income, requiring reductions as well as advances in wages. It is unfair to the general public to be informed by congressional act that raising wages increases the standard of living, when the opposite may be, and has been the case.

I would suppose, roughly, that the passage of this bill, and the expenses attending it and maintaining it, either by direct taxation or by indirect taxation, might reduce the standard of living of the country from 5 to 10 percent. We must keep the doors of employment open to our young men and to those unable by personal limitations to compete. To do otherwise encourages crime. That the present economic ills are not so much due to evil attitudes between employer and employee as it is to the excessive takings by government from both of them. The employee is hampered in his purchasing power by tax additions on every article which he purchases, and the industry is also curtailed in the amounts which he may pay to his employees by reason of the heavy taxes imposed on him by government. This has a direct bearing upon it, in that the conversion of his wages in the desired object necessary for maintenance, taxes curtail the quantity of objects which come into his hands and enter his household. This naturally curtails the number of articles which he may procure, and in turn, the stores from which he buys curtail their orders to the factories. The factories, in turn, by lessened demand, curtail the number of their employees.

This is also the identical process, where the prices of articles are artificially forced up by wages beyond the economic level of others. This is glaringly apparent in the anthracite-coal industry, and will take place in many other directions if this bill becomes law.

To attempt to legislate in any of these processes would be to endeavor to frustrate natural economic laws. Every effort to so legislate would throw one of these processes out of normal. This would necessitate a further legislation, and so on in an endless chain, until one half of the people would finally be engaged in regulating the affairs of the others, with those not engaged in such employment footing the bill.

This very bill is creeping toward this condition. The activities which we may naturally apprehend to follow, if this bill is enacted, will be an aggressive attitude on the part of groups, toward one another, and an openly hostile attitude between the elements comprising them. So much has been said on that, I will just omit it. It has been well known for some time that the wheel of interchange among specialized industries of all sorts has been heavily lop-sided, due to the very thing which may happen by this bill. The very things alluded to by Senator Wagner as unfair labor practice in reality keep the doors of employment wide open for all citizens alike. There is no form of legislation which can assure to anyone a relative standard of living. There are many factors which bear upon this and tend to fix its level. Wages and prices normally keep in step. Taxes possibly are the greatest factor which touch on it. If wages are fixed for one group arbitrarily above a normal level, which would be an average level of exchange, this fixing translates itself into serious unemployment, not only for the higher-priced group, but for other groups also. The workers in whatever class cannot share equally, and some cannot share at all in the distribution of the country's products. Distribution is, itself, reduced. In other words, I am speaking for those who are forced out of employment or into partial employment by what might be called the collective bargaining between groups elevating themselves above other groups. We must give grave consideration to the shutting off, by collective bargaining, of any, from full or partial employment. The unorganized citizen is almost helpless to contest the many attempts by legislation to make inroads on his liberties.

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While this bill has a solicitude for the unorganized worker, I feel that an equal solicitude should be felt for the unorganized citizen in his efforts to maintain his rights.

I come to another point now. The fact must not be lost sight of that there is legal obligation imposed on all citizens to support their families, and that the worker whose avenues of employment may be closed to him, opportunites to support his family curtailed by this act, will be in the position of having it oppress him on one side, while an equal pressure will be laid against him otherwise for his responsibility to his family, and he will be squeezed between the two.

The real-estate owner is almost in the same position, the Government squeezing him on one side for taxes and organizaed labor, under the authority of this act, squeezing him on the other. We should fight for what little dregs may drop out between them.

There is a difference, at the present time, between the wages or salaries of different citizens, according to their groups. I do not know, Senator, what the full object of this bill is. I can only judge by reading it, and what I can see in the newspapers, but I judge it is intended to raise wages. It is intended to raise everybody's wages somewhat on a par, and those that are receiving, like in the building trades and others, higher wages than some others in common labor,will still maintain that difference. The various groups of different crafts and industries will immediately start to elevate their wages. Then, when the others are elevated, then their advances will not be of great effect. Then they will advance again to keep ahead of the others. Each group will try to do the same thing. Articles will advance to such a level as to be almost prohibitive in prices, and be away out of line with the incomes of the greater part of the people.

As I happen to be an engineer, with little demand for my services and a modest income earned otherwise, part of it derived from real estate, with rents way below normal, and with taxes taking a major part of it, I do fear that what little income there is will be taken for necessary upkeep, when the wages for all the mechanics, and things that are needed, such as paint and so forth, will go so high as to practically confiscate it. We have experienced some of that already under the N.R.A. You may say that it is unfortunate, and my reply will be that I am an American citizen, that the Government which legislates for this mechanic is equally my Government, and cannot discriminate against me by legislation. One half of the burden of these plans being put into execution in efforts at recovery are being shouldered by real estate, which is the basic wealth, and really bears all the taxes, whether they are laid on gasoline, or income, or what-not. Every agency set up, and the tremendous cost of maintaining them, but adds to the burden, by necessitating additional income by Government. Now, the real estate, in the main, is being owned, without producing the cost of maintenance, and yet it forms the base of everything, and should afford normally at least 25 percent of the employment of the country, in its maintenance. It is not doing it.

These very men who are endeavoring to get their incomes elevated, to maintain a decent standard of living, are enjoying the advantage of thse heavily reduced rents, although the present wages for the maintenance of them are practically prohibitive to profitable ownership of them.

The evident result of this legislation has already been anticipated by demands for increases in the building crafts, with the prospects of more demands, which the real-estate owner will have, the increases forced on him, though unable to raise his rents.

I want to say, Senator, that the real-estate owner is in a very unfortunate position, because, though he is the real employer of mechanics which maintain properties, all agreements as to wages, and so forth, are made between the employees and the bosses and he has no way of consulting in the matter, or anything to say about it. That is the condition which has obtained largely during my lifetime.

Mr. FISHER. Now, have I used up—have I used my time, Senator?

The CHAIRMAN. Yes; just about.

Mr. FISHER. I just want to ask a question, if I may.

The CHAIRMAN. Certainly.

Mr. FISHER. Does this act penalize consumers of employment like myself from going outside of a craft to get a specific class of work done? There is a provision in this bill fixing arrangements by crafts, and others by class unions.

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The CHAIRMAN. I have not heard it suggested by the author of the bill or those in favor of it that the consumer would be in any way affected by any restrictions upon whom he should employ, whether they be union or nonunion.

Mr. FISHER. Well, the point is this: If this Labor Board fixed craft wages, we will say, for painters, and I wanted to hire somebody out of the paint craft to do painting, would I be committing a penalized offense?

The CHAIRMAN. No; you would not be, under this bill.

Mr. FISHER. Does this bill contemplate the unionizing of foreign and domestic workers in unions, with dues and check-offs?

The CHAIRMAN. The bill, as drafted, does not make any exemption to employers of small or large groups of employees. As drafted, it would apply to a farmer or a housewife, possibly, who employed two persons. The author of the bill made a suggestion at one of the meetings of the committee that it should be limited to employers having 10 employees.

Mr. FISHER. I see.

The CHAIRMAN. As the bill is drafted, it would permit an organization of employees who work on a farm, and would require the farmer to actually recognize their representatives, and deal with them in the matter of collective bargaining. It does not go so far as to require the employer to accept any proposals that are made by the representatives of these employees. He is left a free agent to decide whether he will accept or reject any of these proposals.

Mr. FISHER. Personally, I am not interested in the controversy between company unions and outside unions, because there can be just as much evil to the consumer of employment, and by the employers and employees agreeing to set wages and employment and prices higher in their industry, and can be set above the general level of interchange, just as much with one type of union as with another type of union.

The CHAIRMAN. Am I to infer from what you have said that you are opposed to all organizations of employees?

Mr. FISHER. No, sir. I am merely pointing out that by whatever organization——

The CHAIRMAN. You are pointing out that by forcing them to organize, the net result will be an additional burden upon real estate, which has to bear the major burden of taxation?

Mr. FISHER. Yes, sir.

The CHAIRMAN. And of high prices on commodities?

Mr. FISHER. Yes, sir; also on all other groups.

The CHAIRMAN. Yes; I understand.

Mr. FISHER. And I wish to——

The CHAIRMAN. Do you want that brief inserted in the record, in addition to what you have stated?

Mr. FISHER. Yes, sir.

The CHAIRMAN. All right, sir. That may be done. Now, is there anything else, Mr. Fisher?

Mr. FISHER. I just want to file one thing. I have it right here.

The CHAIRMAN. Mr. Bowen, come forward and be ready.

Mr. FISHER. I wish to file this, as evidence of the results of inequalities [presenting a chart to the chairman], and this may be accepted at its face value, elevating one group against another group, and the effect of the distributable income.

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The CHAIRMAN. Is this your own chart?

Mr. FISHER. This has my name at the bottom.

The CHAIRMAN. The clerk may put this chart in the files of the committee. I do not think we can have it printed because of the fact that the Government Printing Office has not the facilities for printing it.

Mr. FISHER. It is not necessary to have it printed, if it comes to the attention of the committee. Thank you, sir.

The CHAIRMAN. Mr. Bowen.

STATEMENT OF IVAN BOWEN, OF MESSRS. BOUTELLE, BOWEN & FLANAGAN, RAND TOWER, MINNEAPOLIS, MINN., ON BEHALF OF THE PACIFIC GREYHOUND LINES, OF SAN FRANCISCO, AND ALSO ON BEHALF OF CERTAIN GREYHOUND COMPANIES OPERATING UNDER WHAT IS CALLED "THE GREYHOUND MANAGEMENT," FROM CHICAGO EAST

The CHAIRMAN. Mr. Bowen, your full name?

Mr. BOWEN. My name is Ivan Bowen, of the firm of Boutelle, Bowen & Flanagan, attorneys-at-law, with offices in the Rand Tower at Minneapolis. I appear here for the Pacific Greyhound Lines, of San Francisco. I also represent that group of Greyhound companies that is operated under what is called "Greyhound Management," operated from Chicago east.

The CHAIRMAN. Are they the operators of the busses?

Mr. BOWEN. Yes, sir. However, there are Greyhound Lines that are affiliated concerns, that I do not represent, that our people do not have interest in. Some 10 days or 2 weeks ago, Mr. Clarence W. Moffett, of San Francisco, representing the Brotherhood of Locomotive Firemen and Enginemen, appeared before your committee, filed certain affidavits, and made certain charges against the Pacific Greyhound Lines. The names were deleted from the affidavits which he filed, so that it is impossible to specifically and categorically file an answer to some of the charges that are contained in those affidavits. His testimony dealt practically entirely with the troubles that they claim to have had with Pacific Greyhound Lines. I will, at the close of my testimony, file a general affidavit, which was filed by the president of the Pacific Greyhound Lines, with the National Labor Board, which covers the situation, and as I stated, categoric and specific denials of the allegations made in these affidavits that were filed by Mr. Moffett cannot be made, because of the fact that the names were deleted, and we are handicapped in that respect.

As to the controversy that was referred to by Mr. Moffett, I think I can shorten my statement by reading a letter which was sent by Mr. Travis, who is the president of Pacific Greyhound Lines, to Mr. George Creel, chairman of the regional labor board at San Francisco. This was dated March 6, 1934:

DEAR MR. CREEL: This letter is written in compliance with my promise at the conslusion of our conference this morning to submit to you in writing Pacific Greyhound Lines' position in reference to proper and authorized representation of driver employees of the company pursuant to the provisions of section 7 (a) of the National Recovery Act.

The Drivers Association, Pacific Greyhound Lines, have furnished me with evidence of the election of seven representatives to represent its members in dealing with the company, and with proof that approximately 90 percent of our

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drivers are members of this association. They have also signed as such representatives, along with approximately 80 percent of the drivers, individually, a working agreement with this company, which agreement has been executed by the proper officers of the company, and has been in full force and effect since October 1, 1933, and prior to the effective date of the Motor-Bus Code, November 13, 1933. No other organization has presented me with evidence of its right to represent the driver employees of the company.

So far as I know, there has not been and there is not now any controversy between the management of Pacific Greyhound Lines and any of its employees.

Such controversy as may have arisen, and as may be reflected in your files, has arisen solely by reason of a claim by the representatives of the Brotherhood of Locomotive Firemen and Enginemen that they represent a number of our driver employees, some of whom are members of the Drivers Association, and I am told by you that some affidavits have been received by your board to the effect that membership in the Drivers Association was the result of coercion on the part of the management, but I have not been accorded the opportunity of seeing them and, therefore, have no way to inquire into their truth or falsity, or to refute them if found to be false.

The only controversy, therefore, of which I have any knowledge is one raised by the representatives of the brotherhood, as above stated. That really is not a controversy with the management, but is, in effect, a controversy between the representatives of the brotherhood and the representatives of the Drivers Association.

With these facts in mind, if, in the judgment of your board you deem it proper and timely to determine the merits of this controversy, it seems to me that you would be justified in circulating among the members of the Drivers Association a ballot substantially in the following form:

"Do you desire to be represented by the Drivers Association, Pacific Greyhound Lines and its authorized representatives for the purpose of collective bargaining with the management? Yes. No."

For the purpose of such an election, I will be pleased to cooperate with you in every way possible.

If, as the result of such election, you determine that the members of the association desire to have the association represent them, it seems to me that the controversy is at an end.

In the event that it is determined, after such procedure, that said driver employees do not confirm the representation of them by the Drivers Association, I am willing to cooperate with you in a fair plan so as to give the driver employees a freedom of expression as to their desires to become affiliated with and represented by the Drivers Association or any other organization or individual.

Very truly yours,

W. E. TRAVIS.

The Drivers Association of Pacific Greyhound Lines was an association of the company employees themselves. In his letter Mr. Travis refers to certain affidavits having been received by the board. Apparently these were the same affidavits that were filed here by Mr. Moffett, from which the names that were attached to them were deleted.

The attitude of the Pacific Greyhound Lines has been and is now in accordance with the statement of the president, under date of March 25, as to what the meaning of section 7–A was. Everybody that has been connected with the organization, and that I have come in contact with in the administration, have accepted that meaning of section 7–A, except the National Labor Board, and the brotherhoods and it has been due to the insistence of the brotherhoods, and the action of the National Labor Board, in applying a construction that is not in accordance with what the President says this means, that have given rise to any controversy whatsoever in the Greyhound Lines organizations.

Prior to the setting up of the Labor Board, there had never been any employee disputes in the organization, and it has only been because of the attitude of the brotherhoods and of the attitude of the National Labor Board, that these controversies have arisen.

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In connection with Mr. Moffett's statement he called attention to what he claimed was an act, that Pacific Greyhound Lines was owned and controlled by the Southern Pacific Railroad. Such is not a fact. The Southern Pacific Railroad owns one third of the common stock in that company. Some 35 percent is owned by the Greyhound Corporation, and the remainder of it is scattered. Just what bearing that has upon it, I do not know, but, just for the facts of the record, I desire to call attention to that.

The CHAIRMAN. These employees that are organized are your drivers?

Mr. BOWEN. They are our drivers; yes, sir.

The CHAIRMAN. Your office employees are not organized?

Mr. BOWEN. Not in this organization that the brotherhood has been attempting to organize.

The CHAIRMAN The drivers have physical examinations, before being employed?

Mr. BOWEN. Yes, sir.

The CHAIRMAN. And intellectual examinations?

Mr. BOWEN. Yes, sir. They go through school before they are put out on the road.

The CHAIRMAN. How long is the training in school?

Mr. BOWEN. Oh, I think, generally speaking, it lasts about 6 weeks.

The CHAIRMAN. You employ mostly young men?

Mr. BOWEN. Yes, sir.

The CHAIRMAN. Proceed.

Mr. BOWEN. The charges that Mr. Moffet makes against Pacific Greyhound Line are directed at what he terms "coercion" of the employees, to restrain them from joining the brotherhood, and compelling them to join the company association, as he terms it—the Employees' Association. I may say that the Employees' Association was in effect before the provision of the National Recovery Act applied to the Greyhound Lines, and thereafter, it was due to the activities of the brotherhoods, in attempting to induce these men to leave their own organization, that gave rise to the complaint before the local labor board in San Francisco; and I desire to file and put in the record the form which the brotherhood circulated, for the purpose of canceling any representation that the employee had before, and giving them authority to represent them.

(After 5 days return to 961 Pacific Building, San Francisco, Calif.)

AUTHORIZATION CERTIFICATE

To whom it may concern:

This is to certify that the undersigned employee of the Pacific Greyhound Lines, Inc., and/or Southern Pacific Co. (Pacific Lines) hereby authorizes the Brotherhood of Locomotive Firemen and Enginemen, through accredited representatives, to represent me in all matters pertaining to employment, wages, and working conditions with the carrier.

This full power and authority to act for the undersigned, as described herein, is given of my own free will and accord, in accordance with the Railway Labor Act, Emergency Railroad Transportation Act, and National Industrial Recovery Act, and supersedes any power or authority heretofore given any person or organization to represent me, and shall remain in full force and effect for 1 year from this date and thereafter, subject to 30 days' written notice of my desire to withdraw such power and authority to act for me in the matters referred to herein.

——— ——— (Signature).
——— ——— (Address).

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I will further say that his statement is that there were some 200 out of 400 drivers in that organization, for which they had secured powers of attorney. I do not believe that he claimed that those men belonged to the brotherhoods. In fact, Mr. Moffett, in talking to me, admitted that they did not, and that they did not take that position. They merely took the position that they had the right to represent them, whether they belonged to the organization or not.

The CHAIRMAN. That may go in the record.

Mr. BOWEN. And, also, as to the 200 that he claimed they represented, one of the employees, when I was on the coast 2 weeks ago, told me that the authorizations, or these powers of attorney, that they had been delivered, many of them had been delivered in the first place to the Brotherhood of Trainmen, an entirely separate organization than that represented by Mr. Moffett, and that, without any authorization from the employees themselves, they had turned these powers of attorney over to the Brotherhood of Firemen and Enginemen; but the position that we have taken is that, at any time, we will deal with the representatives of the employees, regardless of whether or not they are the so-called "employees' organization", or outside organizations. The attitude of the brotherhoods and of the National Labor Board has been that when it comes to dealing with these representatives, that the representatives do not need to furnish the employer with the evidence of whom he represents; and while they have brought on for an election, under the order of the National Labor Board, in order to determine the representation, never yet have they ever forced the brotherhood to come in and disclose to the employer who he represents, so that we have been in the same position as if I was appearing before this committee, and I refused to give my name or to state whom I represented; and that, as a matter of fact, has been the entire basis of this controversy, and upon such a record as that, the National Labor Board has ordered an election out there, and the election that they have ordered is to determine as to whether or not the brotherhood, on the one side, represents the men, or the employees association, on the other; and it is to be a secret ballot, and when they get through with such an election, we are right where we started in because there is no determination on which of the two organizations represent the specific employees.

The CHAIRMAN. When is that election to be held?

Mr. BOWEN. I do not think that the date specifically has been set for it. It has been ordered several times and delayed, and it was ordered last week, and in conjunction with that, we sent the National Labor Board a wire, in the name of Mr. Travis, the president, in which we asked to be permitted to appear before the National Labor Board and state the facts in this case, believing that there was no necessity for this election; and I file a copy of that telegram.

(The telegram referred to is as follows:)

MARCH 28, 1934.

CHAIRMAN NATIONAL LABOR BOARD,
Washington, D. C.:

Informed by wire your Board ordering election for Pacific Greyhound Lines, San Francisco. Our opinion situation has not been fully presented to your Board. We request opportunity to appear before your Board and make statement before necessity for election is fully determined. We have not yet had such opportunity. Appearance could be made any time subsequent to next Monday.

W. E. TRAVIS, *President.*

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Mr. BOWEN. We received word back from the National Labor Board that they had already decided the question of appeal, and stating that the election would proceed.

(The telegram referred to is as follows:)

W. E. TRAVIS MARCH 28, 1934.

President, 2600 Board of Trade Building, Chicago:

Re tel National Labor Board has already decided question of appeal and has issued instructions to San Francisco Regional Board to proceed with election.

NATIONAL LABOR BOARD.

Mr. BOWEN. Today I received a wire that Mr. Creel, the head of the board in San Francisco, had asked that we be heard down here to determine as to whether or not an election ought to be held, and my information was that the National Labor Board had turned it down.

There is a statement in the record, by Mr. Moffett, that these men that we employ—I had better read his statement so there isn't any question about it:

> They are called to perform service commonly known as protecting. They are called to go to the station, the depots, and collect baggage, load the busses, take up the tickets, for approximately 8 hours a day, and they do not receive any compensation whatsoever for that.

I cannot hardly believe that Mr. Moffett made that statement. It must be an error in transcribing his testimony.

> They are required during this time to handle busses from the garages or the shops to the depot and stations, and they are subject to discipline and dismissal for this time that they are working without compensation. In other words, they receive approximately 3 cents a mile for the actual mileage they drive a car or a bus. If they drive a bus 60 miles they get 3 cents a mile for it, regardless of the length of time it takes them to make the trip.

Just why he should be criticizing the payment on a mileage basis I do not know, because my understanding is that the railroads do the same.

> They are discharged without being given a fair and impartial hearing. They call them into the office one day and tell them they are out of service, and they will let them know later. I have known of men staying around as high as 16 days before they could find out whether they were going to be reinstated or dismissed, and finally they would tell them they could not use them any more.

I am not going to tell what I think of that testimony, or that statement, before this committee. Any intelligent man knows that you cannot build up an organization that has been built up by this Greyhound Co., and treat employees in any such manner as that. His reference to the proposition of the men taking busses back and forth to the garage, and not being paid, is because the basis of their wages that has been worked out with their own organization, is upon such a basis as that, and those statements of Mr. Moffett are the very reason that an organization does not desire the brotherhood to get into it. They are troublemakers from the start. They take an organization that is going along all right, and make the men dissatisfied; and, if there is one thing in this world that probably leads to human happiness, it is satisfaction.

Now, as to the attitude of the Greyhound Lines, the affidavit that I file will cover that, as regards the brotherhood. There never has been any coercion. There never has been any intimidation on the part of the company towards these men. From the very first, when the National Recovery Act became effective, I myself issued a bulle-

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tin, telling these men what were their rights, that they had the right to be represented by whomever they chose, and I wish to state this plainly, that I have stated to Mr. Moffett and to the Brotherhood of Trainmen, I have stated it to Mr. Creel, I have stated it to the secretary of the National Labor Board, and I state it to you, that the bus people do not want the Brotherhood of Railroad Trainmen or any other railroad brotherhood to organize them, because the entire self-interest, the entire financial interest of the brotherhoods is opposed to highway transportation. They have fought us in every legislature in this country. They have introduced and had bills passed for the purpose of regulating us off of the highway, of putting additional taxes on us.

The last session, they introduced a bill, and appeared in support of it in the House of Representatives, to put a tax of 3 cents a mile upon all interstate common carrier busses and trucks, which would have every one put off the highway. With such a situation as that, must the employer stand still and not tell his employee that that is not the sort of an organization that he ought to be in? Their entire interest is opposed to the interest of these men, and we have told our men, and we intend to continue to tell them that any of the brotherhoods is not the proper organization for them to go into, but we also tell them, "If you choose to go into the brotherhood, that is your business"; and we also have the situation in this case, right here, that the Amalgamated Association of Street Railway Employees is attempting to organize these men, and they have claimed that the brotherhood has no jurisdiction in this. This employees' organization itself has made an application to the American Federation of Labor for a charter, and the Amalgamated says to the American Federation of Labor, "That is our jurisdiction, and we don't want any charter issued direct to them"; so, to come in here and charge that this company is coercing these men, when I am frank to tell you that the representatives of the American Federation of Labor approached us, when I was on the coast, and asked whether or not they could go in and speak to this organization of men, and we said, "Yes", and we permitted them to go in there, "And if you can see them on your proposition, that is your business."

But the entire controversy here is not one with the company; it is one between the drivers' association and the brotherhoods; between the amalgamated and the brotherhoods; between the American Federation of Labor and the brotherhoods.

The CHAIRMAN. Ordinarily we would not be interested in this controversy, but the fact that a witness has gone into the matter, of course, justifies your making an explanation, rebutting his testimony.

Mr. BOWEN. Senator, I realize that, and my position on this, in view of the attitude of the National Labor Board, and the manner in which it was handled by them, is indicative of our position on any bill such as this; that if the rights of a citizen, if the rights of the employer, if the rights of the employee are not to be preserved, they are not to be protected by an official order—and I claim that they have not, on the part of the National Labor Board, that their actions have been arbitrary and they have been proceeding without any authority of law, and contrary to the interpretation of Mr. Richberg, and of General Johnson, and the President himself, that that case that is pending out there today, is exactly in that status.

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I desire also to file with the committee the findings of the Labor Board at St. Louis. This was upon a complaint of the Brotherhood of Railroad Trainmen. That is another brotherhood, than the one that is active upon the coast.

The CHAIRMAN. That may be put in the record.

(The document referred to is as follows:)

THE ST. LOUIS REGIONAL LABOR BOARD'S STATEMENT OF FACTS, FINDINGS, AND RECOMMENDATION

CASE NO. 31—FEBRUARY 23, 1934

(In the matter of: Western Greyhound Lines, Inc., on complaint of Brotherhood of Railroad Trainmen)

Mr. E. L. Harrigan, deputy president.

Mr. B. W. Fern, field superintendent.

The representatives of the Brotherhood of Railroad Trainmen appeared on January 16, 1934, before the St. Louis Regional Labor Board, being represented by Mr. E. L. Harrigan, deputy president, and M. B. W. Fern, field superintendent. There was no appearance for the Western Greyhoud Lines, Inc. When the case was called a representative of Mr. Ivan Bowen, who is general counsel for Western Greyhound Lines, stated that Mr. Bowen was in Washington, D.C., attending a meeting of the motor-bus code committee and could not be present, but would appear or would send to the Board a statement.

This case was originally filed with the National Labor Board at Washington in October 1933, and from the record it appears that formal complaint was lodged with that Board early in November 1933. On November 7, 1933, the case was referred to the St. Louis Regional Labor Board and on or about November 10, the complete record was sent to this Board. The case was heard by the St. Louis Regional Labor Board on January 16, 1934, on the complaint of the Brotherhood of Railroad Trainmen. The complaint was in the form of a statement filed November 23, 1933, and a supplementary statement dated December 9, 1933, and addressed to the regional labor board, signed by E. L. Harrigan, deputy president, Brotherhood of Railroad Trainmen. The case was reopened, on the application of the brotherhood for additional testimony on February 6, 1934.

It develops from the file that from early in November until January 16, 1934, this board investigated the complaint, and from that time until January 16, there were numerous conferences between the representatives of the brotherhood and conferences and letters with the officials of the company. Also there arose a serious question of jurisdiction at the time of the establishment of the Industrial Relations Board for the Motor Industry which it was necessary to settle.

It develops from the file and the statements made that the Brotherhood of Railroad Trainmen were given jurisdiction over bus drivers and helpers on the highway. The reasons which dictated this jurisdiction is immaterial.

The statement and hearing above referred to develops that the brotherhood had certain documentary evidence which it would not present at a hearing where the company representatives were present; that the evidence in question consisted of affidavits and signed statements made by bus drivers employed by the company, and it was stated that if the nature of such evidence was discussed, the employees would be subject to discipline; that the affidavits and statements would be presented to the Board in executive session. It sets forth that the question of jurisdiction had been settled between the International Brotherhood of Teamsters, Chauffeurs, and Helpers, and the Brotherhood of Railroad Trainmen, and that the jurisdiction of the drivers had been lodged with the brotherhood. It sets forth that on October 17 a representative of the brotherhood called upon the superintendent of personnel of the company for the purpose of presenting a tentative agreement covering rules, conditions of employment of bus drivers, scale of wages, etc., and that a committee representing the drivers (consisting of two drivers) were present at the conference; that while the discussion was going forward Mr. H. H. Morgan, vice president of the company, came into the room where the conference was being held and made certain statements with reference to the standing of the brotherhood, which according to the statement, were untrue and unbecoming; and among other things stated that the brotherhood was "flat broke" in 1923, and that he had received this information from authentic sources, and that the insurance department of the brotherhood was insolvent and unsound.

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The statement further develops that this was denied at the time by representatives of the brotherhood and later, on October 18, a letter was addressed to the president of the company taking exceptions to the statements as made.

The statement further sets out that immediately after the conference on October 17 there was an extensive campaign started by officers of the company to organize what is termed a "company union"; that the drivers were called in and were advised to the effect that their best interests would be served by becoming members of the company union, and specifically discouraged members from becoming members of the brotherhood. Also, to the effect that those who did not act favorably would be subject to discipline and would be "in bad with the company"; that on October 18 at Springfield and other places, executive officers of the company talked to the drivers individually and collectively, urging the formation of a company union and advised the drivers not to become members of the brotherhood.

It is also stated that certain of the drivers were advised by representatives of the brotherhood not to alienate their standing with the company, but that they should sign the petition for membership in the company union, and that such action on their part would be fully justified when the question of choice between a bona fide labor organization and a company union was finally determined.

It is also stated that on November 1 representatives of the brotherhood arranged for a meeting at Kansas City with Mr. Massey; that at this meeting Mr. Maurice Lennon, who is termed "general counsel of the Western Greyhound Lines," and Mr. Schletz, a comptroller of the company, were also present. It is stated that Mr. Lennon was spokesman for the company and that the conference lasted approximately 2½ hours. It is stated that the matters discussed were aside from the question intended to be discussed, namely a proposed agreement covering employment of drivers.

It is also stated that Mr. Lennon questioned the right of the brotherhood to organize the bus drivers. It is also stated that the brotherhood representative was informed that the company's position with regard to further negotiations would be given attention at a later date. It is also stated that on November 7 Mr. Massey officially informed the brotherhood that the company would decline to enter into any agreement with the brotherhood representing the drivers. It is also stated that in the opinion of the brotherhood this refusal was a clear violation of section 7 (a) of the National Industrial Recovery Act and section 8 of the code of fair competition of the motorbus code, approved October 31, 1933, by President Roosevelt.

The statement was made that the brotherhood is anxious to negotiate an agreement with the company. The statement was also made that the brotherhood felt compelled to decline to submit evidence in support of the allegations in the presence of officers of the company, but that it was perfectly willing to submit any documents to the board in executive session.

At the hearing it developed that the company had been informed of the number of drivers that had made application and that at least two of the drivers, members of the brotherhood, had been present at a conference held in Kansas City with officials of the company. It was also stated that there had been no dismissals of drivers for any cause.

On January 23, the Western Greyhound Lines filed a statement in answer to the statements made at the hearing held on January 16, and this statement sets forth the specific complaint made by the brotherhood was, first: That the company defied collective bargaining; that they interfered with members of the brotherhood; that while the committee was recognized at the meeting held in Kansas City that the statement was made by representatives of the company that they would have nothing to do with the brotherhood.

The statement specifically states that the company accepts the proposal of collective bargaining and that the company is fully aware of the fact that not to do so would be a violation of the Industrial Recovery Act. The company disclaims any knowledge of interference by officials of the company, and states that the representatives of the brotherhood admitted that no drivers had been discharged, and disclaims any statement was made by the representatives of the company or any statement authorized to the effect (referring to the brotherhood) "we won't have anything to do with you."

The statement is made that the brotherhood has never presented the company with evidence that it represents the employees of the company, or any evidence that would legally authorize the company to deal with the brotherhood.

The statement goes into the question that was brought out at the hearing as to the ownership of the stock of the company but as this matter is entirely immaterial

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it will not be gone into here. It also goes into the question that was brought out at the hearing with reference to the Southeastern Greyhound Lines before the Indianapolis board. That case has no bearing on this case and therefore will not be gone into here. The statement also calls attention to the affidavits filed with the board by the brotherhood, which were requested by the brotherhood to be kept for the information of the Board. The statement is made that the representatives of the company have not seen the affidavits and therefore have no information as to what they contain. The statement also maintains that the company has put into effect the provisions of the code relating to hours of labor and have effected increases in wages which were in addition to any required by the code. It also states that the company has no difficulties with its employees.

The statement also calls attention to the fact that the brotherhood originally filed its case with the National Labor Board on November 13, 1933, and that the motor bus code was signed by the President on October 31, 1933, and became effective the second Monday thereafter, or November 13, 1933. It also calls attention to the fact that the Industrial Recovery Act becomes applicable to any industry when the code becomes effective. It also calls attention to the fact that any complaint filed on November 13, 1933, could not justly charge a violation of section 7 (a) against any industry to which section 7 (a) was not applicable until the second Monday after October 31, 1933 (Nov. 13, 1933).

As stated above, this case was reopened and additional evidence was introduced by the brotherhood before the St. Louis Regional Labor Board on February 6, 1934, at which a representative of the brotherhood appeared, and stated that on January 16 the brotherhood had called the board's attention to the fact that the officials of the company made remarks which led the brotherhood to believe that the company was entering upon a program of intimidation and coercion; that it was the intention of the company to dismiss from the services of the company drivers who had participated in organization activities and drivers affiliated with the brotherhood; that to substantiate what had been said on January 16 he had as a witness C. M. Brock, a driver for the company, who was elected general chairman by the members of the brotherhood. The representative of the brotherhood stated that he had every reason to believe that because of Mr. Brock's activities for the organization that his services had been dispended with by the company.

He referred to what he termed a "little accident" happening at Columbia, Mo., in which Brock was involved, and stated that Brock had been dismissed not because of the accident but because of his activities in the brotherhood. Mr. Brock was then asked to make his statement which was to the effect, that he had been a driver for the Western Greyhound Lines for 6 years. That a 3:40 a.m., the morning of January 18, 1934, it was foggy and smoky; that he was coming into Columbia from Kansas City; that he came into Columbia from the highway and when two blocks off the highway, he ran into a bunch of smoke and fog; that there was dust and fog blowing in the air; that he was traveling about 20 miles per hour, and ran into a city street cleaner; that there was no red light on the street cleaner; that he damaged the front fender and headlights on the bus; that no one was hurt at all; that he was arrested and charged with reckless driving, and placed under $25 bond to appear; that he was held out of work for investigation; that he saw Mr. Gender, superintendent of the company at Kansas City, who stated that he could go back to work but the matter had to be cleared up at Columbia; that he went to Columbia and saw the company's attorney and city attorney; that they released him from his bond and stated he would be notified when to come back. Mr. Brock further stated that on January 30 he was told to come to the office of the company; there he saw Mr. Gender; that Mr. Gender stated the matter had been left to him as to whether he (Brock) should be discharged or not, and that Gender then stated that he would be let out. When asked for a reason, Gender stated "everything in general"; that Mr. Gender stated that for the last 6 months he had been in enough to be discharged without any evidence; that Gender would not name any specific thing but stated that he had been mixed up in everything. Mr. Brock stated that he had what he termed a "3-year card" due from the company, which the company had refused him. (The card referred to was card for careful driving issued by the company.)

He further stated that Mr. Gender stated that everybody that went into the brotherhood would be let out, and referred to the fact that Brock had not signed for the company union. Brock stated that he told Gender he had avoided talking about the brotherhood and had never talked to anyone on the company's property about the brotherhood. He stated he had not been in any serious accident for 3 years. Representatives of the brotherhood stated that when the

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case was tried on the 16th day of January, the statement had been made by representatives of the brotherhood what would be done to Brock regardless of what charges might be made, and that it happened (his dismissal) just as they thought it would happen; that his being let out was not because of this accident but because of his membership in the brotherhood. A letter from a Mr. Lightner, alleged to be agent for Western Greyhound Lines at Columbia, Mo., dated January 25, 1934, and addressed to Mr. Brock, was read into the record. This letter quotes what is alleged to be a letter to "Slim" (Mr. Gender) from Mr. Harris (attorney for the company at Columbia, Mo.), and states that the bond for Brock's appearance had been withdrawn. It also states that Mr. Harris has some doubts as to whether the case will be pushed; that the city of Columbia was frank in saying that they were interested in securing damages for the street cleaner.

Immediately after the hearing of February 6, the Board requested the company to file a statement with reference to Brock's dismissal on January 30. On February 13 the company filed a statement in which it sets forth that during 1932 Brock had an excellent record and was promoted to the position of "a star driver" on December 31, 1932; that on January 18, 1933, he received a bonus deduction of 15 days for loitering at rest stops; on February 3 he received an additional bonus deduction for failure to punch tickets; on February 13 his star rating was canceled for speeding; on February 10 an additional bonus was deducted for failure to take his manifest off of the coach; on March 29 his bonus was canceled for delaying turning in his driver's reports; on April 18 he was involved in an accident but it was determined that it was not Brock's fault; on January 18 he collided with a street sweeper in the city limits of Columbia, Mo.; that there were 13 passengers on board the bus at the time and all of them were injured; that to date $753 had been expended in settlement of claims and the more serious ones were still open, and that it was impossible to determine just what the accident may eventually cost. A statement is made that the Weather Bureau, which is located at a distance of about 1 mile from the scene of the accident, reported a visibility of 8 miles with clear sky at 3 a.m. and the same findings at 4 a.m. on the date of the accident. That the accident occurred at 3:40 a.m. within the lighted district of the city of Columbia, and that in the opinion of the company, Brock was guilty of the grossest negligence. That his dismissal was in no way connected with his membership or activities for the brotherhood.

It is only fair to both parties and with a due regard to the view which this Board takes of this case and of its findings herein made that the following comments should be made.

The statements made on October 17, 1933, as to the solvency of the brotherhood is not material for the reason that it appears that it had reference to the year 1923 and was made to a representative of the brotherhood on information which the company's representative stated he believed. It appears from the file in this case that the Western Greyhound Lines did not sign the President's reemployment agreement, and it is also a matter of record that the motor bus code was approved by the President on October 31, 1933, and became effective November 13, 1933. It is clear and we believe settled on the authority of the National Labor Board that this Board could not consider in arriving at its decision acts committed before November 13, 1933, which was the effective date of the code, for the apparent reason that there was nothing to prevent the company at that time from organizing a company union and nothing to prevent it from advising the drivers as to becoming members of the brotherhood. The Board is of the opinion that there is little evidence in the file to prove that the brotherhood has ever presented any evidence to the company to the effect that it represents the drivers save and except the statement that it had 66 applications filed for membership. The 66 applications, which are filed with this Board, develop the fact that the applications had not been acted upon by the brotherhood and that the company had never seen the applications, and that the applications were at no time subject to inspection by representatives of the company.

This Board is of the opinion that there is no evidence in the record which proves that there has been any dismissals on account of organization activities. That this Board could not and cannot consider the affidavits read in this case at the hearing for the reason that they were not subject to inspection by the company; that it would be manifestly unjust and unfair to find against the company on evidence which the company had not seen, had not heard, and had had no opportunity to deny or controvert. This proposition needs but to be stated to demonstrate its soundness and for the further reason that the affidavits are all dated and sworn to before the effective date of the motor bus code; and it is a

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fact that the company had not signed the President's reemployment agreement.

In view of these facts and after having carefully considered the entire record in this case, and all supporting papers, and the statements of both the brotherhood and of the company—

The St. Louis Regional Labor Board finds and rules:

1. That the Board could not consider in making its determination the affidavits which related to incidents and happenings (and conversations had), before November 13, 1933, for the reason that the company had not signed the President's reemployment agreement and the motor bus code was not approved until October 31, 1933, and did not become effective until the second Monday thereafter or November 13, 1933. That on the statements and testimony produced before this Board there is no evidence that can be considered that proves the Western Greyhound Lines have violated any law and especially section 7 (a) National Recovery Act, for all the acts alleged to have been committed were committed before the code became effective. Prior acts are outside the purview of the statute.

2. That the affidavits could not be considered for the further reason that they were not submitted to the company for inspection, the Board being expressly requested "not to divulge any of the names."

3. That there is no evidence that can be considered that would justify this Board in finding that there was a substantial number of employees requesting the Board to conduct an election or that this Board should use its "discretion" in calling an election for the purpose of selecting representatives to carry on collective bargaining.

4. That this Board finds that the 66 applications for membership, signed by drivers of the Western Greyhound Lines, are applications which have not been passed upon nor have the applicants been accepted into the brotherhood; that the drivers whose names appear on the respective applications are not members of the brotherhood and cannot be considered as such by this Board; that the applications could not be considered by this Board for the reason that the applications, while filed in the case, could not on instructions from the brotherhood be submitted to the company for inspection.

5. That the Board cannot find on the evidence as submitted by the brotherhood (hearing Feb. 6, 1934), and the statements submitted by the company, together with physical facts and conditions existing at the time of the accident (3:40 a. m., Jan. 18, 1934), that Brook's dismissal was due or in any way connected with his being a member or active in the affairs of the brotherhood.

Mr. BOWEN. And again, the local labor board decided the case in favor of the Greyhound Lines, and against the contention of the brotherhood there, but there is just one other matter in connection with that, that I wish to call to the attention of the committee, which is indicative of our reason for opposing this bill. In that testimony, the brotherhoods brought in a discharged driver, that operated between Kansas City and St. Louis, I think it was, and they claimed that he was discharged because of the fact that he belonged to the brotherhoods. There are a good many of these men that belong to the brotherhoods, and none of them have ever been disturbed; and he claimed that it was by reason of the fact that he belonged to the brotherhoods that he was discharged. We showed that the man had an accident record, that it was unsafe to put him on the highway; that his last accident had just occurred, in which he plowed into the rear end of a State road sweeper, injuring a number of passengers, and running the damage claims up to considerable.

The labor board made that finding. Some way or other, this record gets down to the National Labor Board, and they appoint a commissioner to take testimony, that was sustained by the hearing at Kansas City, on Monday of this week, as to whether or not the company had unlawfully discharged him. If we had unlawfully discharged him, we were subject to prosecution; and yet, the National Labor Board, sending out an investigator or a commissioner to take testimony, upon which we are required to come in and appear, and

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give testimony that may later be used against us in a prosecution under the law. It is merely another indication of why we oppose any such proceeding as has been conducted under the National Board.

I will say for the local labor boards that, generally speaking, these local labor boards would be inclined to be fair did they not get these instructions to carry on the elections that are contrary to the basis of the law in the different jurisdictions. When these affidavits were put into the record by Mr. Moffett, he said that the reason that he does not want to attach the names to them is because the company will discriminate against these men, and yet the affidavits, themselves, are based upon facts as alleged that these men were called into the company office because of the fact that they belonged to the brotherhood.

The very statement in the affidavit refutes the proposition that he is putting these in, and deleting the names because of an attitude of this company.

The CHAIRMAN. Does that cover everything that you wanted to say?

Mr. BOWEN. That covers everything; and, in closing, Senator, I wish to say that in this statement that I have made here, it is our purpose, in not only replying to Mr. Moffett and the organization that he represents, but that also illustrates the reason why we are opposed to this bill.

The CHAIRMAN. Thank you.

Mr. BOWEN. Thank you.

AFFIDAVIT OF W. E. TRAVIS, PRESIDENT PACIFIC GREYHOUND LINES PRESENTED BY MR. BOWEN

STATE OF CALIFORNIA,
City and County of San Francisco:

W. E. Travis, being first duly sworn, deposes and says:

That he is now, and at all times herein mentioned has been, the duly elected, qualified, and acting president of Pacific Greyhound Lines, Inc., appellant herein; that on the 13th day of October 1933 affiant, as such president, was called before the San Francisco Regional Labor Board and informed that a complaint had been filed by the Brotherhood of Locomotive Firemen and Enginemen alleging, in substance, that the management of Pacific Greyhound Lines, Inc., had violated the provisions of section 7 (a) of the National Industrial Recovery Act by interfering, restraining, and coercing its driver employees in the designation of representatives and in self-organization for the purpose of collective bargaining and other mutual aid and protection; that thereafter, and on the 25th day of October 1933, affiant attended another meeting of said board; that at said meeting, there appeared Mr. C. W. Moffitt, representing the said Brotherhood of Locomotive Firemen and Enginemen, who orally accused Pacific Greyhound Lines, Inc. of having violated said section 7 (a) of the National Industrial Recovery Act, but that no formal complaint was ever served upon, or exhibited to, affiant or any other officer of Pacific Greyhound Lines, Inc. Affiant further states that no testimony, sworn or otherwise, was introduced at said meeting, nor was any documentary evidence presented.

That thereafter, on the 13th day of November 1933, affiant was again called before the said San Francisco regional labor board, Mr. George Creel presiding, at which said meeting the said C. W. Moffitt appeared personally and by attorney; that nothing more than an informal discussion was had at said meeting; that no evidence, either oral or documentary, was produced thereat; that thereafter, and from time to time until and including this 9th day of March 1934, affiant was called before, and conferred with, the said George Creel as chairman of said San Francisco Regional Labor Board, at which times affiant was informed that affidavits had been filed alleging facts tending to prove that Pacific Greyhound Lines, Inc., had violated both the provisions of section 7 (a) of the National Industrial Recovery Act and section 1 (a) of article VIII of the code of fair competition for the motor bus industry, as approved October 31, 1933, but that at

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no time nor place was affiant, or any other officer or employee of Pacific Greyhound Lines, Inc., confronted with any witness or any evidence, either oral or documentary, tending, in any way, to prove any of the allegations of the complaint that Pacific Greyhound Lines, Inc., had violated said National Industrial Recovery Act or said code of fair competition for the motor bus industry, and that at no time nor place was affiant, or any other officer of Pacific Greyhound Lines, Inc., afforded an opportunity of controverting the evidence produced in support of said allegations, or any part thereof.

That during the months of September and October 1933, the driver employees of appellant Pacific Greyhound Lines, Inc. perfected an organization known as Drivers' Association, Pacific Greyhound Lines, Inc., and negotiated with said management a working agreement with respect to standards concerning maximum hours of labor, minimum rates of pay, and other conditions of employment necessary in the business of said appellant, and to effectuate the policy of the National Industrial Recovery Act; that said working agreement was executed by said seven representatives of said Drivers' Association, Pacific Greyhound Lines in their representative capacity, and individually, by approximately 88 percent of said driver employees; that the execution of said working agreement by said representatives and said employees occurred prior to October 31, 1933, the date of approval of the Code of Fair Competition for the Motor Bus Industry, and prior to November 13, 1933, the effective date of said code; and said working agreement was also executed by affiant as president of Pacific Greyhound Lines, Inc., prior to said last-mentioned dates and under authority of a resolution duly and regularly passed at a meeting of the executive committee of appellant on the 25th day of October 1933; that said working date has been, and still is, the agreement under which the management of Pacific Greyhound Lines, Inc., and its driver employees are working.

That in dealing with affiant and the management of Pacific Greyhound Lines, Inc., said above-mentioned drivers' representatives presented proper credentials showing that they were authorized to represent appellant's driver employees for the purpose of collective bargaining with the management of Pacific Greyhound Lines, Inc., but that no other person, group of persons, or association, labor union, brotherhood, or any representatives thereof, have ever presented to affiant, or any other officer of appellant corporation, any credentials or evidence that they, or any of them, were entitled to represent any of appellant's driver employees for the purpose of collective bargaining, or any other purpose.

That on Friday, the 2d day of March 1934, the said C. W. Moffitt, and one Phillips, representing the Brotherhood of Locomotive Firemen and Enginemen, and affiant, as president of Pacific Greyhound Lines, Inc., met, agreeable to the suggestion of the chairman of the San Francisco regional labor board, for the purpose of determining which, if any, of said driver employees of appellant the representatives of said brotherhood represented for the purpose of collective bargaining with appellant corporation; that said last-mentioned parties again met on Monday, the 5th day of March 1934, for the same purpose, but that at both meetings, although frequently requested to do so, the said Moffitt and the said Phillips refused to state whom they represented, and declined and refused to furnish any evidence of any character tending to prove that they, in fact, represented anyone.

That affiant and said appellant have been at all times, and still are, ready and willing to confer with and bargain with any and all representatives of its employees furnishing proof of their representative capacity.

That, as a matter of fact, there is no controversy of any kind or character existing between the driver employees of Pacific Greyhound Lines, Inc., or any of them, or of any other employees of appellant Pacific Greyhound Lines, Inc., and its management.

That neither affiant, nor any other officer of appellant Pacific Greyhound Lines, Inc., has, as herein above stated, been furnished with any evidence, oral or documentary, tending to prove that appellant has in any way violated the provisions of section 7 (a) of the National Industrial Recovery Act and/or section 7 (a) of article VIII of the code of fair competition for the motor-bus industry, and has not been furnished with a copy of the complaint, or any information concerning the exact contents thereof; but, since the complaint was made long prior to the date of the approval of the code of fair competition for the motor-bus industry, and of the effective date thereof, all of the matters and things complained of in said complaint, if in truth and in fact they occurred at all, must have occurred prior to said last-mentioned dates; that there are not now, nor has there ever been, insofar as affiant or any other officer of appellant corporation

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knows, any charges made or filed with said San Francisco Regional Labor Board subsequent to the 31st day of October, 1933, the date of the approval of said code of fair competition, nor has appellant been accused, either directly or indirectly, of any act or course of conduct which might constitute a violation of the provisions of said code since date of approval.

That in spite of the fact that appellant corporation and affiant have been deprived of the right of being confronted by and cross examining such witnesses as may have offered evidence in support of the allegations of the complaint hereinbefore first referred to, and deprived of the right of knowing the contents of the affidavits hereinabove referred to, and of answering any or all of said evidence and affidavits, the said San Francisco Regional Labor Board, as affiant was this day notified by the chairman thereof, has determined and ordered that an election be held among she driver employees of said appellant corporation for the purpose of determining whether the drivers' association, Pacific Greyhound Lines or the Brotherhood of Locomotive Firemen and Enginemen should represent said drivers in all matters pertaining to collective bargaining with appellant; that affiant believes that in making such determination and order, said Regional Labor Board has exceeded its authority and jurisdiction.

[SEAL.] W. E. TRAVIS.

Subscribed and sworn to before me this 9th day of March, 1934.

FRANK HARVEY,
Notary Public in and for the city and County of San Francisco, State of California.

The CHAIRMAN. Mr. Smith. Are the representatives of the Metal Manufacturers' Association of Philadelphia here? They are not here. Are there any other witnesses than Mr. Smith?

(No response.)

STATEMENT OF HAL H. SMITH, DETROIT, MICH., REPRESENTING THE NATIONAL AUTOMOBILE CHAMBER OF COMMERCE

The CHAIRMAN. Mr. Smith, your full name?

Mr. SMITH. Hal H. Smith, of Detroit.

The CHAIRMAN. Your home is Detroit?

Mr. SMITH. Yes, sir.

The CHAIRMAN. And your business?

Mr. SMITH. Attorney at law.

The CHAIRMAN. And you are representing the National Automobile Chamber of Commerce?

Mr. SMITH. I am here representing the National Automobile Chamber of Commerce.

The CHAIRMAN. Where is that located?

Mr. SMITH. The head office of that is in New York.

The CHAIRMAN. They have branch offices, do they?

Mr. SMITH. They have a branch office in Detroit and one in Washington.

The CHAIRMAN. Who are members of that organization?

Mr. SMITH. The 32 automobile companies—I think every automobile company and the major truck companies, exclusive of the Ford Motor Co., are the members of that organization.

The CHAIRMAN. Now, are you speaking for the automobile industry, as well as for the Automobile Chamber of Commerce?

Mr. SMITH. Exclusive of Mr. Ford.

The CHAIRMAN. Yes.

Mr. SMITH. And the truck industry is represented. They have now employed upwards of 300,000 employees in the direct manufacturing automobile plants themselves. That would be exclusive of the parts companies, who are perhaps employing the same number. I

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speak of the parts companies who are dependent, to a large degree, upon the automobile industry itself.

The automobile industry feels a peculiar interest in and responsibility in this measure by reason of the fact that they have recently entered into an agreement with the President of the United States, under which agreement it is expected, and confidently expected, that there will be an adjustment in that industry of all of the difficulties that are referred to in the Wagner bill.

Questions of coercion and discrimination as between employees that are recited and defined at such great length in the Wagner bill, are the subject of the controversies out of which settlement with the President grew, and they are now in process of being submitted to the Board of which Dr. Wolman is chairman, which began its sittings in Detroit on Tuesday of this week.

I want to briefly call the committee's attention to the fundamental theory, as stated by the President in that agreement, in order that I may point out how radically it disagrees with the theory of the Wagner bill, and how the enactment of the Wagner bill would directly conflict with the theory and meaning of that agreement. I will not read all the agreement, but a few sentences in it are very pertinent. The President says that "the big point is that this broad purpose can develop with a tribunal which can handle practically every problem in an equitable way."

He says again:

> It is a complete answer to those critics who have asserted that managers and employees cannot cooperate for the public good without domination by selfish interests. A new basis of understanding between employers and employees. It is my hope that out of this will come a new realization of the opportunities of capital and labor, not only to compose their differences at the conference table and to recognize their respective rights and responsibilities, but also to establish a foundation on which they can cooperate in bettering human relationships involved in any large industrial enterprise. It is my hope that this system will develop into a kind of works council in industry, in which all groups of employees, whatever may be their choice of organization or form of representation, may participate in joint conferences with their employers.

Finally:

> This is not a one-sided statute and organizations of employees seeking to exercise their representative rights cannot at the same time be unmindful of their responsibilities.
>
> Only in this way can industry and its workers go forward with a united front in their assault on depression and gain for both the desired benefits of continually better times.

It was in that spirit of conciliation and cooperation that this agreement was entered into by the President, and it has been accepted by the industry and by the employees, and all are now cooperating in an earnest effort to present their difficulties at a meeting of this tribunal; and that tribunal, in its early sessions, has made clearly evident its response to the theory of the President, and is attempting these adjustments, not in the spirit of a court or of a tribunal, but in the spirit of an arbitration tribunal that brings both parties together and conciliates the difficulty.

The CHAIRMAN. Isn't that just the objective that the author of this bill has in mind?

Mr. SMITH. The bill substitutes for the free agreement between the parties to a dispute, the mandates of a law that sets up a tribunal,

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recites offenses, gives to the tribunal the opportunity, the power to make cease-and-desist orders, to enter judgments, and to make any order that it may deem desirable for the settlement of the controversy, carry its order to the court, and enforce the order under the mandate of a district court of the United States. It substitutes them.

The CHAIRMAN. Then the agreement which you have in mind with the President is for a commission to hear the disputes in your industry and to make findings, which will not necessarily be enforceable?

Mr. SMITH. Exactly.

The CHAIRMAN. While this bill before us would permit the commission to proceed to invoke the power of the courts to bring about certain enforcements?

Mr. SMITH. Exactly; the President, I think, concedes that the greatest progress toward industrial peace will be made by encouraging amicable settlements, outside of any mandate of the courts of the law, that have behind them only the force of public opinion, and their own equity; and he has not thought it necessary in that agreement to provide that either party could resort to the courts to compel the final order, that would impose upon either party the decree of that tribunal.

The CHAIRMAN. Did you interpret this bill to give authority to this commission to fix definite wages in ease of a dispute and then to proceed to get an injunction to enforce its decree?

Mr. SMITH. I did not interpret the bill to give the Board any authority to fix definite wages. I did interpret it that they could issue this cease and desist order in any case of discrimination.

The CHAIRMAN. In any case where, for instance, there was a dispute over the discharge of certain employees?

Mr. SMITH. Yes.

The CHAIRMAN. And the Board sat, in its judicial capacity and decided that the employees ought to be reinstated?

Mr. SMITH. Yes.

The CHAIRMAN. It could then go to the courts and ask for an order?

Mr. SMITH. Yes; and I am not certain, it is drawn so broadly, that if, for instance, the Board found, as a matter of fact, that in one department and industry paid its employees, who were not members of a certain union more than they did in a department where they were members of another union, they could find a discrimination—I don't know the meaning of the word "entering judgment", but I think it would be explained that they could then enter judgment, which would compel the industry to pay the employees that were getting the lesser wage that difference in the wage.

I assume that that was the purpose, although I think the bill is limited to questions of coercion and intimidation in relation to discrimination, not to general wage disputes.

The CHAIRMAN. The emphasis placed upon the bill is the right of independent organizations and the compelling of employers to engage in collective bargaining with the representatives of its employees?

Mr. SMITH. Exactly; exactly.

The CHAIRMAN. Apparently, thus far, there isn't much objection anywhere to it.

Mr. SMITH. So far as collective bargaining is concerned.

The CHAIRMAN. As far as my statement goes.

Mr. SMITH. Yes.

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The CHAIRMAN. It is what this Board can do thereafter or what it could do in checking or restraining an employer whom it was urged was engaged in unfair practices, that is objectionable?

Mr. SMITH. Well, yes; I would like to briefly refer to that.

The CHAIRMAN. Very well.

Mr. SMITH. Let me add this, though, to what I have said about our agreement, that it appears to us that the enactment of this bill would leave the automobile industry in an anomalous situation. It is now engaged in round-table conferences to settle all its difficulties with the labor unions and the employees. I know of no questions as to dispute as to wages primarily. The questions of discrimination are what are coming up, and it is engaged in that settlement, and it has bound itself and intends to go through with that in good faith.

The CHAIRMAN. What kind of discriminations? Recognition of groups of organized employees and nonrecognition?

Mr. SMITH. Well, we have one plant, we will say, that has four different unions in it, and it let out 2,000 men, and it let out amongst those, we would say, 10 men in one union, and they come in and say they were fired because they belonged to the union. The plant says, "We let them go because we had no work," and the question arises as to what it was. Those are the familiar, ordinary questions that are coming up.

The CHAIRMAN. Isn't the result of this agreement that you have entered into with the President tantamount to really issuing final judgment, that you are bound to respect and to comply with?

Mr. SMITH. We have agreed in here that the finding of this Board on any case of discrimination that comes before it will be obeyed by us; and it will be obeyed by us, whether it could be enforced in the court or not; but we are in this singular position in this itself, that, at the very time that we are gathered about the table settling these differences with this conciliation board, if this bill was the law, we could be haled in before this tribunal, and from it into a district court, and against us could be levied the penalties of this act, and even the right of strike has been preserved, so that while we were engaged in good faith, carrying out the agreement with the President, we would be subject to the penalties and all the difficulties that this law has in it.

The CHAIRMAN. In other words, you think this law would be superimposed upon your agreement and could be invoked?

Mr. SMITH. Exactly.

The CHAIRMAN. It could be invoked by those who wanted to use it for the purpose of getting adjudicated differences under this law?

Mr. SMITH: Exactly.

The CHAIRMAN. Which you have agreed to settle through an agreement?

Mr. SMITH. Yes; now, so far as the industry is concerned, we will make no appeal to this tribunal, but the employee, dissatisfied with that tribunal, has this tribunal, and what will become of the President's agreement, into which we have all entered and to which we look forward so hopefully as the settlement of all our difficulties and which has progressed so well, and which is, itself, a pattern of the highest method of legislation, that which imposes its mandate, not by the force of a statutory law, but by the force of its justice and its right and public opinion, so that we say that this law is diametrically

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opposed to the theory of the agreement, as we interpret it with the President.

Now, let me just add, we would not be doing our duty if we did not point out some of the things that are objectionable in the act, some of the particular things, even though they have been referred to, and undoubtedly will be referred to by many of the other witnesses.

In the first place, we do not feel that a law of that kind could stand either in the courts or at the bar of public opinion that specifies a series of offenses of the employer but none against any other person who would interfere with the right of collective bargaining. We think the right of collective bargaining was in the law before it was enacted in the National Recovery Act, but it certainly was confirmed in the National Recovery Act. The familiar case that your honor has undoubtedly had cited before the committee, the *Texas and Pacific case*, where, under the Railway Act, the court sustained the charge of coercion and intimidation, only emphasized the fact that an employee, under all our cases, has the right to bargain freely by himself or by any agent and so, of course, he could bargain and insist upon bargaining collectively, but nevertheless it has been written into the law, and it does not need this act to restate it.

The CHAIRMAN. Of course, the author of this act and some of the witnesses who have had experience on the Labor Board assert that under section 7–A of the National Recovery Act, there is no requirement upon the part of the employer to enter into negotiations for collective bargaining with the employee.

Mr. SMITH. Exactly.

The CHAIRMAN. And the inspiration for this act evidently was that desire to enforce or compel the employer to engage in collective bargaining with the duly-elected representatives of his employees. I suppose you agree to that?

Mr. SMITH. We have had a broader interpretation than that. We have thought we had to bargain with them collectively, if a crowd of men came in, we had to talk to them, and we have always talked to them; but suppose we accept that construction of the act, it is not that we have been unwilling to bargain collectively, it is the agents that have appeared that have been objectionable at times in the industry.

The CHAIRMAN. Under this act you would not have the right to object to the agents.

Mr. SMITH. None at all.

The CHAIRMAN. You would have to take such agents as this board declared the duly-elected agents.

Mr. SMITH. Yes. Well, if they are freely chosen, under the National Industrial Recovery Act, I think we have to take them. There is no objection to that.

The CHAIRMAN. I do not think you would be compelled as matter of law. Do you, under that law?

Mr. SMITH. Well, we are not compelled to make an agreement with them.

The CHAIRMAN. No, but I think under the law, as the evidence is presented to us, and which has been actually exercised, certain employers have said, "We are not compelled to talk or bargain with you. We do not care to discuss the matter."

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Mr. SMITH. Well, we talk. I have in mind one plant that has four labor organizations in it, and we talk with every one of the four. That may be an illustration of our general attitude.

The CHAIRMAN. I hope that the case I have cited would be an exception to the rule for I assume most employers are willing at least to start negotiations with representatives of their employees.

Mr. SMITH. Certainly. But accepting that construction of the statute, the bill proposes to protect the right of collective bargaining. My point is that the right of collective bargaining upon the part of the employe is interferred with and will be interfered with, not always by the employer, but very often by rival labor organizations.

Now, a specification that loads penalties, as this act does, upon one who violates the terms of the statute, must have some reasonable relation to the purposes of the statute. Is it possible that we ought to here enact a law that penalizes the employer for violating the right of collective bargaining and leaves the labor organization who today is the one with whom the difficulty very largely arises—leave them free from all penalties? Our position is that the law, if it is to be valid either in the courts or at the bar of public opinion must lay the penalties upon everyone who interferes with the right of collective bargaining. Only then could it be just.

The committee may have had its attention called to a very interesting statement that was made by Mr. Richberg last October to Mr. Johnson, when he went to Illinois to investigate the miners' strike, and where he comments on that very phase of the situation. The difficulties there were between rival organizations, and the war was in progress.

Now, the next thing is in the procedure before the board. If you remember, the penalties that we can be subjected to, as has been pointed out—I am not certain what that word "judgment" means, but certainly very serious penalties can be enforced against us, and yet, in the procedure, there need be no sworn testimony, it may all be hearsay and the findings of the board are final, in fact, and cannot be disputed; and nowhere in the proceeding is there a jury trial or even the ordinary method of court procedure. It seems if we are going to be penalized for offenses and the board would be given the very broad authority that is given here, that there ought to be some of the ordinary safeguards in the organization of that tribunal; but the most difficult thing to harmonize with the principle of the agreement, and absolutely impossible to harmonize with the principles of the statute, and absolutely impossible to harmonize with the agreement that we have entered into with the President of the United States is that very singular clause that gives to the labor organization the right to bring about a complaint, and that is a curious thing. The complainant, under this statute, never may be identified. He does not lodge the complaint. The board, which is itself investigator, prosecutor, and judge, lodges the complaint—extraordinary procedure, going further than the Federal Trade Commission ever went—that the labor organization that lodges that complaint indirectly and invokes the processes of this board, can, at any time it is dissatisfied with the progress that is being made, or with the order of this board, or of the district court of the United States, can resort to trial by combat and force and call a strike.

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In this letter that I refer to of Mr. Richberg, he protested most vigorously against the right of the employees to have a strike while they were appealing to the National Labor Board, as constituted under the N.R.A. Is it possible that the law would tolerate a strike, upon the very grounds upon which the labor organization has invoked the jurisdiction of this Board? Certainly there is nothing in the President's agreement that told us that you must sit down with your employees and attempt by conciliation and agreement to eradicate your differences, but at any moment they have the right to walk out of your plant and to tie it up.

I think they accepted that agreement on the understanding that that right was gone. Certainly, whether the right was gone, it would be a violation of the President's understanding, so that the great difficulty here with this act is its unfairness. It lodges a penalty upon the employer but not upon others that might be guilty of exactly the same offenses against the right of collective bargaining.

It sets up a tribunal with no sort of legal machinery or means to reach a judgment, which may be a serious judgment, and one that is developed on a complaint made by the tribunal itself, the facts of which cannot be reviewed in a court. I question very much that it conforms to any constitutional guaranty in that respect, but, finally, it says to the labor organization: "Yes; we have created the tribunal. It can enforce its decree against the employer. You can lodge the complaint, and at any time that you desire to abandon those proceedings, all the remedy of the strike, with all the so-called 'difficulties to the public', are open to you."

It substitutes force for ordinary legal procedure, and certainly it leaves our industry in a most anomalous situation. Endeavoring in good faith to reach a settlement of our difficulties by conciliation and agreement, we are faced with the possible enactment of a law that levies heavy penalties upon us. It might be said, as I have seen it said in the papers that there should be some teeth in this right of collective bargaining, but, at the moment, when we attempt by peaceful means, to reach a satisfactory agreement, outside of the imposition of any statutory right, it is certainly no time for either the labor organization or governmental authority to show its teeth, to compel obedience to an agreement that we freely entered into and intend loyally to abide by.

I have called attention to certain other things in the bill that are not detailed. I would like to file a statement covering them.

The CHAIRMAN. We will be very glad to have it.

Mr. SMITH. I have it here.

The CHAIRMAN. Thank you, Mr. Smith.

(The clerk will here insert in the record the printed brief of the National Automobile Chamber of Commerce, several copies of which are returned herewith.)

Mr. SMITH. And, if it is not already in the record, I would like to have this text of the President's agreement placed in the record for your reference.

The CHAIRMAN. We will be pleased to have it in the record. That may be inserted.

Mr. SMITH. This copy I have here has printed on the outside of it, "To all Chevrolet employees." All the members of our industry transmitted a copy verbatim without comment of the entire text of

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the President's statement, to every employee in the industry, and this is typical copy of that.

(The paper referred to is as follows:)

President Roosevelt's statement detailing settlement of the automobile dispute:

After many days of conferring in regard to the principles of employment in the automobile industry the following statement covers the fundamentals:

1. Reduced to plain language section 7–A N.I.R.A. means—

A. Employees have the right to organize into a group or groups.

B. When such group or groups are organized they can choose representatives by free choice and such representatives must be received collectively and thereby seek to straighten out disputes and improve conditions of employment.

C. Discrimination against employees because of their labor affiliations, or for any other unfair or unjust reason is barred.

A settlement and statement of procedure and principles is appended hereto. It has been offered by me to, and has been accepted by, the representatives of the employees and the employers. It lives up to the principles of collective bargaining. I hope and believe that it opens up a chance for a square deal and fair treatment. It gives promise of sound industrial relations. It provides further for a board of three of which the chairman will as a neutral represent the Government.

In actual practice details and machinery will of course have to be worked out on the basis of common sense and justice, but the big point is that this broad purpose can develop with a tribunal which can handle practically every problem in an equitable way.

Settlement of the threatened automobile strike is based on the following principles:

1. The employers agree to bargain collectively with the freely chosen representatives of groups and not to discriminate in any way against any employee on the ground of his union labor affiliations.

2. If there be more than one group each bargaining committee shall have total membership pro rata to the number of men each member represents.

3. N.R.A. to set up within 24 hours a board, responsible to the President of the United States, to sit in Detroit to pass on all questions of representation, discharge, and discrimination. Decision of the board shall be final and binding on employer and employees. Such a board to have access to all pay rolls and to all lists of claimed employee representation and such board will be composed to—

A. A labor representative.

B. An industry representative.

C. A neutral.

In cases where no lists of employees claiming to be represented have been disclosed to the employer, there shall be no basis for a claim of discrimination. No such disclosure in a particular case shall be made without specific direction of the President.

4. The Government makes it clear that it favors no particular union or particular form of employee organization or representation. The Government's only duty is to secure absolute and uninfluenced freedom of choice without coercion, restraint, or intimidation from any source.

5. The industry understands that in reduction or increases of force, such human relationship as married men with families shall come first and then seniority, individual skill, and efficient service. After these factors have been considered no greater proportion of outside union employees similarly situated shall be laid off than of other employees.

By outside union employees is understood a paid-up member in good standing, or anyone legally obligated to pay up. An appeal shall lie in case of dispute on principles of paragraph 5 to the board of three.

In all the hectic experience of N.R.A. I have not seen more earnest and patriotic devotion than has been shown by both employers and employees in the automotive industry. They sat night and day for nearly 2 weeks without a single faltering or impatience. The result is one of the most encouraging incidents of the recovery program.

It is a complete answer to those critics who have asserted that managers and employees cannot cooperate for the public good without domination by selfish interest.

In the settlement there is a framework for a new structure of industrial relations—a new basis of understanding between employers and employees. I would

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like you to know that in the settlement just reached in the automobile industry we have charted a new course in social engineering in the United States. It is my hope that out of this will come a new realization of the opportunities of capital and labor not only to compose their differences at the conference table and to recognize their respective rights and responsibilities but also to establish a foundation on which they can cooperate in bettering the human relationships involved in any large industrial enterprise.

It is peculiarly fitting that this great step forward should be taken in an industry whose employers and employees have contributed so consistently and so substantially to the industrial and economic development of this country in the last quarter century. Having pioneered in mechanical invention to a point where the whole world marvels at the perfection and economy of American motor cars and their widespread ownership by our citizens in every walk of life, this industry has indicated now its willingness to undertake a pioneer effort in human engineering on a basis never before attempted.

In the settlement just accomplished, two outstanding advances have been achieved. In the first place, we have set forth a basis on which for the first time in any large industry a more comprehensive, a more adequate, and a more equitable system of industrial relations may be built than ever before. It is my hope that this system may develop into a kind of works council in industry in which all groups of employees, whatever may be their choice of organization or form of representation, may participate in joint conferences with their employers and I am assured by the industry that such is also their goal and wish.

In the second place, we have for the first time written into an industrial settlement a definite rule for the equitable handling or reductions and increases of forces. It would be ideal if employment in all occupations could be more generally stabilized, but in the absence of that much-desired situation, if we can establish a formula which gives weight to the human factors as well as the economic, social, and organizational factors in relieving the hardship of seasonal layoff, we shall have accomplished a great deal. My view, and that of both employees and employers, is that we have measurably done so in this settlement.

This is not a one-sided statute and organizations of employees seeking to exercise their representative rights cannot at the same time be unmindful of their responsibilities.

Industry's obligations are clearly set forth and its responsibilities are established. It is not too much to expect organizations of employees to observe the same ethical and moral responsibilities even though they are not specifically prescribed by the statute. Only in this way can industry and its workers go forward with a united front in their assault on depression and gain for both the desired benefits of continually better times.

The CHAIRMAN. The committee meeting stands adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 4 p.m., Wednesday, Apr. 4, 1934, the further hearings of the Committee on Education and Labor were adjourned until Thursday, Apr. 5, 1934, at 10 a.m.)

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TO CREATE A NATIONAL LABOR BOARD

THURSDAY, APRIL 5, 1934

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The committee met, pursuant to adjournment, at 10 a.m., in room 318, Senate Office Building, Washington, D.C., Senator David I. Walsh (chairman) presiding.

Present: Senators Walsh (chairman), Erickson, and Davis.

The CHAIRMAN. The committee will come to order. Arthur H. Young.

STATEMENT OF ARTHUR H. YOUNG, VICE PRESIDENT, UNITED STATES STEEL CORPORATION

The CHAIRMAN. Mr. Young, give your full name, please.

Mr. YOUNG. Arthur H. Young.

The CHAIRMAN. Your residence?

Mr. YOUNG. Montclair, N.J.

The CHAIRMAN. Your profession or occupation?

Mr. YOUNG. Vice president, United States Steel Corporation.

The CHAIRMAN. And the industrial plants are located where?

Mr. YOUNG. Pretty much all over this country, sir.

The CHAIRMAN. How many employees have you?

Mr. YOUNG. Approximately 200,000.

The CHAIRMAN. You are here representing the United States Steel Corporation?

Mr. YOUNG. Yes, sir.

The CHAIRMAN. The committee will be pleased to receive your views respecting this proposed legislation.

Mr. YOUNG. I speak in opposition to the bill now under consideration by your committee because of reasons and facts arising out of more than a quarter century of experience in personnel and industrial relations work. Starting quite young in the steel mills, at the age of 15, I was working 12 hours a day, proud of the fact that I was paid 15 cents an hour—$1.80 a day—the then wage of an adult common laborer. For many years I worked with my hands, as a leverman, rigger, and roll hand. Later I moved over and slowly upward on management's side, in charge of safety and employment activities in the South Chicago plant of the Illinois Steel Co. and later as director of the American Museum of Safety; then 6 years as manager of industrial relations for the International Harvester Co., and for nearly 10 years just prior to February 1 (when I went on my present job) I was in charge of Industrial Relations Counselors, Inc. This is a non-

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profit organization, underwritten by Mr. John D. Rockefeller, Jr., engaged in research and consulting service on all matters having to do with human relationships in industry.

I make this personal mention in the hope that my reasons for opposing this bill may have, for your committee, a validity not less than the arguments presented in favor of the bill by persons less intimately in contact with the everyday relationships between employers and employees.

I find the bill in its entirety both vicious and undesirable because of its fundamental philosophy as to the certain and complete clash of interest as between employer and employee. Consequently, all of its provisions assume a regimentation of each side into a warring camp, and intercourse between the two is referred to in terms and implications of perpetual strife. This is in utter disregard of progress toward complete cooperation and the abolition of small remaining areas of conflict as between the worker and his boss that has distinctively and uniquely characterized industrial relations in the United States of America. Only a few years ago our practices and procedures were eagerly investigated by official governmental missions from England, Australia, France, and other countries, who sought "the secret of high wages." I had the honor to meet and confer with those missions, and found that government, labor, and employer members alike were astounded at the favorable conditions of employment and remuneration of our workers, and likewise at the comradery existing between men and management in our shops. Hardwood floors, bathrooms, central heat, automobiles and telephones, children at college, and paid holidays for workers were startling enough to these visitors, but the "Hello, George", "Howdy, Pete" exchanged between the workmen in the shop and the officials who were conducting the visitors were to them almost incomprehensible.

This is not the picture of the American workingman that has been painted for you by certain preceding witnesses, proponents of this bill, but it is the situation described by competent, impartial, painstaking seekers of facts after thorough-going investigation, and officially stated in the reports of the British group known as the "Sir William MacKenzie Mission" and the "Australian Labor Mission" in 1927.

I do not mean to infer that the dark picture of starving, downtrodden workers, oppressed by the iron heel of a heartless employer was necessarily dishonestly portrayed by these other witnesses. May I call your attention to the fact that an analysis of the 32 persons who appeared as proponents of this bill shows the following interesting classification:

Sixteen were labor-union officials; 10 were Government officials having to do with labor problems, ranging from a Cabinet member and a Senator of the United States to members of N.R.A. regional boards; 6 were college professors.

Aside from the significant fact that not a single witness before your committee as a proponent of this bill appeared as an employer or as an employee, although the measure is the most important ever considered for legislative enactment as affecting the relationship between labor and capital, this classification suggests that their aggregate evidence is perhaps naturally, but not artificially, colored.

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The CHAIRMAN. I recall that Mr. Dennison of the Dennison Co. appeared before the committee after the opposition had commenced and indicated that with an amendment to the bill he would favor it.

Mr. YOUNG. Yes, sir. My transcript of the evidence indicated that Mr. Dennison appeared before you as a member of the industrial advisory groups.

The CHAIRMAN. You are correct. I had forgotten that.

Mr. YOUNG. It is a well known fact that professional groups engaged in restricted specific research problems tend naturally to lose perspective and to view all phenomena exclusively in the terms and equations of their special interests. Thus, we find Dr. Jung writing of society in general in terms that apply solely to the clinics of abnormal sexology in which he is immersed, and we find surgeons, lawyers, scholars, and others regarding the mine-run of common folk only as the distorted image appears in the restricted sphere of that part of the spectrum in which they are interested. Labor-union officials, N.R.A. officials (and particularly members of regional boards), and many college professors are interested only in symptoms of class warfare, and of evidences of discord, and of coercion. Such evidence does exist, but it is the exception and not the general rule. And particularly is it so in this great country of ours where, uniquely, the personnel of management is so largely composed of men and women who have "come up from the ranks"—they have, themselves, worked with their hands; they know "What's on the worker's mind", not from books, but from experience. They know, too, that in consonance with our traditions, men want to work with and not for their boss, and that government without the consent of the governed is no government at all.

It was out of this contact and this understanding that "works councils" were first formed, nearly 20 years ago, and it is the reason for their success and their steady increase.

A preceding witness has spoken disparagingly of the "Rockefeller plan" and not only implied that it was conceived as a subterfuge and operated as a shame but that it has been rejected by the employees of the Colorado Fuel & Iron Co. because of their newly acquired freedom under section 7 (a) of the N.I.R.A. No one who has ever dealt with Mr. Rockefeller could ever question his absolute sincerity of purpose and act. I think you Senators would agree to that. And I can state with authority that the plan is still in effect in the mines and the plants of the Colorado Fuel & Iron Co. To say otherwise is untrue (p. 746, Ward and Paul).

The services of the members of the committee are so vital to the Nation on other matters I cannot presume to take up your time with a complete argument for and description of the employee representation or works council form of joint relationships in industry. Witnesses that follow me, workers who are now managers, and workers who are spokesmen for their fellow employees, working under that system will convince you of their sincerity of purpose, their freedom of action and speech, and the beneficial results obtained. But I feel I must correct untruthful statements and improper implications made before your committee regarding the plans in effect in the subsidiary plants of the United States Steel Corporation.

These plans are all very similar in fundamental structure. In that respect they do not differ from the bylaws and the charters issued to

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the hundreds of local unions by the international union headquarters. But these plans are similar after the representatives revise them—they are in effect only after the representatives of the employees and of the management have mutually agreed on their fairness and their practicality. In that respect their sameness is distinguished from the uniformity of union bylaws. A further point of difference with trade-union bylaws is that they are in effect only after a majority of the employees at any plant, voting by secret ballot in an election exclusively conducted by the employees, elect to accept them as the basis for their joint relationships in all matters of mutual interest, far transcending the ordinary scope of so-called "collective bargaining."

I brought with me copies of the plan that was in effect in our various companies and subsidaries thereof. They are too numerous, perhaps, to offer to go into the record.

The CHAIRMAN. Are all of the plans similar?

Mr. YOUNG. The plans are basically similar, sir. They differ in wording. Their important and general provisions are practically the same. The list of the companies is not attempting to list the various plans, as within a company we may have different plans, but it is simply listing the companies to which these plans apply. They are the American Bridge Co.——

Senator DAVIS. Just a minute, Mr. Young.

Mr. YOUNG. Yes, Mr. Senator.

Senator DAVIS. How many of the workers of the United States Steel Corporation belong to these several organizations which you have mentioned?

Mr. YOUNG. They are in effect at all plants. They apply to all of the workers who are not of a supervisory grade or have the power to hire and fire, so far as the employee group is concerned.

Senator DAVIS. How many of the workers belong, that is, that really pay their fees and pay their dues, if they collect dues—how many of them are members that sign the roll, so to speak?

Mr. YOUNG. There are no membership dues; there is no form of organization to which they subscribe as members. They indicate their participation in the plan by participation in the nominating ballots and election ballots annually, by contact with their representative at town meetings of departments held after the regular representative meetings have been held.

Senator DAVIS. Do you know the number that belong to these different organizations?

Mr. YOUNG. More than 160,000 of the employees have voted recently at elections for the acceptance of this plan.

Senator DAVIS. Do they have regular meetings?

Mr. YOUNG. The employee representatives meet regularly once a month by themselves, or specially if they desire, and alternately with representatives of the management.

Senator DAVIS. Could you give me the number that attend these meetings? Is there anyway of ascertaining that?

The CHAIRMAN. Of the employee members you mean?

Senator DAVIS. Yes; of the employee members.

The CHAIRMAN. What percentage of the employee representatives attend the meetings?

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Mr. YOUNG. One hundred percent of the representatives attend the meetings. The meetings vary in size from a minimum of 5 to a maximum of 30, and I should say the only reason for absence would be illness or unavoidable absence on the part of employee representatives.

Senator DAVIS. We will take as illustration that there are 500 employees doing a particular line of work. Do you know the percentage of those men, those workers, that attend monthly meetings?

The CHAIRMAN. I understand they do not have monthly meetings, Senator.

Senator DAVIS. I thought he said they did have monthly meetings.

The CHAIRMAN. The representatives, what they call the executive committee of the workers, have monthly meetings.

Mr. YOUNG. Yes, sir.

The CHAIRMAN. The workers meet once a year and elect their representatives.

Mr. YOUNG. Yes, sir.

The CHAIRMAN. Outside of that, I understand there are no meetings of the workers.

Mr. YOUNG. Except as a representative may desire to get his particular constituency together. He may do that at the noon hour. It may be arranged for that to be done on company time, if the matter is important.

The CHAIRMAN. Senator Davis would like to know what percentage of the employees vote at these annual meetings.

Mr. YOUNG. All employees have the right to vote. There are no restrictions on the right of suffrage. The participation in the balloting may range anywhere from 85 percent to a full 100 percent of the employees affected in balloting for their representatives.

The CHAIRMAN. And the organization consists then of officers or representatives elected by the employees, who carry on, who hold monthly meetings and carry on negotiations relating to collective bargaining with the employers or with the management of each plant?

Mr. YOUNG. Yes, sir.

The CHAIRMAN. The organization of employees is a voluntary organization; it consists of an opportunity given the employees to vote, to choose their own representatives, and are called together when their representatives, for some reason or other, desire to confer with them as a body?

Mr. YOUNG. Yes; if you would add to that the fact that they have accepted by their own secret balloting the form of organization of the employees and the manner of their collective bargaining and contact with their management as indicated in these plans, it would be a fair picture of the organization.

The CHAIRMAN. I would like to know about that. There has been, at some time, an opportunity given to the employees in each plant to determine the kind of organization they want?

Mr. YOUNG. Entirely so, sir.

The CHAIRMAN. And they did that by ballot?

Mr. YOUNG. They did that by ballot. In February, last month, meetings were held at practically all of our plants. We had then had 7 or 8 months' experience under a plan that was adopted last June. It was indicated that there were changes necessary to bring that plan into consonance with the procedure that had developed, and therefore

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we held, as the management, conferences with our employee representatives then serving, and modified the plan, made substantial amendments. Some of them were at the behest of the management. For instance, we had felt that interpreting some of the rulings of the Government labor boards it would be desirable not to have restrictions on the qualifications for representation, that rather than requiring an employee to be a year in service and be of a certain age, and an American citizen, that the employees might be free to choose whom they wished as their representative. That was a modification that the management felt desirable to bring up in consonance with the interpretation we made of Government rulings. I might say we had to argue rather long with the employee representatives who felt that they wanted to have the 5-year employment service qualification.

The original plan provided it might be terminated by either side at the expiration of the effectiveness of the N.I.R.A. The employees wanted some assurance of its permanency, and the plan has been amended so that it now can only be amended by a majority vote of the employees. There was a full discussion by the representatives. Then after the agreement was had between them and the management, the revised plan was submitted with the recommendation of the representatives to the employees for their acceptance or rejection by secret ballot, and the election was exclusively under the control of the employees.

The CHAIRMAN. Did you have any organization in these plants, or was there an organization in these plants prior to last June?

Mr. YOUNG. Practically none; no, sir; except our employees have good fellowship clubs in nearly all the plants.

The CHAIRMAN. Has the passage of the National Recovery Act and the provision in it known as section 7 (a) led to the establishment of these organizations of your workers?

Mr. YOUNG. I should think quite definitely, Senator, that it precipitated the action that had been under consideration and discussion for sometime prior to that.

The CHAIRMAN. You may proceed.

Mr. YOUNG. As an indication of the complexity of our problem of contact with employees, may I say that these plans are in effect in practically all plants of the American Bridge Co., the American Sheet & Tin Plate Co., the American Steel & Wire Co., the Carnegie Natural Gas Co., the Carnegie Steel Co., Illinois Steel Co., National Tube Co., Oliver Iron Mining Co., Pittsburgh & Conneaut Dock Co., Pennsylvania & Lake Erie Dock Co., Tennessee Coal, Iron & Railroad Co., the Lorain Steel Co., Universal Exploration Co., Pittsburgh Limestone Co., Universal Atlas Cement Co., Columbia Steel Co., Federal Shipbuilding & Dry Dock Co., and Oil Well Supply Co., all of which are subsidiaries of our corporation, and I have already referred to the recent referendum vote where this revised plan was submitted and was adopted by a very substantial majority.

Now, many statements have been made before your committee to the effect that these elections are dominated and controlled by the employer, or that the employees have no opportunity of considering alternatives. It may be of interest to you to know that, preceding these elections at many of our plants, the employees were circularized with literature of the type I hand you herewith. In some cases the

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employees were solicited by opponents of the employee-representation plan in a house-to-house canvass. At one plant the handbills were showered from an airplane especially chartered for the purpose. It would seem to me that the indications point to more coercion and "sales opposition" from outside agencies than to pressure from the employer. As a matter of fact, our supervisors were specifically ordered not to make any attempt to unfairly influence the attitude of the employees.

Now let me call your attention to some principal features of these plans, mostly common to all:

ART. III, SECTION 1. No restriction or limitation in the choice of representatives, save only that they may not be company officials.

SEC. 2. All employees enrolled on the company's pay rolls are entitled to vote.

ART. IV. All nominations and elections are by secret ballot under the direction of the committee on rules, which is composed exclusively of employees.

ART. VII. The employee representatives meet regularly or in special meetings by themselves at least once a month, and alternately in joint council with management.

SEC. 5. Time necessarily lost in performance of duties is compensated by the company.

ART. IX. A direct, logical, and efficient machinery for the adjustment of any matter is provided. Failing conclusive action of the sequential steps in adjustment, arbitration may be had. Neither the right to strike, nor the right to close the plants is abridged.

ART. XI. Amendments relating exclusively to employee organization or procedure are exclusively the function of the employee representatives.

ART. XII. The plan can be terminated only by the employees.

Is there anywhere in this document anything that smacks of coercion, intimidation, domination? Absolutely no. But you will find evidence of initiation, participation, influence in the formation and compensation for services performed. And, gentlemen, these acts, the ordinary, everyday intercourse between men and management who mutually respect each other, are, under the terms of this bill, made "unfair labor practices", for which I and my fellow managers and our associates in these works councils may be punished by fine or imprisonment.

I refer to "my associates in these works councils", and, gentlemen, I would say that term is truly descriptive of the status to which American workers and their employers have risen. Just as the original concept of the work relationship back in the Dark Ages was that of owner and slave, and gradually evolved to that of master and servant, so, too, has it in turn evolved to one of associates, jointly interested in a common enterprise for their mutual advantage.

This is no new or original concept. In the report of the President's second industrial conference, published March 6, 1920, appears this paragraph:

It is idle wholly to deny the existence of conflicting interests between employers and employees. But there are wide areas of activity in which their interests coincide. It is the part of statemanship to organize identity of interest where it exists, in order to reduce the area of conflict. The representative principle is needed to make effective the employee's interest in production, as well as in wages and working conditions. It is likewise needed to make more effective the employer's interest in the human element of industry.

Gentlemen, this was a mandate, nearly 15 years ago, from the Secretary of Labor and an associated group of civic-welfare-minded gentlemen, that directed management to exercise their function of leadership in this endeavor. And it is a legitimate, everyday func-

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tion—this assumption of leadership. The employees of the iron and steel industry to testify before you later, will, I am sure, confirm their desire and expectancy of the exercise of this function by their managers. There is no resentment on their part, no suspicion of hidden coercion or intimidation or subterfuge, because the initiation of these endeavors finds its fruit in a mutually satisfactory agreement on policies. Should the manner of execution of these policies be challenged—that is, if the executive function of management, which no sound or sensible plan of employee representation would seek to lodge in any other than an exclusively management personnel, were to improperly administer policies jointly agreed upon, then full and adequate and convenient machinery of adjustment is provided in the plan. In other words, these plans seek to share on an equal basis between employees and employer the legislative and judicial functions and necessarily, the executive function lies solely with management. These plans are not "soldiers and sailors councils" to run industry; they are joint conferences to insure that management shall govern in all matters of mutual interest by policies and practices jointly approved—that government shall be by consent of the governed.

Section 5 of the bill before your committee would, in our opinion, destroy irreplaceably, immediately the contact which has been made necessary by our present-day large-scale operations of industrial units.

The substitute which is so obviously sought by the bill is the archaic structure of national and international trade unions. There was an age when, perhaps, the interest of a craftsman lay more closely with his fellow-craftsmen throughout the world than it did with his fellow-employees of a plant or company. Granted that modern industrial methods have somewhat destroyed the pride of individual craftsmanship—personally I do not subscribe in full to this tenet—there are other and as powerful incentives today to full personal satisfaction of the worker, and his common interest and mutuality of concern lie principally with his coworkers of all ranks in his plant and his company.

From the list of organizations affiliated with the American Federation of Labor, I cull the following, with which it might be expected employees of a steel company would be expected to ally themselves, were such form of organization to be their choice, or required of them by legislation——

International Union of Blacksmiths, Drop Forgers, and Helpers; International Brotherhood of Boiler Makers, Iron Ship Builders and Helpers; International Union of Bricklayers, Masons, and Plasterers; United Brick and Clay Workers of America; International Association of Bridge and Structural Iron Workers; International Union of Building Service Operators; Brotherhood of Railway Carmen of America; United Brotherhood of Carpenters and Joiners of America; Brotherhood of Railway Clerks; Retail Clerks International Protective Association; International Coopers Union of North America; International Federation of Technical Engineers, Architects, and Draftsmen's Unions; International Brotherhood of Electrical Workers of America; International Union of Operating Engineers; International Brotherhood of Firemen and Oilers; International Brotherhood of Foundry Employees; Hod Carriers, Building and Common Laborers

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Union of America; Hotel and Restaurant Employees and Beverage Dispensers International Alliance; International Association of Machinists; Amalgamated Association of Iron Steel and Tin Workers; Brotherhood of Maintenance of Way Employees; National Organization of Masters, Mates, and Pilots of America; Amalgamated Meat Cutters and Butcher Workmen of America; International Association of Sheet Metal Workers; International Union of Mine, Mill, and Smelter Workers; United Mine Workers of America; International Molders Union of North America; Oil Field Gas Well and Refinery Workers of America; Brotherhood of Painters, Decorators, and Paper Hangers of America; Pattern makers League of North America; Plumbers and Steam Fitters of the United States and Canada; International Union of Metal Polishers; International Union of Quarry Workers; International Union of Seamen; Switchmen's Union of North America; International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers; Order of Railroad Telegraphers; Telegraphers Union of North America.

Long and confusing as is this list of American Federation of Labor affiliates, it does not include such independent national trade unions as Automobile Workers Industrial Union; Amalgamated Society of Carpenters and Joiners; Amalgamated Food Workers; National Beneficial Association of Marine Engineers; Marine Workers Industrial Union; Mine, Oil and Smelter Workers Industrial Union; Brotherhood of Railroad Trainmen; American Federation of Railroad Workers; Railroad Yardmasters of America; Brotherhood of Railroad Signalmen of America; American Train Despatchers Association, nor the multiplicity of departments, State branches, and city central branches of the American Federation of Labor.

To simply recite the names of these unions is to envision overlapping confusion and jurisdictional disputes and yet to leave wide gaps of coverage for thousands of employees for whom no unions are formed. And not all of our tradesmen are eligible to some of the unions listed, because of "aristocracy" traditions and class and color distinctions prevailing in the unions. Gentlemen, it seems to me that a bona-fide plan of employee representation as a medium of contact between men and management is both logical and necessary.

And, gentlemen, these arguments apply not only to the provisions of title I of the bill—they show with equal force the disordered and impractical devices proposed in title II. And, thus directed, they are reinforced by the logic and the directness of the recent statement by the President of the United States in his settlement of the automobile industry's difficulties.

And they are further reinforced by the indications of direct and localized control proposed last week by the Federal administrator of recovery.

The undesirability of the provisions of section 202 (a), setting up a permanent staff of the proposed board without the protection of civil service laws or of the Classification Act of 1923 as amended have been adequately argued before the committee. I call your attention to another point in this section (lines 11 to 15, inclusive, p. 8):

> The board is directed to retain the officers and employees as created by the President on August 5, 1933, to the fullest extent consistent with the efficient functioning of the board.

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I assume that, were the arguments for a judicially constituted rather than a partisan board, as applied to section 201, to prevail, this clause of 202 (a) should receive your consideration in connection therewith.

In the light of the facts and realistic stiuations, the impending activities of more logical application, known to your committee, and the many unwholesome features of this bill, clearly it must be regarded as an attempt to impede, for partisan preference, the steady progress toward recovery, and to intrude legislation of a type and a purpose that must be repugnant to all employers and employees and to all who have the well-being of the Nation in their hearts and minds.

It is a homely, but peculiarly applicable, simile to liken the development of sound and harmonious relationships between men and management to the working out of a sound and harmonious relationship in marriage between a man and his wife. Both depend upon a mutual conviction that their interests in life are largely in common, at least to the extent that they should form an alliance. Both require for fulfillment at least a mutual respect of the contracting parties for each other, and preferably real admiration. Both require that out of this commonalty of interest and mutual respect there shall develop a give-and-take attitude in their every-day association together, and both require that out of the alliance there shall develop for each part an increasing enrichment of their lives and social and economic security.

It is in the way that a man and a woman, by themselves, acquire these attributes that, in 99 out of a hundred cases, a satisfactory and happy married life emerges. No impersonal third party can lay down arbitrary laws or rules that will govern the result—it is the way in which they live together, day by day, that determines. Occasionally a friend of one or both may offer helpful advice or admonition. Even under the flag of friendship, the overtures may be hazardous—inevitably it is so if the counselor be "suspect" by either party.

Just so is it in the case of industrial relations. Men and management, convinced of their mutuality of interest, maintaining a reciprocated respect for each other, determine by their every-day conduct the wholesomeness of the union. Occasionally a friend, known to them and accepted by them (such as their code authority) may offer suggestions or reproof to good advantage—but it is no more possible to set up a national board to lay down the law and the gospel to all employees and all managers in all industries in this far-flung land of ours, than it is to set up a similar board to minister to all married couples.

It is trite to say that the human factor is the factor of greater importance in industry. Capital without labor is helpless, and labor without capital would relegate our civilization to barbarism. Clearly, the two must serve in common, and with mutually purposeful direction. By and large, the facts prove that this is being done and by devices of proven value. To ignore the significant results already achieved—to cast aside our present media of accomplishment and substitute new and untried and unwholesome methods is not the part of statesmen. And, gentlemen, this is a problem for statesmen, for in this admittedly industrial nation of ours he who contributes to the solution of the problems of industrial relationships

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contributes to the economic, political and social well-being of the Nation no less than those who seek by statutes of morality or international treaties of amity so to do.

Gentlemen, I am sure we would all agree that the one great and all-sufficing rule for the conduct of human relationships in industry is that precept given us by the Carpenter of Nazareth—"As ye would that men should do unto you, do ye also unto them." Many men try honestly and conscientiously today to apply this rule, but frequently it fails, not because of the rule, but because of mortal man's limitations. The Giver of the Golden Rule was divine. He knew that which men would wish done unto them. Many of us can only make our best guess as to what others would wish done unto them. Perhaps the rule should, for us, be written, "As ye would that men should do unto you, were ye such as they do ye also unto them."

Gentlemen, I say to you in all the sincerity at my command, the works council plan is likewise a supplement to the Golden Rule. It is the device by which management may substitute for its best guess as to the desires of the employees the direct and certain voice of the chosen representatives of the employees, and likewise may the employees have available to them the voice and counsel of the employer.

There are those of us in both the ranks of management and workers who truly believe in and seek to apply the Golden Rule, and, for them employee representation more surely spells accomplishment.

The CHAIRMAN. May I ask you one question?

Mr. YOUNG. Certainly, sir.

The CHAIRMAN. I think I understand the system that obtains in each individual plant in an organization of employees, and I notice from this printed plan that you submitted to us that a majority of the employees can abolish the organization or plan at any time they choose.

Mr. YOUNG. Yes, sir.

The CHAIRMAN. Is there any superorganization which unites the organization of workers?

Mr. YOUNG. There is a provision for an annual conference by the representatives in the various companies.

The CHAIRMAN. But there is no means of joint action, or no supercouncil where there are representatives of all the employees in all the plants of the United States Steel Corporation?

Mr. YOUNG. No, sir; there is no such provision.

The CHAIRMAN. Of course, your plants all are different, they engage in making different products?

Mr. YOUNG. There is a wide diversity of interest of product. We have steamships, railroads, quarries, and all sorts of mines and mills.

The CHAIRMAN. We thank you for your presentation.

Mr. YOUNG. Thank you, sir.

The CHAIRMAN. Mr. Hook.

STATEMENT OF CHARLES R. HOOK, PRESIDENT AMERICAN ROLLING MILL CO., MIDDLETOWN, OHIO

The CHAIRMAN. Your full name?

Mr. HOOK. Charles R. Hook.

The CHAIRMAN. Your residence?

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Mr. HOOK. At Middletown, Ohio.

The CHAIRMAN. Your occupation?

Mr. HOOK. I am president of the American Rolling Mill Co.

The CHAIRMAN. Is that a subsidiary of any other corporation or company?

Mr. HOOK. No; that is the parent company. It has a few subsidiaries.

The CHAIRMAN. Where are your subsidiaries located?

Mr. HOOK. There is one at Kansas City, Mo., but the main plants are located at Middletown, Ohio; Zanesville, Ohio; Columbus, Ohio; Butler, Pa., and Ashland, Ky.

The CHAIRMAN. How many employees have you in all these plants?

Mr. HOOK. At the present time there are exactly 10,421 on the pay roll.

The CHAIRMAN. Is that normal?

Mr. HOOK. Sir?

The CHAIRMAN. Is that a normal number.

Mr. HOOK. Well, that is almost up to the 1929 number, which was the top figure of employment, we reached almost 11,000, and we are now 10,421.

The CHAIRMAN. What do you manufacture in these different plants?

Mr. HOOK. Sheets and light plates particularly, some car wheels. We have a plant manufacturing wrought steel car wheels at Butler, Pa.

The CHAIRMAN. We will be pleased to hear you.

Mr. HOOK. In order to save the time of yourselves and those who follow me, gentlemen, I will try and stick as closely as possible to the text which I have before me.

I appreciate very much the privilege of appearing before you and presenting to you my views with respect to Senate bill 2926 and the situation I am confident will arise as the result thereof, if this legislation should pass.

I cannot agree, gentlemen, with the wording of section 2 under title I, which says:

> The tendency of modern economic life toward integration and centralized control has long since destroyed the balance of bargaining power between the individual employer and the individual employee, and has rendered the individual unorganized worker helpless to exercise actual liberty of contract, to secure a just reward for his services, and to preserve a decent standard of living, with consequent detriment to the general welfare and the free flow of commerce. Inadequate recognition of the right of employees to bargain collectively through representatives of their own choosing has been one of the causes of strikes, lockouts, and similar manifestations of economic strife, obstructing commerce and imperiling the general welfare.

I wish to state again, gentlemen, that I cannot agree with that statement, and I hope to prove to you by what I shall say hereafter that I am correct in my position.

The CHAIRMAN. In other words, you think the bill is founded on a false premise.

Mr. HOOK. I do. From a very careful study of the bill and my own experiences as a workman—by the way, Senator Davis, I apprenticed as a roller turner for a year and a half in a tin mill when we did not have cradles to lift the rolls out, we took them out with boards and crowbars. You probably remember those days.

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From a careful study of the bill and my own experiences as a workman, foreman, superintendent, and manager over a period of 35 years, during 28 years of which I was closely and directly connected with negotiations and operations under agreements with the Amalgamated Association of Iron, Steel, and Tin-Plate Workers, I am convinced that the effect of this bill would be to destroy the very thing it is declared to be its policy to accomplish, namely, the establishment of industrial peace and industrial democracy. I feel that I am qualified to speak from the standpoint of first-hand experience and knowledge.

In the summer of 1904, after I had occupied the position of superintendent of a sheet-steel plant for more than 6 months and had reached very definite conclusions with respect to employee and employer relationship under a national union agreement, I came to the conclusion that there was only one way to prevent grievances and disputes and that was by local plant representation of employees elected by the employees of that plant by secret ballot and dealing with the management immediately and with real knowledge of the facts.

The local lodge of the Amalgamated Association of Iron, Steel and Tin Plate Workers had what was known as a "mill committee", but I soon found that this mill committee was nothing but a grievance committee. It operated only when, as, and if there was a grievance. I believed then, as I do now, most sincerely, that there is only one way to prevent grievances and disputes and that is for management to meet with representatives of their own employees regularly and in the spirit of friendship and good will to discuss and consider problems of mutual interest, in order that they might arrive at fair and sound conclusions before situations develop to the point that they become grievances and lead to disputes.

Gentlemen of the committee, I deplore the title of the act. We don't want labor disputes. What we want and what I claim has been fast developing in this country as a result of the sound plans of employee representation, is a modern method for the careful consideration and study, by those vitally and directly interested, of the many problems of our complex industrial life; first, so that safe and good working conditions are provided and, secondly, that every possible encouragement be given to individual initiative and quality production through adequate and fair compensation.

From the summer of 1904, when I asked the union to elect the first committee, termed for the want of a better name "an advisory committee", until this day, there has been elected each year, by secret ballot, committees in every department of every plant——

The CHAIRMAN. What year is that?

Mr. HOOK. 1904, almost 30 years.

The CHAIRMAN. Do you find much rivalry among the men in aspiring to be chosen as representatives in your plants?

Mr. HOOK. They consider it quite an honor, Senator; yes, they do.

The CHAIRMAN. But they would announce themselves as candidates, like they do in politics, and they would do some lobbying among the workman?

Mr. HOOK. I presume they do. I am not familiar with what they do themselves, but I know in a number of cases that there have been tickets in the departments and great interest shown in the election of

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their particular ticket. I hope you will ask me anything you wish as I go along.

The CHAIRMAN. Yes.

Mr. HOOK. From the summer of 1904, when I asked the union to elect the first committee, termed for the want of a better name "an advisory committee", until this day, there has been elected each year, by secret ballot, committees in every department of every plant, with the result that in the 33 years of the existence of the company which it is my privilege to represent, we have never, to my knowledge, had a dispute with our own employees which has resulted in the loss of 1 day's work in any department in any plant.

When this plan of negotiation was started, now almost 30 years ago, I met with the committee every Saturday night for some weeks, as the result of which we found that many of the problems which we were inclined to believe were of serious import as judged from our side of the fence, became insignificant and easily settled when understood one by the other. Time does not permit to give you the hundreds, yea, thousands, of illustrations which I might present for your thoughtful consideration, which would show that, as a result of this method of fair and considerate conference by the management and the employee representatives, means of increasing compensation were found through the joint effort to reduce cost and improve product.

The successful operation of this plan of employee representation was accomplished, not because of, but in spite of, the national union with which we had had an agreement in one department of one plant for some 28 years.

Undoubtedly the most conclusive evidence that our men believed they had been fairly dealt with, and had confidence that this same fair dealing would be continued, occurred in the Middletown sheet-mill department in September 1929. The Middletown plant had been completely rebuilt and a continuous sheet mill installed, entirely changing the manufacturing processes in the sheet-mill department. In June of that year an agreement had been prepared and submitted to the sheet-mill men. It was finally adopted and signed by the advisory committee of that department, as at that time no one, including the Amalgamated officials themselves, was able to write a scale adaptable to the new process. Officials of the Amalgamated Association were present when the new agreement made direct with our men was signed. Some 60 days after the new plan had been in successful operation, those officials returned to Middletown and endeavored to get the workers in that department to abrogate their agreement, which they refused to do.

On the 18th day of September the national officials of the Amalgamated Association of Iron, Steel, and Tin Workers ordered the men to strike, and to their everlasting credit, be it said, the men were faithful to their trust and refused to go out. These men had been loyal members of this national union for many years, but this attempt of their national officials to bring dishonor to them settled the fate of the Amalgamated Association in our plant.

Of 690 men then employed, only 37 failed to be at their posts at their appointed time. Six of these 37 were either sick and could not come out or were kept from coming out for some unavoidable reason, and these 6 came to work the next day. Ten of the 31 who failed to appear applied for reinstatement within 10 days. Not one

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minute's time or one ton of production was lost, although every method of abuse and coercion known to the professional union organizer was used to get these men to break their agreement and leave their jobs.

A complete history of this experience, contained in a statement issued by our men at the time, is attached hereto as evidence of the truth of this statement by me. An affidavit sworn to by members of the committee with whom the agreement was made is also attached. I leave this for your careful consideration. Here is the agreement, a copy of the agreement, a photostat of the committee's signatures, the original signatures, and here are statements, affidavits stating that this is a true copy of the original statement.

There is one thing here, Senator, that I would like to call your attention to, because it relates very definitely to the bill which is before you. Under section 5, one of the paragraphs, I will not turn to it now, there is a statement that if favor if used it would be an unfair practice. Let me call your attention to the fact that when we changed this process entirely and put in labor-saving machinery, it meant the elimination of quite a number of jobs; in fact, there were about 1,200 men in the department at the time when we were using the old hand mills, Senator, and we anticipated that when the new machinery was installed that there might be as high as five or six hundred men eliminated, so we adopted a plan of separation allowance, and so stated to the men ahead of time, before the introduction of the machinery began, and we said this, that wherever a man's job was eliminated and we could not find another job for him, we would give to him an allowance, a separation allowance equal to one half a month's wages for each year's service, not to exceed 6 months. Under that plan some men got as high as $1,900.

On that plan we paid out $357,000 in separation allowances. That was going on when this discussion between our own men and their union was up. I advised with our counsel and the counsel told me that if this bill had been in effect at the time and we tried to influence our men to stick by their agreement, which we would have a perfect right to do, the existence of this plan for taking care of them during the transition period might easily be construed as a favor and we would be prohibited from continuing it.

I might call to your attention a number of other things of the same kind which we would be prohibited from at this time also.

The CHAIRMAN. Would you like to have that go in the record?

Mr. HOOK. If you please, sir.

The CHAIRMAN. At this point or at the close of your remarks?

Mr. HOOK. It does not make any difference, but I think it really ought to go in at this point.

The CHAIRMAN. That may be done.

(The paper referred to by Mr. Hook is as follows:)

AFFIDAVIT

STATE OF OHIO,

Butler County, ss:

Personally appeared before me M. E. Sarchet, a member of the finishing mill department of the American Rolling Mill Co., Middletown, Ohio, who, first being duly sworn, deposes and says that he is, at the present time employed by the American Rolling Mill Co., Middletown, Ohio, in the finishing mill department, and he has been in its employ for 22 years.

The affiant further states that he knows the pamphlet entitled "Statement of the Members of the Crews of the Finishing Mill Department of the Middletown

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Plant, the American Rolling Mill Co., dated November 21, 1929" is a true statement of facts as presented at that time. Furthermore, affiant states that the facsimile of all signatures attached to this statement is a true reproduction of the actual signatures of the committee which drafted this statement.

The affiant further states that he was a member of the above-mentioned committee and signed the statement at that time.

Further the affiant saith not.

M. E. SARCHET.

Subscribed and sworn to before me a notary public, in and for aforesaid county this 20th day of March 1934 at Middletown.

[SEAL] W. M. HUNTZINGER, *Notary Public.*

My commission expires December 28, 1934.

AFFIDAVIT

STATE OF OHIO,
Butler County, ss:

Personally appeared before me Fred Palmer, a member of the finishing mill department of the American Rolling Mill Co., Middletown, Ohio, who, first being duly sworn, deposes and says that he is, at the present time, employed by the American Rolling Mill Co., Middletown, Ohio, in the finishing mill department, and he has been in its employ for 33 years.

The affiant further states that he knows the pamphlet entitled "Statement of the Members of the Crews of the Finishing Mill Department of the Middletown Plant, the American Rolling Mill Co., dated November 21, 1929" is a true statement of facts as presented at that time. Furthermore, affiant states that the facsimile of all signatures attached to this statement is a true reproduction of the actual signatures of the committee which drafted this statement.

The affiant further states that he was a member of the above-mentioned committee and signed the statement at that time.

Further the affiant saith not.

FRED PALMER.

Subscribed and sworn to before me a notary public, in and for aforesaid county, this 20th day of March 1934, at Middletown.

[SEAL] W. M. HUNTZINGER, *Notary Public.*

My commission expires December 28, 1934.

AFFIDAVIT

STATE OF OHIO,
Butler County, ss:

Personally appeared before me, Charles E. Rossfeld, a member of the finishing mill department of the American Rolling Mill Co., Middletown, Ohio, who first being duly sworn, deposes and says that he is, at the present time, on the pay roll of the American Rolling Mill Co., Middletown, Ohio, and he has been in its employ for 24 years.

The affiant further states that he knows the pamphlet entitled "Statement of the Members of the Crews of the Finishing Mill Department of the Middletown plant, the American Rolling Mill Co., dated November 21, 1929" is a true statement of facts as presented at that time. Furthermore, affiant states that the facsimile of all signatures attached to this statement is a true reproduction of the actual signatures of the committee which drafted this statement.

The affiant further states that he was a member of the above-mentioned committee and signed the statement at that time.

Further the affiant saith not.

CHARLES E. ROSSFELD.

Subscribed and sworn to before me, a notary public in and for aforesaid county, this 20th day of March 1934, at Middletown.

[SEAL] W. M. HUNTZINGER, *Notary Public.*

My commission expires December 28, 1934.

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AFFIDAVIT

STATE OF OHIO,
Butler County, ss:

Personally appeared before me D. B. Lauderback, a member of the finishing mill department of the American Rolling Mill Co., Middletown, Ohio, who, first being duly sworn, deposes and says that he is, at the present time, employed by the American Rolling Mill Co., Middletown, Ohio, in the finishing mill department, and he has been in its employ for 32 years.

The affiant further states that he knows the pamphlet entitled "Statement of the Members of the Crews of the Finishing Mill Department of the Middletown Plant, the American Rolling Mill Co., dated November 21, 1929" is a true statement of facts as presented at that time. Furthermore, affiant states that the facsimile of all signatures attached to this statement is a true reproduction of the actual signatures of the committee which drafted this statement.

The affiant further states that he was a member of the above-mentioned committee and signed the statement at that time.

Further the affiant saith not.

D. B. LAUDERBACK.

Subscribed and sworn to before me, a notary public in and for aforesaid county, this 20th day of March 1934 at Middletown.

[SEAL] W. M. HUNTZINGER, *Notary Public.*

My commission expires December 28, 1934.

AFFIDAVIT

STATE OF OHIO,
Butler County, ss:

Personally appeared before me R. Van Buskirk, a member of the finishing mill department of the American Rolling Mill Co., Middletown, Ohio, who, first being duly sworn, deposes and says that he is, at the present time, employed by the American Rolling Mill Co., Middletown, Ohio, in the finishing mill department, and he has been in its employ for 19 years.

The affiant further states that he knows the pamphlet entitled "Statement of the Members of the Crews of the Finishing Mill Department of the Middletown Plant, the American Rolling Mill Co., dated November 21, 1929" is a true statement of facts as presented at that time. Furthermore, affiant states that the facsimile of all signatures attached to this statement is a true reproduction of the actual signatures of the committee which drafted this statement.

The affiant further states that he was a member of the above-mentioned committee and signed the statement at that time.

Further the affiant saith not.

R. VAN BUSKIRK.

Subscribed and sworn to before me, a notary public in and for aforesaid county, this 20th day of March 1934, at Middletown.

[SEAL] W. M. HUNTZINGER, *Notary Public.*

My commission expires December 28, 1934.

STATEMENT OF THE MEMBERS OF THE CREWS OF THE FINISHING MILL DEPARTMENT OF THE MIDDLETOWN PLANT OF THE AMERICAN ROLLING MILL CO.

On January 5, 1929, the hot-mill employees of the Middletown plants of Armco held a meeting with the management in the auditorium of the general office building. At this meeting the management announced their plan to gradually discontinue the operation of the old method sheet and jobbing mill and to introduce the new method of semicontinuous process.

We were told that for some months, probably at least a year, the new process would be in the experimental stage and constant changes would be made both in machinery and manner of work, and because of this condition it would be impossible to work out tonnage rates until the machinery and method of work was standardized. The management representatives stated they would be agreeable to pay a day rate which would be comparable to what we had earned for similar work under the tonnage scale.

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Mr. Stringham, speaking for the company, presented the day rates which had been figured out from our actual earnings during the year 1927. We were given every opportunity to ask questions and discuss the matter, which we did. The rates proposed seemed fair to us. At this January 5 meeting we were told there were 1,157 tonnage men then working in the sheet- and jobbing-mill departments and that when all the new mills were installed probably more than 500 men would be required on these new mills; in other words, there would be about 600 men who would have to be laid off or other jobs found for them at Middletown or other plants.

The company announced the plan for paying the lay-off bonus to those for whom a job could not be found and for those who might be offered a job and not want to take it. The company's statement regarding this matter was as follows:

1. We do not expect to be able to find jobs for employees who have been with the company for less than 1 year.

2. Jobs will be found on new finishing mills for as many men as are necessary for their operation and every effort will be made to place as many as possible in other positions in our various plants. The employment department will have charge of placing men.

3. Men who are not placed will be given half pay for as many months as they have years of service but not more than 6 months and with a minimum of $50 per month.

4. No special payment as outlined in paragraph 3 will be given to men who are placed in any of our plants.

5. Any man who accepts a position in our plants, but decides within a period of 30 days that for some reason he is not able to go on, will receive the payments as outlined above.

6. Continuous service with full insurance will be carried for the period mentioned in paragraph 3 on all men who are not placed in our plants.

7. If an employee gives up a job and receives payment as above and then starts with the company later his special payment will cease and he will not receive them again if he should leave the company's employ a second time.

8. If requested, the company will be glad to assist in placing men with other companies if positions cannot be found in our plants.

As far as we know, no steel company ever before paid hot-mill men half pay for 6 months after a plant was shut down or after men had been laid off permanently.

We sent for Vice President Miller, who came to Middletown the middle of January. He met with Mr. Stringham, Mr. Danford and members of our committee. He was permitted to go through the mill and see everything for himself, and, before he returned to Pittsburgh, agreed that the rates were fair and was perfectly satisfied for us to continue to work for these rates. These same rates are still in existence, except that the company corrected one or two inequalities which we brought to their attention.

These rates were satisfactory to the national officers and were never questioned by them until after they tried to get us to break our agreement, on September 18, in order to save their own faces with certain manufacturers.

On May 23, President Tighe, Vice President Miller, and Secretary-Treasury David J. Davis were shown through the Butler plants of Armco by Mr. Stringham, so they could see with their own eyes the operations of the full continuous process. If that complete process were installed at Middletown only a handful of men would be required; this we knew from the report of a large committee of our Middletown men who were permitted to go to Butler early in the spring.

When President Tighe visited Butler, Mr. Stringham gave Tighe a letter from Mr. Hook, inviting Tighe to Middletown for a conference with Armco officials. The letter said:

"We have a number of things that we want to discuss with you in order to give you a complete understanding of our situation here, and I would greatly appreciate it if you will arrange to come to Middletown to see me as soon as your conference at Atlantic City is over.

On May 27 notices were posted in the new mill by the company calling a meeting of all the members of the crews in the auditorium of the general office building on Saturday, June 1. Four hundred and fifty-seven hot-mill men attended this meeting. At this meeting a copy of a letter addressed to the hot-mill advisory committee and members of the crews was given to each man who attended the meeting. This letter stated the company's position regarding the negotiation in the future of agreements covering wages and working conditions. That part of the letter relating to this particular matter said:

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"Pressure of competition has forced, and the ingenuity of the management and the workmen has developed, a new system for the manufacture of light plates, sheets, tin plate, and flat-rolled products generally.

"The American Rolling Mill Co. no longer operates jobbing mills, and will shortly discontinue the operation of sheet mills in Middletown, Ohio. Sheets and light plate are now being produced by a new system of finishing, which only slightly resembles the system which it is replacing. The system, though firmly established, is still in need of rapid and continued improvement and development. This new idea, once grasped by competition will be quickly accepted and the originators will be in arrears if they rest on their laurels and do not continue to forge ahead.

"Operating under a continually changing system of manufacture it is obviously impossible to sign a permanent scale and it is equally impossible to continue to negotiate a scale in the traditional manner. A discussion of a scale in the traditional manner forces the management and the men to disclose valuable trade secrets to their mutual disadvantage.

"The system of paying a tonnage rate had many advantages and many disadvantages, but it is recognized as a satisfactory method of paying a fair day's wages for a fair day's work as soon as an operation is standardized and sufficient experience has been accumulated to determine what constitutes a fair output.

"The men and management of the American Rolling Mill Co. have had satisfactory evidence of the beneficial results that have been obtained here by practical cooperation of employee with employer. There is no better demonstration needed that honorable treatment between employee and employer will be rewarded in full measure, and that they are amply protected from injustice from any source through the workings of the advisory committee.

"In view of the foregoing we are willing to formulate an agreement with our finishing mill employees through their advisory committee and suggest the following wording:

"'Recognizing the futility of trying, at the present time, to make a scale of wages based on tonnage performance, the undersigned agree that changes in number of men on crew, wages and working conditions on the finishing mills in Middletown, Ohio, will be made by mutual agreement between representatives of the company and the finishing mill advisory committee.

"'The American Rolling Mill Co. agrees that these wages and working conditions shall be commensurate with the labor performed and responsibility of the various positions on the crew, and in harmony with the policy covering "compensation" as expressed in the resolution of its board of directors adopted December 12, 1919, a copy of which resolution is attached hereto.'"

In explanation of the company's position in this matter, Mr. Hook made the following statement:

"Our relations with the officers of the Amalgamated Association have always been most friendly and we thoroughly understand the restrictions with respect to their authority in formulating scales in other than the conventional manner.

"We have no quarrel with the Amalgamated Association, and we have no objection to anyone who so desires, to belong to the association.

"The reason that we must adopt the plan of formulating an agreement with our own advisory committee is, as stated, that the conventional system of signing an agreement with the Amalgamated Association would put us in a position where we and you would be forced to expose our trade secrets for discussion before competitive manufacturers and their employees.

"The Amalgamated Association has lodges in other places where neither the national lodge nor the local lodge has a signed agreement with the company, and all we ask is that our men and ourselves be placed in the same position; however, we are perfectly willing, as stated in our letter, to formulate an agreement with our own employees through their own advisory committee."

Many of the men asked questions and complete and frank explanations were made by the company's representatives.

On Tuesday, June 11, President Tighe and Vice President Miller arrived in Middletown, and, with the officers of Miami Valley Lodge No. 20, conferred with Mr. Hook, Mr. Tytus, and Mr. Stringham. Mr. Hook explained the situation here at Middletown to Mr. Tighe and Mr. Miller, giving them copies of the letter he addressed to the hot mill advisory committee and members of the crews, dated May 27, making the same explanation to Mr. Tighe and Miller that was made to the employees of the finishing mill at the meeting which was held in the aduitorium of the general office building on June 1.

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President Tighe explained that he could make no decision as to the official attitude of the Amalgamated Association, as he would have to report back to his international committee, who would make the final decision as to what their attitude would be. Later, President Tighe, Vice President Miller, and Secretary-Treasurer Davis returned to Middletown with the executive board. A meeting was held, which was attended by Mr. Hook, Mr. Tytus, and Mr. Stringham; and Mr. Hook again explained the company's position exactly as he had explained it to us at the general meeting on June 1.

After the executive board and President Tighe returned to Pittsburgh, Vice President Miller and Secretary-Treasurer Davis remained in Middletown and were present at all conferences held with the company representatives.

During the conference held at the office of the company on June 29 with the company representatives, in addition to Miller and Davis and the officers of Miami Valley Lodge No. 20, there were about 20 of the old members present, as the committee did not want to take the responsibility alone for any final settlement.

During the discussion on Saturday, Mr. Hook stated that he was willing that the old advisory committee should continue to function for the year ending June 30, 1930, and wrote the following letter, addressed to the hot mill advisory committee:

"In further reference to our letter of May 27, 1929, addressed to the hot mill advisory committee and members of the crews, wish to advise that in formulating the agreement proposed in that communication we are willing that the present advisory committee, which was elected by Miami Valley Lodge No. 20, shall continue to function for the year ending June 30, 1930, and will be privileged to itself fill any vacancies in its membership during that period."

The regular plan in existence in the plant was to elect advisory committees in the various departments in November of each year, and this letter was written so that a new advisory committee would not have to be elected either immediately or in November; and that point was made perfectly clear.

Secretary Davis submitted several proposals of agreements to be signed by the American Rolling Mill Co. and the officers of Miami Valley Lodge No. 20, and each time he was told very frankly and in our presence that under no circumstances would the company sign a general agreement with the Amalgamated Association or a local agreement with Miami Valley Lodge No. 20, and that any agreement that would be signed would be between the members of the crews of the finishing-mill department, represented by the finishing mill advisory committee.

Discussions were continued between our committee and the company officials until Sunday noon, at which time the company officials agreed that they would add to their proposal the following paragraph:

"It is also understood and agreed that, if, during the above-mentioned period, July 1, 1929, and June 30, 1930, the old method of operating any part of the mill shall be resumed, the book scale as agreed to by the Western Sheet & Tin Plate Manufacturers and the Amalgamated Association of Iron, Steel, and Tin Workers of North America shall be paid."

This seemed to be as good an agreement as we could possibly secure, and when we left the office we went uptown, where it was agreed by us if the words, "and signed by the American Rolling Mill Co." would be added, we would agree to it.

We telephoned to the company officials to come to the Manchester Hotel and the agreement was submitted to them with the above words added. A discussion took place regarding what was to be considered "old method" and the company officials said they would sign the agreement provided it was understood that the crop ends from universal plate was not to be considered sheet bars. They told us also at the same time that if they signed the agreement it meant old central works would never start again.

That was agreeable to our committee, and Mr. Tytus, for the American Rolling Mill Co., added the following words, "Unless using sheet bars a mill shall not be classed as old method." The following agreement was signed and dated June 29, 1929, because we did not want it dated on Sunday:

MEMORANDUM OF AGREEMENT

Between the finishing mill advisory committee, representing members of the crews of the finishing mill department at the Middletown plants of the American Rolling Mill Co., and the American Rolling Mill Co., of Middletown, Ohio:

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Recognizing the futility of trying, at the present time, to make a scale of wages based on tonnage performance, the undersigned agree that changes in number of men on crew, wages, and working conditions on the finishing mills in Middletown, Ohio, will be made by mutual agreement between representatives of the company and the finishing mill advisory committee.

The American Rolling Mill Co. agrees that these wages and working conditions shall be commensurate with the labor performed and responsibility of the various positions on the crew, and in harmony with the policy covering, "compensation" as expressed the resolution of its board of directors adopted December 12, 1919, a copy of which resolution is attached hereto.

It is also understood and agreed that, if, during the above-mentioned period July 1, 1929, and June 30, 1930, the old method of operating any part of the mill shall be resumed, the book scale as agreed to by the Western Sheet and Tin Plate Manufacturers and the Amalgamated Association of Iron, Steel, and Tin Workers of North America shall be paid, and signed by the American Rolling Mill Co. Unless using sheet bars a mill shall not be classed as old method.

The American Rolling Mill Co., by Charles R. Hook, vice president, John B. Tytus, William Stringham.

Finishing Mill Advisory Committee, by C. M. Downey, M. E. Sarchet, Nicholas Stahl, Fred Palmer, Charles E. Rossfeld, E. W. McCracken, G. A. Offenhauer, William McIntosh, Frank Kontnier, D. B. Lauderback.

The best evidence that this agreement was approved by Vice President Miller and Secretary-treasurer Davis is the fact that they wanted to sign the agreement with our company and the company officials refused to permit them to sign for the reasons that have already been stated.

No question regarding our wages, the agreement, or the universal plate, which we were working, was raised by any national officer of the Amalgamated Association until after we had been working for at least 2 months under the agreement which was perfectly satisfactory to the parties interested.

We understand that there was a meeting of the executive committee of the Western Sheet and Tin Plate Manufacturers Association for the bimonthly settlement shortly after the first of September and that President Tighe was called on the carpet about the Middletown agreement.

Suddenly the national officers, particularly Vice President Miller and Secretary-treasurer Davis, who were present when the agreement was made, became very indignant and claimed that the agreement was violated by the company. Our committee met with the company officials at their office on Monday, September 9, and after a thorough discussion of the matter every member of our committee, with the exception of one man, who said he could not remember the discussion regarding the universal plate, agreed that there had been no violation of the agreement and our committee so told the national officers. However, the national officers demanded that the officers of Miami Valley Lodge No. 20 present to the company a scale book for signature, which we did and which was, of course, refused.

The committee which signed the agreement again met with company officials Sunday morning, September 15. During the discussion the company officials stated that inasmuch as there was some misunderstanding regarding the use of the universal plate, they would be willing to take all such material off the mills and would call a meeting of all the members of the finishing-mill department crews on the following Saturday, September 21, 1929, for a final discussion and settlement of this point.

After the meeting of the committee on September 15, the following statement was issued and signed by the committee and posted in the mill:

To the members of the crews of finishing-mill department, the American Rolling Mill Co., Middletown, Ohio:

The statement has been made by certain parties that the agreement signed by us dated June 29, 1929, has been violated.

In our opinion there has been no violation of the agreement.

Since there is some misunderstanding regarding the use of universal plate on mills nos. 21 to 26 we have asked the management to discontinue the use of universal plate on these mills until a definite and final understanding on this point can be reached.

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The management has agreed to call a meeting of all the men of the finishing-department crews on Saturday morning, September 21, 1929, for a final discussion on this point.

For the finishing mill advisory commission:

C. M. DOWNEY.	WM. MCINTOSH.
M. E. SARCHET.	G. A. OFFENHAUER.
FRED PALMER.	FRANK KONTNIER.
CHAS. E. ROSSFELD.	D. B. LAUDERBACK.

Regardless of the fact that the company was willing to discontinue the use of this universal plate, which was absolutely the only matter which up to that time about which there was any discussion, and in face of the fact that the committee which made the agreement in a signed statement said, in their opinion, there had been no violation, yet the national officials insisted on issuing an order calling on the men to cease work at 8 o'clock on Wednesday, September 18.

On Tuesday night after the order had been issued, President Tighe asked Downey, Sarchet, and Rossfeld to go out to Mr. Stringham's house and tell him of the action that had been taken. These three men went to Franklin and got Mr. Stringham out of bed in order to acquaint him with the facts. After a discussion of the situation, Mr. Stringham called Mr. Hook at his home. Mr. Hook got out of bed and invited Mr. Stringham and the committee to come to his house and talk the matter over, which was done. When they got to Mr. Hook's house, Mr. C. W. Verity, the treasurer and assistant general manager of the American Rolling Mill Co., was also there. Mr. Hook had sent for him. The whole situation was gone over again, the company officials taking the position that all they asked was that the agreement which had been made in good faith should be kept.

Downey, Sarchet, and Rossfeld asked Mr. Hook if he and Mr. Verity and Mr. Stringham would be willing to go down to the hotel and talk this matter over to see if there wasn't something which could be done so that the order which the national officials had issued would be withdrawn. Mr. Hook and the other officials agreed to do this and Mr. Hook added that they would be willing to do anything in the world that was honorable and right to prevent an open rupture with the Amalgamated Association officials.

The committee and the company officials reached the Manchester Hotel just a couple minutes before midnight. President Tighe was in his room and came downstairs immediately. Vice President Miller and Secretary Davis were not around the hotel nor could they be reached by telephone at any of the places at which they could be expected to be. One of the members of the committee got in his automobile and went every place in town that he could think of to find them, yet they could not be found. The company officials waited at the hotel until 2:20 a.m., when the company officials, the committee and President Tighe himself gave up hope of finding the two men, who should have been where lodge officials could have conferred with them.

Let Miller and Davis make their own explanations as to where they were.

We made our agreement in good faith and in the presence of Vice President Miller and Secretary-Treasurer Davis, and as honorable men there was nothing for us to do but to continue to work and keep inviolate our agreement, and this we have done and will continue to do.

In the October 3 issue of the Amalgamated Journal the following statement was made:

"Latest reports concerning the Middletown situation show the company is only partially succeeding in its attempt to operate its plant."

This statement, like many other lies that have appeared in the Journal since that time, was to deceive you and the public. Every one of the 20 mills started up exactly on time and each turn from that time until this has continued to do so. A check-up of each crew 24 hours after the attempt was made to get us to stop showed that out of 690 men employed in the mills at that time only 37 men were not on the job at the time they were supposed to be there, 6 of these 37 were either sick, and could not come out or were kept from coming out for some unavoidable reason and these six came to work the next day, leaving but 31 men out of 690 who were not at work 48 hours after the national officials of the Amalgamated Association attempted to bring dishonor to us by getting us to cease work and break our agreement, made in good faith and with their approval.

We have the names of 10 other men who went to the management within 10 days after the 18th and asked for reinstatement, so that really only 21 out of 690 were willing to follow the national officers of the Amalgamated Association and bring dishonor to themselves as individuals.

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As had been planned before the national officers issued the order to us to break our agreement, a meeting of the members of the crews was held on Saturday morning, September 21, and after a general discussion the following resolution was presented by Arnold Skinner, seconded by J. C. Davis, and passed by the unanimous vote of all present:

"*Resolved*, That the actions of the finishing mill advisory committee, which signed the agreement with the American Rolling Mill Co. June 29, 1929, be and hereby are approved.

"In order to eliminate any misunderstanding, the employees of the finishing mill department in meeting assembled Saturday, September 21, 1929, authorize and instruct the advisory committee to add to the agreement of June 29, 1929, the following paragraphs:

"It is understood and agreed that this agreement is with the members of the crews of the finishing-mill department and no other organization or individuals.

"It is understood and agreed that no material rolled on the new continuous mill is to be considered sheet bars."

This action settled for all time the question as to whether or not the committee which signed the agreement of June 29, had properly interpreted that agreement.

Beginning with the issue of September 26 and continuing to this date, the Amalgamated Journal has continued to publish lies and hurl abuse upon heads of men who for years were its most loyal supporters and whose advice, if followed by the national officials, would have kept the good name of the Amalgamated Association clean and clear.

We want to repeat that the question of wages in connection with the situation at Middletown was not raised by us and was only brought up as a subterfuge after Vice President Miller and Secretary-Treasurer Davis saw that we would not break our agreement to save their faces. As we have stated before, Vice President Miller agreed that tonnage rates could not be set for the various jobs under the constantly changing conditions (which are still going on) and that the day rates which were offered by the company were perfectly fair.

The statement that the company is paying "starvation wages in Middletown" is a lie.

The wages we received will compare favorably with the earnings of the men in any plant in this country doing similar work; furthermore, regardless of how small the tonnage is we get full day's pay. There are several cases where the crews were sent home on account of a breakdown but we got our full day's wage just the same. There was one case where a poker at the gas producer burnt off, shutting off the gas supply, after the mill had made only five pairs, yet all members of the crew got their full day's wage.

We have the satisfaction of knowing that we have done what is right and have kept the good name of ourselves and our families clean.

The facts and statements herein published are given to you in order that you may know the truth and be guided accordingly.

The following committee, consisting of one man off of each crew, is authorized to make this statement for all of the members of the crews of the finishing mill department at Middletown, Ohio:

Arthur B. Anderson, finisher no. 1; Forrest L. Barnhardt, roller no. 2; Frank Kolker, heater no. 3; Thos. B. Bailey, roller no. 5; Ebb Gibbs, roller no. 4; W. I. Chamberlin, roller no. 6; W. E. Hayes, finisher no. 7; George J. Krebs, heater no. 8; R. J. Kalbfleisch, heater no. 9; Chas. J. Long, finisher no. 10; O. M. Hayes, heater no. 7; Herman Reuter, finisher no. 21; Chas. Berhany, finisher no. 13; Floyd Ballard, roller no. 22; Marion Meyer, finisher no. 10; Burns Mount, finisher no. 1; Edward Wagner, catcher no. 6; D. B. Lauderback, roller no. 1; Fred Palmer, heater no. 9; Chas. E. Rossfeld, roller no. 21; R. Van Buskin, roller no. 2; M. E. Sarchet, roller no. 14; Harry Pell, roller helper no. 2; Wm. T. Buehl, heater no. 13; Roy Weamer, roller no. 26; Chester Francis, heater helper no. 25; Raymond Williams, roller no. 25; Wallie Waddell, catcher no. 3; Albert Wardlow, roller no. 8; Howard Whitley, spell hand no. 14; Fred Smith, finisher no. 4; J. W. McGriff, heater no. 5; Geo. Mullin, heater no. 9; John Henry, catcher no. 12; George Conrad, roller no. 11; Peter Kurtz, roller no. 1; Chas. Downs, roller helper no. 2; Esau Moore, roller helper no. 3; Fred McCoy, roller helper no. 6; J. Kiesewetter, heater no. 22; W. Mullen, heater helper no. 2; Ira Shane, heater no. 21; Andy Argo, finisher no. 14; Charley Roberts, matcher no. 14; Wm. Willis, finisher no. 21; Chas. Downey, roller; Ed. McCracken, roller no. 12; Jack Price, roller no. 13; Al Offenhauer, roller no. 11; Walter Stoutenboro, roller no. 22; Walter M. Butler, heater no. 25; Ed. Stewart, matcher no. 24; George W. Horn, heater helper no. 23; Charles H. Bolton, finisher no. 11.

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November 21, 1929.

The following committee, consisting of one man off of each crew, is authorized to make this statement for all of the members of the crews of the finishing mill department at Middletown, Ohio:

D. B. Lauderback; Fred Palmer; Chas. E. Rossfeld; R. V. Buskink; M. E. Sarchet; Arthur B. Anderson, finish no. 1; Forrest L. Barnhart, roller no. 2; Frank Kolker, heater no. 3; Thos. B. Bailey, roller no. 5; Ebb Gibbs, roller no. 4; W. I. Chamberlain, roller no. 6; W. C. Hayes, finisher no. 7; George J. Krebs, heater no. 8; R. J. Kaltflush, heater no. 9; Chas. J. Long, finisher no. 10; O. M. Hayes, heater no. 7; Herman Reuter, finisher no. 21; Chas. Brehany, finisher no. 13; Floyd Ballard, roller no. 22; Marion M. Eyer, finisher no. 10; Burns Mount, finisher no. 1; Edward Wagner, catcher no. 6; Walter Woddell, catcher no. 3; Harry Pell, catcher no. 2; Albert Warelloar, roller no. 8.

Howard Whitley, spell hand no. 14; Fred Smith, finisher no. 4; J. W. McGriff, heater no. 5; Geo. Mullin, heater no. 9; John Henry, catcher no. 12; George Conrad, roller no. 11; Peter Kurtz, roller no. 1; Chas. Douns, roller helper no. 2; Esau Moore, roller helper no. 3; Fred McCoy, roller helper no. 6; J. Kiesewetter, heater no. 22; W. Mullen, heater helper no. 22; Ira Shane, heater no. 21; Wm. Willis, finisher; Andy Argo, finisher no. 14; Charley Roberts, moulder no. 14; Wm. T. Buehl, heater no. 13; ——— ———, no. 26; Peter Francis, helper no. 25; Raymond Williams, no. 25; Walter M. Butler, heater, no. 25; ——— ———, watchman no. 24; George W. Hom, heater helper no. 23; Charles H. Bolton, finisher no. 11.

Mr. HOOK. There has been much said, and the reason I present this evidence is to impress you with the fact that the employee representatives have exercised their own judgment and are not unduly influenced by the management. Bargaining means influencing one way or the other. You cannot sit down to the table and discuss, even the United States Senate would disagree with each other on some things, I know, and we cannot help from doing that in the province of industry, and that is all that bargaining is.

Senator DAVIS. What tonnage do you get out of the newer strip mill?

Mr. HOOK. The new strip mill?

Senator DAVIS. Yes.

Mr. HOOK. Well, I noticed the other day that they got out about 1,800 tons in 24 hours, in strips.

Senator DAVIS. At what gage?

Mr. HOOK. Sixteen gage. Well, the average of that gage would be about 11, at that time.

Senator DAVIS. What is the width of the strip that you produce in Middletown?

Mr. HOOK. We are producing a strip of the width of 48 inches. We can go a little wider, we can go to 51 now.

Senator DAVIS. And how long?

Mr. HOOK. That strip runs about 250 feet long.

Senator DAVIS. What is the weight of the billet?

Mr. HOOK. Five and a half tons. That is the ingot. We roll direct from the ingot to the strip, first through the blooming mill and then through the continuous mill.

Senator DAVIS. How many men are employed in the strip mill?

Mr. HOOK. Well, I have got the employment record over here I have not got it in my head, Senator. I cannot tell you right offhand.

Senator DAVIS. That one particular strip mill displaces how many of the old-time sheet mills?

Mr. HOOK. Mr. Simpson, Administrator of the Steel Code, has just asked me for an exhibit on that, which we are studying. You have to take into consideration that while you may reduce the number

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of men in the sheet mill you are increasing the number of men in the maintenance department—the electrical department. We are not finished with that study and I would hesitate to make a statement to you that was not based on the exact facts. I think probably that for an equal tonnage—and this is only a guess and I hope you will not hold me to it—but assuming the production of 20,000 tons of sheets by the old method, bloomed down into a sheet bar, and the sheet bar going to the furnace and the sheet mills finally, as compared to the rolling of the strip mill, then through the pack furnace, with tables in front and a catcher behind the rolls, and all the most modern conveniences, I should judge there would probably be a reduction of 45 percent in the total number of men from beginning to end. But that is a pure guess, Senator. We are at work on that very study now for the National Recovery Administration. I would be very glad to send it to you.

Senator DAVIS. Thank you. I will appreciate it if you send it to me.

Mr. HOOK. I will be delighted to. Here is another piece of evidence of coercion, gentlemen——

Senator DAVIS. May I ask you about this pressure that is on the machine that takes the sheet at 15 gage and probably run it to 28 gage or 38 gage, I would like to know what pressure there would be on the cold rolling of that sheet.

Mr. HOOK. The screw pressure?

Senator DAVIS. Yes.

Mr. HOOK. Maybe we have got some engineers here that can answer that right offhand. I cannot tell you offhand. I would be guessing at that. It is tremendous.

Senator DAVIS. It is more than a million pounds pressure then, isn't it?

Mr. HOOK. Yes. For instance, we are dealing now in split thousands, when we are measuring the difference between the rolls, or in the thickness of the sheet which we are trying to develop, or the shape of the piece when engaged in the pass. Now, you know when we used to have a one-sixty-fourth fit on the mills we felt that was a pretty good fit. Now we are dealing with split thousands. In other words, we have a push button on the side of the housing and when they push the button the motor revolves a certain number of revolutions and the screws go down a quarter of a thousandth. That is pretty fine work.

Senator DAVIS. I was told the other day by an authority on that particular subject, the man that does the stretching from 15 to 30 gage, and the maximum of 40 gage, that with the new improvement in the bearings they will operate with 40 percent less power.

Mr. HOOK. Well, there are a good many calculations being made, Senator, but I would have to refer you to the engineers for technical data of that kind. I am very glad to send them to you, though; I would be glad to send you any of those things that you would like to have. Shall I proceed?

The CHAIRMAN. You may proceed.

Mr. HOOK. I want to introduce into the record at this time, gentlemen, another exhibit in the form of a letter which came to me voluntarily. I know there are many who say that is all "hooey", but I have been working down here on the Durable Goods Industries Com-

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mittee and have only been home in the last 3½ weeks about 6 days, and that only on Sunday, and I received this letter.

Senator DAVIS. You are telling them as a Government employee rather than a manufacturer.

Mr. HOOK. No, Senator, I am not. The Durable Goods Industries Committee was elected by the Code Authority of the Durable Goods Industries at the request of General Johnson, so we are simply advisory to the general, or trying to find for him an answer to some of the problems which he has before him, and I will have something to say about that with respect to this bill, too, but here is a letter which illustrates the kind of compulsion there is in the industry with respect to the employees' representatives. This was sent to me at the Mayflower Hotel. It says:

DEAR MR. HOOK (from the employee representative, finishing mill): Due to the fact the committee was discussing the Wagner bill, and thought you would be interested to know how our committee felt that had worked under both plans, union and employee representation, and now we are 100 percent against the Wagner bill, and hope you are successful in defeating it, as we are very thankful of what you are doing.

Now, I had not any more idea that was coming to me than you. That is signed by the committee in the sheet mills department, representing that group of some 700 men. I think some of these men will be here tommorrow and you will have an opportunity to question them and determine for yourselves whether what I have said to you is the truth or not.

The CHAIRMAN. The letter may be inserted in the record.

(The letter referred to is as follows:)

MIDDLETOWN, OHIO, *March 19, 1934.*

DEAR MR. HOOK (from the employee representative, finishing mill): Due to the fact the committee was discussing the Wagner bill, and thought you would be interested to know how our committee felt that had worked under both plans, union and employee representation, and now we are 100 percent against the Wagner bill and hope you are successful in defeating it as we are very thankful of what you are doing.

Yours truly,

JOHN R. WATSON.
W. C. HAYES.
WILL PORTER.
MELL SARCHET.
JAMES CONRAD.
ARNOLD SKINNER.
CHAKNUM ESSIG.

Mr. HOOK. In order to tie up what I was saying to you, I will have to duplicate what I have said.

I bring this to your attention because Mr. Green and others have stated before this committee that plans of employee representation, to which they refer as "company unions", are dominated and controlled by company officials.

I deny the truthfulness of their statements and challenge the supporters of this bill to urge upon Congress a thorough and impartial investigation by a qualified congressional committee authorized to report upon the entire field of employment relations as contained in the petition presented to Congress at the opening of this session by the National Association of Manufacturers.

I offer this case and the articles by Harold Seidman which appeared in the Nation last August as evidence of the necessity for Congress

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to hold labor-union officials and their agents responsible for their acts in the same manner in which management is prohibited from practicing unfair and coercive methods. And I offer these.

The CHAIRMAN. They may go into the record.

(The papers referred to by Mr. Hook are as follows:)

[From the Nation, Aug. 16, 1933]

LABOR RACKETEERING—HOW CORRUPT UNION LEADERS HAVE BETRAYED THE RANK AND FILE

(By Harold Seidman)

The National Industrial Recovery Act forces employers to be fair in their dealings with labor, but what is going to protect labor from the tyranny of corrupt leaders who have long ruled over many unions? A Tammany sachem could not do a more thorough job than the labor bosses who reign supreme by means of gangsters, graft, machine-made constitutions, and judiciously distributed patronage. Under the leadership of these unscrupulous officials both local and international, every known type of racketeering flourishes. Most of the union czars have risen from the ranks. Once in power they are confronted by numerous temptations. They have the characteristic American love for easy money, and politicians and equally corrupt employers are willing to supply them with plenty of it in return for "favors." Unfortunately, union leadership in this country is for the most part notoriously lacking in social conscience, and more often than not union officials use their position to further their own interests.

Tribute exacted from both the employers and union members swells the already oversized incomes of labor racketeers who, according to Federal estimates, are intrenched in 47 trades. Protesting victims are soon silenced by strong-arm squads, and the czar's political influence is usually sufficient to quash any court action. To date only two of these racketeers have been brought to justice. Sam Kaplan, president of local 306 of the Motion Picture Operators, was found guilty of coercion, and Patrick J. Commerford of the Union of Operating Engineers, a Tammany leader, ran afoul of that bugaboo of all racketeers—the income-tax law.

The salaries paid to the union officials are out of all proportion to the service they perform. Sam Kaplan, who spent 1 or 2 days a week in the union office, received $21,800 a year, and his successor, Harry Sherman, was granted a salary of $18,000. No previous president of local 306 had ever received more than $250 a year. P. J. Morrin, president of the International Association of Bridge, Structural, and Ornamental Iron Workers is paid $15,000 a year, all necessary expenses, and $12 a day for daily expenses. Louis Kaufmann, business agent of local 244 of the Motion-Picture Operators is said to receive $14,000 a year. Although the majority of the union members are now unemployed, the salaries have not been reduced during the depression.

In addition to their salaries, the czars receive other monetary benefits from the union. Over a 5-year period Kaplan was "voted gifts" amounting to $55,000 by the union. Three weeks after his last "gift" of $25,000, Kaplan announced to the startled brotherhood that the union was broke. Officials of unions are also usually allowed from $30 to $50 a month for the upkeep of luxurious automobiles presented to them by the union. In one New Jersey local the president had $300 worth of dental work done at the union's expense. Yet the labor racketeer has not been satisfied with his seemingly adequate stipened and has found other lucrative sources of income.

Incomes of the large unions run into huge sums. The boss has complete charge of this money and rarely accounts for expenditures. Members of local 3 of the International Brotherhood of Electrical Engineers brought a suit against the local officials to account for $7,500,000 of union funds, much of which they claimed had been used illegitimately. This is the same union which contrary to all union principles entered into an agreement with the New York Edison Co. not to organize its employees. Jacob S. Solomon, secretary of the organizing committee of local 3, admitted that he had secretly destroyed the vouchers and records of the expenditures of close to $1,500,000 between 1926 and 1930 because he feared that "spies" would gain access to the records, and Wilson, the president, agreed that considerably more than $1,000,000 had been spent without authorization. In 1926 before H. H. Broach, who has just resigned as head of the International.

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took office, the union spent $2,130 in legal fees; between 1927 and 1930, Broach spent $532,000 for legal services. The case for an accounting was suddenly settled last fall. According to a letter sent to Police Commissioner Mulrooney by a committee of the union, "the accounting case was settled by guaranteeing the men who brought the action 1 year's work in addition to a cash settlement."

Sam Kaplan made no accounting during his entire term of office. He was held in contempt of court by Judge May for failure to produce the books of the union. In a case now pending trial, members of suspended local 52 of the iron workers charge that John M. Schilling, financial secretary of the local for 24 years, never gave an accounting during all this time. They found the auditor's report he presented this year unsatisfactory and allege that Schilling refuses to account for $100,000 of the union's money.

To enrich the treasury of local 306 further, Kaplan introduced the permit system by which nonunion men are allowed to work on union jobs. This was done without the consent or knowledge of the members of the union. Under his rule there were 600 permit men who paid initiation fees ranging from $500 to $1,000 and 20 percent of their salaries to the union. Permit men receive much lower wages than the regular card holders, and have absolutely no voice in union councils. They are not recognized as union members, but they are liable for certain levies and assessments. Harry Sherman, the new president, is now making an effort to reform this system which is still maintained in local 306.

Tom Maloy employed the same system in local 110 of the motion-picture operators of Chicago. Nonunion men claimed that they could obtain jobs by paying Maloy or his representative, Pete Kitcheos, sums ranging from $450 to $1,000. However, they soon found themselves out of work again if they did not continue to pay tribute to Maloy after the initial installment. If the permit man lost his job, he had to give Maloy another huge "gift" to obtain work. In addition to this, the permit men gave 10 percent of all their earnings to local 110. Permit men occupy jobs which ordinarily would go to the regular members of the union. Many unemployed card men are willing to take a permit man's job, but they cannot get them. In Chicago men who had been members of the union since 1910 were without work while permit men held good jobs. Pleas to the local officials were unavailing.

Another racket practiced by union officials is to send a man out on a job paying, say, $100 a week. The employers pay this money not to the worker, but to an official of the local, who gives the worker a salary of $50 a week and pockets the other $50. The employee pays 10 percent of his $50 into the union treasury. Even workers who receive starvation wages must pay part of their pittance to the union for protection. Thirteen complainants, seven of whom were women, brought charges against the Teamsters and Chauffeurs Union in Hudson County, N.J. The affidavits alleged that the women, who were cleaners and pressers, were forced to pay from $1 to $2 as weekly fees to what was termed a cleaners' branch of the union for the privilege of working unmolested. Some of the women's salaries amounted in all to only $5 or $6 a week.

Employers also contribute their share to the labor czar's revenue. Kaplan, Brandle, and Fay, in addition to being representative of the workers, were also big business men. Sam Kaplan was head of a nonunion company, which manufactured projection machines. Brandle, fourth vice president of the International Union of Iron Workers, was president of the Labor National Bank of Jersey City and an officer of the Branleygran Co., dealers in insurance and bonds. The Branleygran Co., which was the second largest holding company in the State, wrote bonds for construction work. Joseph Fay, head of local 825 of the Union of Operating Engineers, was part owner of the International Excavating Co., which rented out 10 dump trucks and several steam shovels to building contractors. The wise employer patronized these firms. John Springer, of the Springer-Cocalis theater circuit, stated that:

"although the prices of Sam Kaplan's company were higher than the prices of his competitors, we thought it a wise policy to pay much higher prices to Sam Kaplan's company and insure freedom from labor troubles in our theaters. Our records further show that when we gave all of our business to Sam Kaplan's company, no attempts to unionize our theaters were made, but that when we ceased to patronize Sam Kaplan's company, the attempts of local 306 to unionize our theaters became aggressive and were marked by violence."

An amusing story is told of how one of the trucks from Sam Kaplan's company drove up to instal equipment in the Ward Theater in the Bronx when that theater was being picketed by Kaplan's own union. Union theaters which patronized Kaplan's firm were allowed to employ one card man at $85 a week and four permit men at $45 to $50 a week. Others had to use five regular men at $85 a week.

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"Gifts" to the union boss usually prevent all labor difficulties. Patrick J. Commerford, vice president of the Building Trades Council and delegate at large of the International Union of Operating Engineers, was on the pay roll of several nonunion companies. The Carlton Hoisting Co. paid him $25 a week in 1927 and $50 a week in 1928 and 1929 to keep it free of labor trouble. The cash was kept in a safe until a sizable amount accumulated and then Commerford would call for it. The United Hoisting Co. paid Commerford $75 a week for the same services. These gifts were for protection against Commerford's own union.

Strike breaking was another of Commerford's specialties. He received $7,000 from the W. R. Gahagan Co. to call off a strike, and $5,000 from R. J. Murphy Co. to break up a strike at Jones Beach. Theodore Brandle and officials of other New Jersey locals of the Iron Workers split a $10,000 "gift" from the Iron League of New Jersey. Brandle was also director general of the Iron League, an employers' organization. He said he was going to serve both sides.

The czar, who exercises absolute control of the distribution of jobs, preserves his power by giving the best ones to his supporters. Members of the opposition soon find themselves unemployed. Local 11 of the Newark Iron Workers used the "card-index" system for the purpose of discrimination. Under the "card-index" system a worker may receive a job only when the card bearing his name appears at the head of the file. When he receives work his card is moved to the end of the file. A job given to a favorite might last for several months, while a member not in the good graces of the officials of the union might receive work only lasting a day and yet have to wait his turn before receiving another job. Chancellor Berry said that workers in this union were oppressed almost to the point of serfdom. Sam Kaplan appointed the business agents of local 306, and the business agents distributed the jobs. No member of local 3 of the Electrical Workers was permitted to accept employment without permission of the local officials. Other bosses use the same methods.

If a member persists in his attacks on the administration, he is soon suspended or expelled from the union and loses his means of livelihood. Many union constitutions are so written that the czar can always find a pretext for suspending or expelling a member. A member can be fined hundreds of dollars, suspended, or expelled for "improper conduct", "committing a nuisance", "using his own automobile in a manner considered unfair to other members or against the best interests of the local", "creating or attempting to create dissatisfaction or dissension", "disturbing the harmony of meetings", "using profane language in the property of the local union", "revealing the business of the union to outsiders", and "attending any meetings or conferences having for their purpose the criticism of any officers or representatives of the district council." The iron workers must also take the following oath: "I will at all times be respectful in word and action to every woman, and be considerate to the widow and orphan, the weak and the defenseless." The constitutions are often drawn up by hand-picked committees selected by the czar.

Joseph Blek was suspended from local 3 of the electrical workers on the charge of working with nonunion men. The men were actually members of his own union, and Judge Martin stated in his opinion that "the alleged charges were merely a pretext to discipline the plaintiff." Fourteen members of the same union who attended a meeting for "the restoration of union rights of local 3" were suspended for a year and fined $300 each. Alexander Polin was beaten up and expelled from Kaplan's union for asking for an accounting.

Although Judge Peter Schmuck declared that unions which expelled their members for taking their grievances to court were not only "ridiculous" but were "assuming governmental authority which would not be tolerated by the Government", yet most unions still provide for the immediate expulsion of members who go to court before exhausting their resources within the union. Union trials (and often the conviction is had without any) are notorious farces. The highest authority to which a member can appeal is the international convention which is held every 2, 3, or 4 years, provided it is not postponed to save expenses. The convicted member may wait as long as 8 years before being heard, and then there is little likelihood of the original decision being reversed. In the carpenters' union during the last 8 years 102 appeals were taken to the executive board from the rulings of the international president. In every case the decision of the international head was confirmed.

If the opposition does succeed in wresting the power from the czar, the international often steps in and suspends the local; and another union is established in the same territory with the ousted officials in power. The constitution of the Iron Workers contains the following clause:

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"The general president shall, whenever in his judgment subordinate bodies or the members thereof are working against the best interest of the international association, have the power to order said body to disband or cease such practices under penalty of revocation of charter. He may personally, or by deputy, take possession of, for examination, all books, papers, and financial accounts of all subordinate bodies."

The president of the Electrical Workers has the same power.

Patrick J. Commerford was appointed supervisor of local 125 of the International Union of Operating Engineers by President Possehl to "eliminate graft and corruption." The same system was installed in 18 other locals. Commerford appointed all the officers and there were no elections. When the union rebelled and removed Commerford, local 125 was suspended and a new local 130 was formed with Commerford as its supervisor. He informed contractors that they must deal with the new local. A similar procedure has apparently been followed in the case of local 52 of the Iron Workers. When John M. Schilling, a vice president of the International, was not reelected financial secretary, local 52 was suspended and a new local 447 was formed with Schilling as financial secretary.

Gangsters and strong-arm men are employed by the racketeers to intimidate the members of the union. Kaplan had four bodyguards whose salaries were paid out of the union treasury. Men who became too obstreperous at meetings were silenced by these thugs. One of them, Teddy Greenberg, was sentenced to 6 months for assaulting Cecil Woods, Jr., a member of the opposition party of local 306, but Kaplan saw to it that the union continued to pay Greenberg his salary of $125 a week during his term of imprisonment. Henry Godel, an active critic of the officers of local 3 of the Electrical Workers, was recently murdered. Sternburg, Young, Clohessy, Martin, Terry, and Malone were all severely beaten up, and Sorenson and Dooner were shot in the union offices. A member of the union who testified in court against Van Arsdale, who was accused of shooting Sorenson, had acid thrown in his face and lost the sight of his right eye. Dissenters in local 110 of the Motion Picture Operators met similar fates.

A fight between the Touhys gangsters and the Humphreys gangsters to gain control of the teamsters union in Chicago provided even more spectacular displays of violence. Eighty-three-year-old Steve Summer, an officer of the union for more than 30 years, had bullet-proof glass windows in his home, steel mesh on the windows, and a porthole for a rifle in the door to protect him against invaders. One mob drove up to the union headquarters with a battery of machine guns, automatic shotguns, and revolvers and announced "we are taking over the place for the day." They were driven out a few days later in a counter revolution Sass and Goldberg, officers of the union, were abducted, and the home of Arthur Metzger, a business agent, was bombed when he refused "a fabulous salary to retire and revoke the union's membership in the American Federation of Labor." There were seven bombings in 48 hours at the height of the guerrilla warfare.

Union treasuries are milked by the czars not only to defend themselves, but the gangsters. Greenberg was defended on numerous occasions by high-priced union lawyers. Each member of local 306 was assessed $21 to provide a $25,000 fee for Max Steur who defended Sam Kaplan against an indictment based on charges made by members of the union. Kaplan also spent $3,000 a week for an intensive advertising campaign to "maintain the reputation of local 306." The administration of local 3 of the Electrical Workers requested $1,500 for the legal defense of Constantino who was accused of shooting Sorenson and Dooner. When a member moved to use the $1,500 for the medical expenses of Sorenson, he was ruled out of order.

International officers have done little to remedy the situation. Instead, they often give aid and comfort to unscrupulous officials by laying all dissension within the unions to "radicals" and "labor spies." At the convention in 1932, P. J. Morrin, International President of the Iron Workers, said that—

"In the Eastern section of the country, especially the Newark [Brandle] district, our organization has been cursed with a lot of radical activities which have kept that organization embroiled in internal conflict for the past 2 years. They have kept up constant wrangling and dissension within the ranks of their local union accompanied by radical bulldozing tactics seeking either to rule or ruin. I myself visited our Newark local union and pointed out to them the dangers of permitting their internal dissension to continue, and the dangers of permitting these dissensionists to lurk within their ranks. I urged them to forget their differences and disregard the wild, radical propaganda made to them by radical members within their own ranks."

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Morrin apparently changed his mind about the source of the troubles in the Newark unions this June when he removed Brandle, Sherlock, and the other officials for misuse of powers.

H. H. Broach attributed the trouble in local 3 to the work of "labor spies." The June 1932 issue of the *Journal of Electrical Workers* bore on its cover the legend, "Union Destroyers Exposed." A series of obviously faked letters from one "G. Edgar Applegate" of the "American Financiers Protective and Investigation Bureau" to his agent "Bartly" were published in this issue. No record of the concern or of Applegate has ever been found. Broach asserted that he had several investigating organizations working, and promised further "startling results."

When anyone discloses the rotten conditions within a union, he is immediately branded as a union destroyer and enemy of labor. The *Electrical Workers Journal* launched a vicious attack against Louis Budenz, one of the most conscientious and highly respected workers in the American labor movement, because he criticized the administration of local 3 in an article for *Labor Age*. Bugniazet, the editor of the *Journal*, claimed among other things that "Budenz almost ruined the hosiery workers financially, and was forming an outlaw group in Philadelphia known as Hosiery Workers Branch No. 1." Budenz's suit for libel is now pending trial. Many people have hesitated to expose the labor racketeers because they feared that they would be accused of attempting to undermine the structure of the trade-union movement in the United States.

Complaints by members of labor unions have received little sympathy from authorities representing a corrupt political machine in New York. District Attorney Crain was very slow to act on the Kaplan case. Waiters of local 1 who complained that they were being forced to pay from $100 to $300 for jobs which lasted only 6 weeks were turned away from Crain's office. One of them, Ben Glast, embarrassed the district attorney's office by taking the law into his own hands and shooting two agents of the union. Daly, head of the complaint bureau, gave the lame excuse that "he had not gone into the matter to protect the union members, and it was considered wiser to let the complaining waiters handle the early stages of the prosecution themselves."

All union czars have powerful political connections which probably explains in some degree the reluctance of the public prosecutors to act. Tom Farley of tin-box fame, the sheriff ousted by former Governor Franklin D. Roosevelt, was dictator of the Cleaning and Dyeing Industry at a salary of $50,000 a year, and was an honorary member of Kaplan's union. Kaplan instructed his men to vote the straight Democratic ticket, and purchased five motion-picture sound trucks with union funds to aid the Democratic Party in its 1930 campaign. Former Senator Baird said that Brandle and Hague were the "owners" of the Democratic Party in New Jersey. It was Brandle's certified check for $60,000 that settled Hague's income-tax difficulties. Tom Farley, former sheriff Charles W. Culkin, and District Leader James Hines were reported to be the political angels of local 3 of the Electrical Workers. Pat Commerford was himself a Tammany leader.

Organization of workers has been greatly stimulated by the National Industrial Recovery Act, and the labor racketeer is looking forward to even more lucrative pickings in the future. The American Federation of Labor, a fundamentally weak organization, has not the power to act. All President Green can do is issue proclamations and make recommendations. He has been doing this during the past 2 years with negligible results. It is extremely difficult to amend the present constitutions of the unions, and this precludes all possibility that the unions will be able to do their own housecleaning.

If labor is to be properly represented in drawing up the codes of fair practice and in collective bargaining, the Federal Government must find the means of driving our the labor racketeer. One may doubt that the committee to investigate racketeering headed by Senator Copeland of Tammany Hall will be capable of finding the solution.

[From The Nation, Oct. 18, 1933]

New Labor Leaders Needed—The A. F. of L. and Its Racketeers

(By Harold Seidman)

The American labor movement is in greater need of honest and progressive leadership at the present time than it has ever been in the past. The power and prestige of organized labor in the United States, which have been declining rapidly

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in the past few years, have been revived by the National Recovery Act, but the hope that this act offers cannot be realized unless the racketeers who despotically rule many unions are driven out. Most American workmen do not trust unions, and the thousands who have recently been added to union membership lists will break their affiliations rather than be victimized by the labor czars. Unfortunately, the American Federation of Labor has never attempted to clean out the racketeers and has actually encouraged racketeering by its policy of noninterference, though the whole trade-union movement has thereby been brought into disrepute.

New cases and new methods of labor racketeering are uncovered almost daily. United States Attorney George Z. Medalie is now investigating charges that bricklayers working on the new Federal building in New York were forced to pay $5 a week to the union for the privilege of working. Dave Friedman, a former member of the executive committee of the Boot and Shoe Makers' Union, has said he knew "of an instance where an employer volunteered higher wages and the union heads vetoed it." When members become too curious about union affairs, the czars call strikes to unite them and make them forget their other grievances. Opposition groups that go to court are frequently kept embroiled in litigation until their limited resources are exhausted and they are forced to give up the battle. The rank and file in many unions are reduced to dumb submission. Appeals to the federation have been in vain.

Owen S. M. Tierney, who represented local 125 of the International Union of Operating Engineers in its fight against Patrick J. Cummerford, now in prison for violating the income-tax law, received absolutely no cooperation from the federation. Tierney wrote to William Green in 1932 describing the unbearable conditions that existed in local 125 under the despotic rule of Commerford, who was on the pay roll of several employers and had accepted huge bribes to break and prevent strikes. Green refused to grant Tierney an appointment to see him in Washington, but said his personal representative was in New York making an investigation. Mr. Tierney never saw this representative, and his subsequent letters to Green were unanswered. Despite more than 15 successive court victories, local 125 is still battling to have its charter restored. The majority of employers now obtain their workmen from local 130, the new union set up by the international, as they are unwilling to deal with a local which is not favored by the international for fear that their out-of-town jobs will be tied up. If its funds are not exhausted, local 125 will ultimately be successful in its fight against the international, whose president, Possehl, is an official of the American Federation of Labor, In the meantime members of local 125 are experiencing extremely hard times.

William Green could not have been ignorant of the intolerable conditions that existed in local 306 of the motion-picture operators under the tyrannical rule of Sam Kaplan, another convicted labor racketeer, yet he did almost nothing to eradicate the evil. Numerous complaints to the American Federation of Labor went unheeded. In appointing receivers for the union, Judge Cotillo wrote:

"The American Federation of Labor was dilatory in protecting the property and working rights of members of local 306 of the motion-picture operators. When organized labor neglects to clean its own house, under its own laws, until conditions become so bad that it finds itself in a court of equity, it must be not surprised to suffer the consequences of its own indifference."

William Green, however, was enraged by the appointment of receivers and declared it "an unjustifiable invasion of the legal and administrative rights of the American Federation of Labor."

In Hudson County, N.J., 600 drivers resigned from local 461 of the International Brotherhood of Teamsters and Chauffeurs and accused the union officials of racketeering. The drivers announced that they would form a new organization and passed a resolution severely criticizing the American Federation of Labor. They said that all appeals to that body to investigate charges of racketeering and dictatorship in the locals had been ignored. Green said in reply that these men "were affiliated only indirectly with the federation."

The usual excuse offered by the A. F. of L. for its failure to prosecute racketeers is "lack of jurisdiction." However, in some cases Green has found means to overcome this obstacle. In the fur workers' strike of 1926, Mr. Green met Mr. Samuels, president of the employers' association, in Washington and arranged a settlement secretly without consulting either the strikers or their leaders. A meeting of the strikers was then called at Carnegie Hall, at which Green and his lieutenants were to explain to the workers the terms of the settlement and the advisability of accepting them. To make sure that Mr. Green's advice would

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be followed, the strike leaders were not permitted to enter the hall. Nevertheless, Green was howled down and the men refused to accept the settlement. The terms finally obtained were much more advantageous than those Mr. Green had agreed upon and tried to force upon the workers. Shortly afterward Green appointed a committee to investigate the fur workers, and 32 officers of the New York locals were expelled. When the locals refused to recognize the expulsions, they were all suspended. The Needle Workers' Industrial Union, with which the A. F. of L. has been waging a violent struggle, grew out of these suspended locals. The federation was not hampered by "lack of jurisdiction" in this case.

Since unscrupulous employers are always looking for opportunities to attack labor unions, one would expect labor organizations to exercise great care in their choice of officers. But just the opposite has been the case. Many a man has walked out of jail into a high union office with the tacit approval of the high command of the American Federation of Labor. Though officers of the union spent $19,000 on his defense, William Hogan was convicted of stealing $30,000 from the treasury of local 3 of the Electrical Workers. Hogan was not expelled from the union, and some time after his release from prison he was elevated to the office of International treasurer, a position which he still occupies. P. J. Morrin, president of the International Union of Iron Workers, was convicted in the notorious MacNamara case. Minor union officials with criminal records are too numerous to mention here. P. J. Commerford will probably get back his old job in the union when he is released from prison.

Joseph Fay, one of the members of the labor triumvirate in New Jersey—the other two, Brandle and Sherlock, have both been expelled from the Iron Workers' Union—was recently appointed by President Possehl International representative of the Operating Engineers in New York City "to preserve the International union's aspirations in formulating and perfecting contractual relationships with associations of contractors and employers." Part owner of the International Excavating Co. and International Hoisting Co., Fay had been expelled from the union in June 1932, because he was an employer, but had been unconditionally reinstated in August; he said at that time that he would "ultimately disassociate himself from the contracting companies." Apparently he did not, for in June last he was charged with conspiracy to control the excavating and trucking business in northern New Jersey for the benefit of companies controlled by him and his associates. Fay is typical of the capitalist labor leaders who have infested American unions in recent years. Time was when a man immediately lost his union card on becoming an employer, but that is so no longer.

Matthew Woll, first vice president of the American Federation of Labor, who has distinguished himself in recent years by his bitter opposition to unemployment insurance and to the recognition of Russia, has continually allowed salesmen to exploit his high office to sell policies issued by the Union Labor Insurance Co., of which he is president. Mr. Woll has given this explanation for the formation of his company:

"As a result of our study we realized that the trade unions are all ill-equipped to cope with problems involved in any insurance arrangement. The only sound way to overcome the difficulties presented was to form an insurance company that would be managed on a safe and sound basis. The result was that the Union Labor Insurance Co. came into existence for that purpose."

The Union Labor Insurance Co. has far exceeded its original purpose, and there is hardly a labor lawyer who has not been approached by one of Woll's insurance salesmen. Sometimes prospective buyers are told that Mr. Woll wants to speak to them on the telephone. An insurance salesman greets them instead of Mr. Woll. One business man, active in the recovery movement, declared he received a telephone call purporting to come from a "Mr. Schwaum of the American Federation of Labor," to the effect that Mr. Woll was returning from Washington and wanted to see him. Assuming that it was an important labor or Government matter, the business man canceled all his engagements for the afternoon. Aaron Nadler, an insurance salesman, appeared instead of Mr. Woll, with a letter of introduction signed by the latter. When this case was brought to the attention of Mr. Woll, he said he did not countenance such acts by his salesmen. However, he did not deny that it was his signature on the letter.

Dr. Leo Wolman, now chairman of the Labor Advisory Board of the N.R.A., wrote that the Amalgamated Union broke off from the United Garment Workers in 1914 because of "autocratic and unrepresentative administration of the [latter] union's business * * * corrupt practices among the officers of the United Garment Workers, and misuse of union funds, particularly in connection with

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the abuse of the union label." The A. F. of L. has since then continually waged war against the Amalgamated, which is probably the strongest union in the United States today.

Although fewer than 10 percent of the American workers have until recently been included in the membership of the A. F. of L., the federation has frequently claimed sole ownership of the labor movement in the United States. President Green recently stated that "there is no room in the United States for any other labor movement." The A. F. of L. regards members of independent unions as nonunion. Yet many American workers are not able to join A. F. of L. unions because of the stringent admission regulations and high initiation fees. Where can men who have long been unemployed find from $25 to $300 for initiation fees?

The failure of the A. F. of L. does not mean that trade-unionism is unsound. Even under corrupt leadership, organized workers have gained benefits which they could not have obtained in any other way. But by permitting racketeering to continue, the A. F. of L. has endangered the cause of all organized labor. Employers are justified when they refuse to deal with these grafters and ex-convicts. No honest employer would protest against collective bargaining if the racketeers were driven out of the unions. That is a problem which General Johnson and his aids who are directing the National Recovery Act cannot evade.

For the first time in history the American Government is aiding organized labor. The N.R.A. has abolished the "yellow-dog" contract and guaranteed to every worker the right of collective bargaining. But labor needs more than this. If it is to go forward and prosper it must have new, honest, courageous leaders who can consolidate these gains. The new labor leader must be a man who commands the respect of both the employer and the worker. The American Federation of Labor as it is now organized cannot provide this leadership. The Federal Government should hold an investigation through one of its agencies to determine why the A. F. of L. and its affiliates, especially in New York, New Jersey, and Chicago, consistently block all efforts to sweep out the czars and their gangsters. Labor should no longer be permitted to stand above the law. After a thorough investigation a code of fair practice should be drawn up for labor unions. The capitalist labor leader, the czar who extorts money from employers and members of the union, the stacked constitutions, the paid gangsters, must all be eliminated. If organized labor in the United States is to survive, it must have a complete "new deal" and a complete new leadership.

Mr. HOOK. In my testimony before the Senate Finance Committee on June 1, 1933, during the hearings on the N.I.R.A., I urged that the same prohibition set up for management in their dealings with employees be made to apply also to those not connected by employment with the company. I know from the record the other day that Mr. Hickman, president of the Chamber of Commerce of the United States, suggested that there be an amendment to section 7 (a) in order that labor-union officials and their agents would be held responsible for their acts.

I say to you most sincerely and only after most careful and mature thought, that had section 7 (a) of the N.I.R.A. provided against false representation, coercion, and abuse on the part of labor-union representatives and agents not employees of the company, you would not, in my opinion, be sitting here today conducting hearings on this bill. We would not be confronted with the numerous actual, and threatened strikes which have already destroyed much of the advantages gained under the Recovery Act.

Section 3 (2) of the Wagner bill specifically excepts labor organizations and their officers or agents under the definition of an employer and thereby grants them immunity with respect to practices classed as unfair on the part of all other employers and violation of which submits the other employers to the liability of fine and imprisonment. By implication, it makes a gentleman of one and a criminal of the other.

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I submit to your judgment, would it be fair, if you were going to set up rules for a contest in any sport, that the rules of the game apply to only one side? How long would the sense of justice of the audience stand for permission to be granted to one side in a football game to use the flying wedge, the flying tackle, signals in the huddle, clipping, and slugging, and at the same time applying penalties to the other side for the same practice?

We recognize the right and are heartily in favor of permitting employees to bargain collectively in any manner they choose and through any representatives they might elect. Their decision with respect to their form of organization and their choice of representatives should be reached without improper influence, coercion, or abuse upon the part of management or any outside organization, particularly one which is not held legally responsible for its acts.

I call your attention to the provision of section 5 (6), lines 7 to 15, inclusive of page 6.

The fact that this proposed legislation permits of the closed shop definitely discloses the real purpose of the act. No employee should be forced to join any organization because the majority of his fellow workers choose to be members of that organization or because his employer elects to agree to such a provision with an organization to which a majority of his employees belong.

In my opinion, a proper relationship between men and management cannot be accomplished by legislation. Without mutual understanding, confidence, and respect, you cannot have satisfactory and friendly relationships.

The CHAIRMAN. You understand that the bill compels an employee to join the organization which 51 percent of the employees elect?

Mr. HOOK. Yes; I do. My understanding is this, that if 51 percent of the employees of a plant elect to belong to a certain organization and the management of that plant makes a contract with that organization to which 51 percent belong, he might make it necessary for the 49 percent to belong to it by a contractual relationship between that union and the organization.

The CHAIRMAN. The management would have to be a party to it. There is nothing in the law requiring that in this bill.

Mr. HOOK. I said it might.

The CHAIRMAN. Yes; but it would be the employer who would do it.

Mr. HOOK. Yes.

The CHAIRMAN. If the employer made a contract with the representatives of 51 percent he might stipulate that all his employees would have to belong to that organization.

Mr. HOOK. Yes; my contention, Senator, is it would not be fair, or right, or American to say to those 49 percent that because an employer wanted to make such a contract that they have got to belong to that organization and pay dues to it.

The CHAIRMAN. I think we are all agreed on that.

Mr. HOOK. Thank you, sir.

The CHAIRMAN. I understand the bill only goes so far as to state that the employer must recognize, for the purpose of carrying on collective bargaining negotiations, the representatives chosen by 51 percent of his employees, regardless of the character or kind of organization they see fit to choose.

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Mr. HOOK. That is correct. My contention is that the 49 percent should have the right to a voice if they wanted it, as they have today under the National Industrial Recovery Act.

Senator DAVIS. Then you would have two different scales for a particular mill, one which sets forth a certain wage and the other which sets forth a certain wage?

Mr. HOOK. I doubt that, Senator.

The CHAIRMAN. You think the highest wage would control?

Mr. HOOK. Yes; I think you are right, Senator Walsh. There is no question about that.

Senator DAVIS. If the highest wage is going to control, then they would practically be unanimous for it, wouldn't they?

Mr. HOOK. Senator, if they felt that the contention on the part of the 51 percent was wrong, they would at least have an opportunity to persuade, would have an opportunity to attempt to persuade the 51 percent that they were wrong. Take for instance the question of two jobs under the same name. That is where I contend for local representation with respect to questions of wages. Now, of course, you are an experienced man, you know the mill business, and you know today that we have heating furnaces on which we have automatic control, the valves go off and on, the gas comes on, the temperature is controlled, the temperature of the piece is controlled, the whole thing is automatic, yet that man who runs the furance is called a heater. Down in another part of the plant we have a furnace and we have a heater, but that man still controls his valves by hand and regulates that entirely himself. That requires a materially different kind of skill and supervision than the other case.

Senator DAVIS. How many classifications are there in the steel industry?

Mr. HOOK. In jobs?

Senator DAVIS. Yes.

Mr. HOOK. Will you give me my brief case?

The CHAIRMAN. Somebody said 2,000.

Mr. HOOK. Two thousand is correct. We spent 2 years working on this. I would like to show you that exhibit. We spent 2 years, Senator, valuing the various jobs in the various plants. This shows you what a job does. There is every job in the mill classified and described, and then in zones we run up from naught zone up to zone 28, and each job was studied to determine in what zone it should go. In other words, we used as the basis of study the amount of skill required, the amount of physical effort required, the amount of supervision required, to arrive at a factor which could be weighted and used to evaluate that job. Now, we went over every job in the mill. It took us 2 years with very competent men to do that thing.

That is why I contend that it is the man on the job and in the individual plant who knows conditions in that plant, and who is best able to deal with the management with respect to those terms.

Senator DAVIS. Do you own your own ore mines?

Mr. HOOK. We do not own them outright. We have an interest in ore mines, but ours is a minority interest. We only have a minority interest in any of the ore mines in which we are interested.

Senator DAVIS. I take it for granted that you do not believe in the majority rule.

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Mr. HOOK. Maybe we do not understand each other. What I do not believe in is this, that the minority should be forced to accept the representation of the majority. I contend that the individual or the group should have the right to elect their own representatives and to be represented by whoever they want to represent their viewpoint, because it is conceivable that the majority might be willing to agree to something which the minority still felt is not sound, and the minority might, by conference, secure some better arrangement than the majority would be able to. You see what I mean. Shall I proceed?

Senator DAVIS. Go ahead.

Mr. HOOK. In my opinion a proper relationship between men and management cannot be accomplished by legislation. Without mutual understanding, confidence and respect, you cannot have satisfactory and friendly relationships.

We tried one great experiment in prohibition; let's not make another great national mistake by creating a condition through the establishment of prohibitions and control over the proper, fair, and natural intercourse between the employer and his employee that would destroy happy and mutually satisfactory relationships that have been built up over many years of close personal contact and conference. This bill would utterly destroy the equality of bargaining power on the part of the employer, place unnecessary expense upon the shoulders of the employees and subject them to coercion and abuse by outside organizations, the like of which this country has never known.

The interpretation which is possible of application to such words as "influence", "favor", "or by other means", "to fail to exert every reasonable effort to make and maintain agreements", and in fact to practically all of section 5 of the bill would effectively prevent that kind of contact and action on the part of management which makes for cooperation of the entire organization and most profitable employment.

What disturbs me most about this proposed legislation is that there is an apparent assumption that the interests of the employer and employee are not mutual but antagonistic. I am quite confident that the distinguished Senator and his associate proponents of this legislation have been influenced largely and unfortunately because of certain experiences they have had as members of and in connection with the National Labor Board, set up to handle disputes arising as a result of complaints and alleged violations of section 7 (a) of the National Industrial Recovery Act.

With no intent to be disrespectful and in the spirit of most constructive criticism, I cannot help but conclude from my own experience that many of these complaints were recognized and made the subject of investigation which to an experienced and impartial expert on employer-employee relationship would have been plainly evident as complaints made to embarrass an already overworked management and instigated by professional labor-union salesmen, representing small minorities, for the purpose of gaining membership for their national organization and making secure their own positions.

We need no more legislation; we have in the N.I.R.A. all the protection that is required to safeguard the interests of employees, if impartially administered.

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Today, through codes of fair competition, practically all industry has been organized and brought together under close governmental supervision in order to make the necessary national economic adjustments, based on studies of facts and information now available for the first time as a result of the Act. Are we now to resume the unscientific adjustment between economic groups through threat and strife instead of basing such adjustments on facts?

The wage policy of the national labor unions with which I have had any experience has been antiquated and nonconstructive. They depend upon coercion to force the highest possible wage rates without due regard for individual skill, responsibility, or the ability of industry to pay. Frequently, this condition leads to unfair wage treatment within the closed-shop organization. To set wages on a fair and scientific basis requires not only an understanding of the economics of the business, but long experience in rate setting. In our own company, we have established a fair wage plan which required 2 years' study by men who have had years of experience in our industry. This plan recognizes the difference in skill between jobs, and compensation for each job is established in its relationship to others. This can only be done after a thorough, detailed study of every job in the plant. The cost of living in the community was taken into consideration, as well as a study of rates paid in competitive industries. Then the rates were referred back to the men themselves and adopted only after very careful conference and consideration. This is constructive collective bargaining.

For years, the American workman has enjoyed more conveniences, privileges, and luxuries, as a result of the cooperative spirit which has existed in American industry under the American plan than in any other country in the world. The Government has an obligation to its citizens not to do anything which may jeopardize our standards of living. Under the terms of this bill, I do not see how any employer can continue to provide such beneficial activities as group life insurance, sick and death benefits, free medical services, free parks, and playgrounds, bonuses to workmen, and so forth, without violating the law and being subject to a severe penalty.

To provide conditions that would not permit me, or any other member of our management, to consult with our employees concerning our common mutual problems in the profitable operation of the business is contrary to American principles. In conclusion, I ask you to show your faith in the industrial system under which America has become the envy of the world by suppressing this dangerous legislation, and I want to quote the very timely advice of Owen D. Young, before the Academy of Political Science in New York on March 21, 1934:

> Wise rules for the game conceived in patience and imposed with restraint, high impartiality of the referee, too high to be touched by the corrupting influence of greed for money or for power, too high to be poisoned by anger or the wish to punish, too high to be paralyzed by despair, and too courageous to be made impotent by fear, are underlying essentials to any policy of recovery * * *

May I say to you that there can be no great work done of any kind without much of cooperation and there cannot be real cooperation until there is, first, confidence built upon a foundation of understanding. Thank you, sir.

The CHAIRMAN. We thank you.

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Mr. Hook. There was one question, Senator, I just happened to think about it, that you asked Mr. Young, and I would like to reply to that question myself.

The CHAIRMAN. We will be pleased to have you.

Mr. HOOK. You wanted to know the number of men who voted.

The CHAIRMAN. Yes.

Mr. HOOK. You wanted to know the number of men who voted when the plans were adopted, and I have the record for our company right here. At the Ashland plant the number of men voting was 90.9 percent of those eligible to vote, and 27 percent voted against the plan. In other words, 73 percent voted in favor of their plan. Now, mind you, this is their plan. The employee representatives themselves studied this thing for some months, and then the elected representatives of the employees recommended what they had finally agreed on among themselves to the employees at large for a yes-and-no vote for adoption or rejection. So they were adopted by a yes-or-no vote after recommendation by the employees themselves, not the management.

The CHAIRMAN. What is the date of that election?

Mr. HOOK. Last December.

The CHAIRMAN. How many candidates were there as representatives of the employees?

Mr. HOOK. Well, I will have to count them.

The CHAIRMAN. Approximately.

Mr. HOOK. Double the number of candidates, of course.

The CHAIRMAN. That is enough.

Mr. HOOK. About 60, I should say, in that plant. I know at Middletown there are 90, and they differ in the plants, depending upon the number of men, but the average for the company was this: There were 91 percent of all those who were eligible to vote who voted, and 15 percent voted against the plan.

The CHAIRMAN. That is the average in all the plants?

Mr. HOOK. In the four plants.

Senator DAVIS. Has any provision been made for a national meeting, so to speak, of the employees of the Middletown, the Ashland, and the other plants?

Mr. HOOK. They can if they want to. In other words, it is not up to us to tell the employees what to do. It is what they want to do. Their plans are such that they can do it if they want to. That is my opinion of this whole thing, Senator; that is, let the men decide what they want to do themselves and not we or some outside organization try to tell them what they ought to do.

Thank you, sir.

The CHAIRMAN. Mr. Weir.

STATEMENT OF ERNEST T. WEIR, CHAIRMAN NATIONAL STEEL CORPORATION

The CHAIRMAN. Mr. Weir, your full name?

Mr. WEIR. Ernest T. Weir.

The CHAIRMAN. Your residence?

Mr. WEIR. Pittsburgh.

The CHAIRMAN. Your occupation and business?

Mr. WEIR. Chairman of the National Steel Corporation.

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The CHAIRMAN. You are here representing the National Steel Corporation or a subsidiary of it?

Mr. WEIR. The National Steel Corporation and their subsidiaries. They have quite a number.

The CHAIRMAN. Have you any direct charge of any particular subsidiary?

Mr. WEIR. No; I am the chief executive of the National Steel Corporation, which owns all of the subsidiaries.

The CHAIRMAN. What is the difference between your position and Mr. Young's position, who testified here?

Mr. WEIR. Mr. Young is in charge of the industrial relations department of the United States Steel Corporation.

The CHAIRMAN. Vice president.

Mr. WEIR. The vice president. May I proceed, Senator?

The CHAIRMAN. The committee will be pleased to hear you.

Mr. WEIR. Mr. Chairman and gentlemen, members of the committee: When I originally asked to appear before this committee, it was largely with the thought of answering certain statements that have been made by proponents of this bill regarding the Weirton Steel Co. controversy with the National Labor Board. Since that time the Government has filed suit against the company on that matter and I, therefore, feel that it is improper for me to make any statement about any controversial matter in that case. I do, however, wish to express my opinion regarding this proposed legislation and give my reasons for it.

I have been in the steel business all my life. I began working in a mill at the age of 16, and I think I know the viewpoint of the steel workers about labor organizations and wages. I was one of the original organizers of the Weirton Steel Co., the principal plant of which is at Weirton, W.Va. When we started that plant, the district was farm land. We built the mills and the town grew up around them until it is now a community of possibly 25,000 persons, and the Weirton mill employs approximately 9,000 persons. The other mills of the Weirton Steel Co. employ approximately 3,000 persons, or a total of about 12,000 employees.

The Weirton Steel Co. is one of the subsidiaries of the National Steel Corporation, Senator.

From the day our business was started in Clarksburg, W.Va., in 1905, and then extended to Weirton in 1910, right up to within a few years ago, my office was at the mills as was also that of my brother and John C. Williams, both of whom were associated with me in the development of this business from its beginning. This gave us a direct contact with our employees and our daily operations, the three of us being personally acquainted with a great many of our men at all times.

In order to protect the growing interests of our business and to insure its future we took on other properties, including those producing raw materials such as coal, ore, and so forth, in the beginning of 1930, and so expanded and diversified the business that it was necessary for me to remove my office to Pittsburgh which, of course, is only 35 miles from Weirton and is rather centrally located for control over our other operations. However, Mr. John C. Williams, as president of the Weirton Steel Co., remained at Weirton in daily contact with the men, as did all of the other executives who grew up in the business.

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Many of our employees today have been with us since the organization of the company. We have at all times paid as high or higher wages than are being paid by any other mill; and I consistently opposed every reduction of wages during the depression, openly in newspaper interviews and as shown by editorial comment. My record in that respect is an open book, beginning with a public statement as far back as February 5, 1931, before any reductions had been made in wages in the steel mills. I recently arranged with our employee representatives that there would be no reduction of wages in the future without their consent.

A 10-percent wage advance was made in the steel industry last week, thus bringing the rates of pay back to the 1929 level; and I am frank to say I was quite influential in bringing about this result, which will be immediately beneficial to the almost 500,000 workers in the steel industry. I have received many pay envelops myself, and know what it means to the worker and his family to receive an increase in pay.

I believe the working man is primarily interested in his wages. Eighty percent of our employees have no interest in labor organizations. They want to be left alone, and provided with work and the opportunity to earn good wages under good working conditions. What we have developed over a period of years in the way of a plant and organization, has been done without the aid of labor unions, without any form of espionage and practically no labor trouble. There has never been a time that our employees could not confer with us about any matter of interest to them, and we have been free from the wasteful practices and uneconomic domination of union labor leaders. Now it is proposed to pass a law, the effect of which would be to drive a great many employees into national labor unions, whether they desire them or not.

The average employee joins a union only because he is told by union organizers that he will not have a job if the union wins, or that jobs will be allotted according to the numbers on the union membership cards. Many of them sign cards because of coercion and intimidation, and yet this present bill lays no restraint upon coercion or intimidation by labor unions. They are to be free to carry on any kind of propaganda they see fit but it is to be an offense if an employer even indicates his attitude toward labor-union membership. I have had numbers of our employees come to me and ask me if it was going to be necessary in the future to join a labor union to hold their jobs as they had been told this would be the case. This bill would make it an illegal practice for an employer to express an opinion on that subject. If 51 percent of the employees of a plant joined the union, that union would represent all of the employees, and the other 49 percent, although not members of the union, would have no one to represent them in dealing with the company. Their only right to be heard or to participate in the councils of the employees would be to join the union, and that is the purpose of this legislation, in my opinion.

Senator Wagner has been quoted as saying that the purpose of this bill is to make employee-representation plans illegal. In my opinion, employee-representation plans can accomplish far more for the workers than any national union can accomplish. The problems that affect the worker are not all wage problems. An analysis of 505 matters arising through our employee representatives in the last half

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of 1933 indicates that 296 of them related to differences in wage, wage differentials, piecework or tonnage rates, and the remainder of them had to do with matters of safety, economy and waste, health and sanitation, housing and living conditions, education, athletics, public relations, etc. Many of these questions are just as vital to the men as wage questions and they will receive much better attention from a local organization of the employees than they could receive from the officers of national unions.

One of the methods proposed in the bill of making employee representation plans illegal is to forbid the employer from paying for the time of an employee representative spent in his committee work. The evident intention is to give the impression that the amount of money paid by the employer to help support the employee representation plan was so large as to make it a factor of great influence with the representatives in favoring the employer as against the men whom they represent. The figures given below show that the amount of money actually spent in carrying on this work is insignificant and a small compensation for the time, energy, interest, and thought that is devoted to the various problems involved in the interest of the employees by their elected representatives.

The Weirton Steel Co. spent from July 1933 to February 1934, inclusive, a period of 8 months, in the payment of employee representatives for time engaged on their work, approximately $12,600. During that time it had pay rolls in those mills of approximately $12,000,000, so that the amount paid to these men for that time was a relatively insignificant figure, and when distributed among the 49 representatives averaged about $30 per month per man to compensate them for time lost from their own jobs while working for the benefit of their fellow employees. The services of these men were of great value in that they "ironed" out and solved many problems that otherwise would have had to be handled by the management. This $12,000 spent in a period of 8 months, with a pay roll numbering 13,000 people, represented a cost of about $1 per man, or 12½ cents per month. This compensation for lost time is payable to whomever is elected and, therefore, could have no effect upon the attitude of the representative toward the company.

It cannot, therefore, be a means of favoritism and the only purpose of putting such a clause in this act is to attempt to exterminate the company union in favor of national unions. If our men had belonged to a national union during this period of 8 months, there would have been paid in dues, without counting initiation fees, out of the pockets of the workmen instead of the company, approximately $150,000, none of which would have been subject to public accounting and a great part of which would have gone to national union offices. If, in seeking to protect my men from the domination and control of national unions I am a "public enemy who ought to be pilloried", as Mr. Green referred to me, then I am proud to be so regarded.

I think it is a direct insult to the workers in our plants that it should be presumed by Senator Wagner or anybody else that their allegiance can be purchased not only by this insignificant sum but for any sum of money or other favors. Employee representatives are keenly interested in their work, realizing the responsibility which rests upon them and there is no danger of them being coerced by any

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company into failing to protect the interests of the men by whom they were elected.

The worker today is fully aware of his rights and is giving serious thought and consideration to the improvement of his position and his relations with his employer; and even were the employer inclined to try to coerce him it would not be possible. Let me say further that I believe the employer today is not interested in the coercion of his employees. He wants to deal with them on a fair and constructive basis and one that will be of mutual benefit to the employee and to the industry. I have had much experience with national labor unions, and as constituted, officered, and operated today peace in industry with them is impossible.

We have stated to our employees in writing that it will never be a requirement of any employee that he belong to any organization or that he does not belong to any organization.

I noted Mr. Green's remarks before your committee about starving families in Weirton, whom he alleged to be walking the streets because of my attitude toward labor. Inasmuch as I am not inclined to take much stock in general statements, and believe that it is always essential to get the facts, I just took the trouble to obtain some figures from the Federal Unemployment Agency and the C.W.A. as to the unemployed in the district in which the town of Weirton is situated. The two agencies together report 455 unemployed persons; 154 of these were employees of other companies, and 67 of them young men who never have been employed, so that there is left 234 who claim to have been former employees of the Weirton Steel Co.; 123 of these left our employ before September 1, 1933, some of these as long ago as 1916, leaving 111 employees now unemployed who claim to have been employed by us prior to the strike. Twenty-two of these 111 have been reemployed since the figures were obtained, leaving 89, of whom 43 had less than 8 months' service with us, some of them as short a time as 2 days. That this condition is well recognized is evidenced by an editorial in the Wheeling News, of March 22, 1934, a leading paper of northern West Virginia and western Ohio and published in Wheeling, W.Va., 25 miles from our closest operation but familiar with conditions in the district. I quote the editorial:

A sample of the rank sensationalism that is being indulged in by the labor leaders, and by the public press concerning the Weirton trouble is contained in an Associated Press dispatch from Washington Wednesday. Stating their dissatisfaction with the action taken by the Federal Government against the Weirton Steel plant, a group of labor leaders are reported to have said: "We aren't helping the starving men a bit by this. We demand that the company be forced to deal with the union!"

The plain implication of that statement is that there is a very large body of workers on strike at Weirton, whose families are destitute, and who are literally at the point of starvation; due to their devotion to the cause of unionism they have been persecuted, and denied employment.

Nothing could be farther from the truth. The Weirton plant today is employing more people that it ever did. There are no idle men in or about Weirton, who cannot get work if they want work.

There are no families starving.

There is no want in Weirton.

As a matter of fact, the C.W.A. allotment for Weirton has not been used, and there is no indication that it will be used.

No other industrial town in the United States is in a condition as satisfactory as Weirton is today.

If the intent of the N.R.A. and the desire of the Federal Government is to bring about reemployment, the policy of the Weirton Steel Corporation has been

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more successful in accomplishing that result than any other great labor employing organization in the country. Yet we see this concern daily pilloried, subjected to attack by the Federal Government, and the daily press filled with insinuations and accusations that would cause the public to believe that there are thousands of men and their families starving, and that their only salvation is to have the Federal Government "crack down" on Weirton.

I would like to say further that all during the depression there has never been any starvation in Weirton, and that community made it a point to handle its own relief and take care of those who might be in want. I defy Mr. Green or anybody else to prove that there is or has been starvation in Weirton.

I also took the trouble to have the average daily earnings of Mr. Long, who appeared before you and referred to the Weirton case, computed. He averaged in 1933 for every day he worked over $10 a day and had an average as high as $14 a day during 1928. Another of the union men who came down here to appear before you was paid for every day he worked this year an average of well over $17 a day. These men are not down here protesting against any mistreatment of labor by the Weirton Steel Co. They are here because they are paid officers and organizers for the union, which is trying to take about $250,000 a year in dues out of our employees.

Senator Wagner claims a national labor board with sweeping authority is necessary to punish employers who refuse to comply with section 7a. The present act has adequate remedies. Even now, on the recommendation of his board, the Attorney General has started a suit in the Weirton Steel matter in Delaware and the matter will come on for hearing in court, where it belongs. We welcome the opportunity to have the matter laid before the court in a legal, orderly way, instead of being subjected to the newspaper tirades of Senator Wagner, founded upon unconfirmed reports from strike leaders and union agitators. The courts were always open to Senator Wagner and are the proper place for the determination of such matters. It seems to me it would be very dangerous to put the sweeping powers sought to be given in this bill into the hands of a national labor board, if we are to judge its methods and procedure by those of the present board.

This legislation, in my opinion, presents an unheard of spectacle, in the guise of a court of justice. There will be two parties before the court, the employer and the employee, represented by the labor union. The board may make order operating upon the employer, it may assess penalties against him and order the reinstatement of employees, and yet it has no power to restrain the union, assess damages against it, or, in any manner, punish the union for its acts. What sort of justice would this be? We will have to abandon our American concept of even-handed justice if such a tribunal is constituted by this act.

The act makes it legal to agree that no one may be employed except members of a union, but makes it illegal to agree that no one may be employed except nonunion men. The obvious purpose of such a one-sided provision is to establish by law the closed shop and, after all, that is the issue in this legislation.

When the unions have power to dictate a closed shop, they have reached a point where they say: "You must join our union or starve." This is tyranny—it is un-American. To belong to a union is all right, but to say that the man who does not belong to a union shall not be allowed to labor is all wrong.

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I cannot believe that the people of this country are ready to put their stamp of approval by legislation upon the closed shop in industry, and if it is accomplished by law I predict unending industrial troubles. It will mean the end of the fine spirit of cooperation between employers and employees, which has been growing through employee-representation plans. I believe industrial peace lies in the direction of cooperation between employers and employees, and not antagonism. The purpose of this bill is to drive a wedge between the employer and the employee, to herd them into two different camps as if their interests were always antagonistic.

Such a policy is uneconomic and dangerous to our industrial welfare. It will continually foment strife, for example, the provisions of this bill will permit the Labor Board to hold an election at any time that it finds a substantial number of employees who want an election. In political or corporate matters we are accustomed to thinking of an election as something coming at a scheduled time, the results of which determine the persons in power for a definite length of time, yet the industrialist is to be left in a situation where an election can be called at any time. The efficiency and productivity of a mill inevitably goes down when there are periods of excitement, contention, or strife. The work accomplished in a week when elections are taking place is always noticeably less than when things are running smoothly.

Suppose the employees of a plant are about evenly divided in their allegiance. There will always be a substantial number requesting a new election and the minute an election is over those defeated will constitute a substantial number who would like to see a new election called. No matter how vexing or harassing the Labor Board might be in this matter, the employer is left without any help, as no court has any right to enjoin the board. If we shut down a mill and open another, someone will claim that the mill was closed down because it had a greater percentage of union labor than the mill which was opened up. Every discharged employee can claim that he was discharged on account of his union activities and every such complaint, no matter how trivial, can be filed with the Labor Board in Washington and require an answer and hearing.

One of the provisions of this bill enables not only every member of the board, but any agent of the board to call upon any employer for any records or papers that he deems necessary. I want to give you an example of what was asked of us in connection with the investigation of our case. We were served with written notice demanding the production of various papers and records. There were 10 items in the list, including records of correspondence, expenditures, reports, and papers. I just want to call your attention to four of the items that were asked of us. We were asked to produce our papers and statistics, showing the system for distribution of employment monthly for the past 5 years. We were also asked to produce monthly records for the past 5 years as to new employment, discharges, layoffs and shut-downs, with list and identification and classification of all persons employed, discharged, or laid off since September 1, 1933. Each mill and plant hires its own men. A man may work a few days a week, then be off a few days, and a record is made of that in loose-leaf form, which record is sent to the office for filing. To have produced the records required of us would have taken the services of several clerks for a month or more and it would have required a

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truck to convey them. We were also asked to produce records of the general volume of the business in tonnage and value and the sources and volume and value of the raw materials utilized.

When one is served with a court subpena requiring the production of papers, he has the opportunity to go before the court and have it determined whether or not the papers are necessary and at whose expense they are to be produced. In the Federal courts, I believe, it requires an order of court to require the production of papers, but this bill would enable any clerk or agent of the board to demand any records that he thought he needed, irrespective of the cost or expense involved, and bring them to Washington or any other place where the agent desired them.

This is only one instance of the abuse of authority possible when any board or its agents are clothed with the dictatorial powers sought to be given to the Labor Board by this legislation. Business men and manufacturers are already subject to enough demands in the way of reports and information, without imposing this additional burden. When such records are demanded in income-tax matters and Federal trade matters it can be said of the demands at least that they concern some item of major importance, but under this legislation an employer could be subjected to the annoyance of such demands on the complaint of a single discharged employee, and that complaint need not be in writing or formal. It may be merely rumor or suspicion.

Notwithstanding the heavy burden of these requirements which the bill places upon employers, there is absolutely no similar requirement provided for the union. Not only is there no provision for the furnishing of any information by the union, but they are not even required to make any accounting to anyone under any circumstances of the very large sums of money which they will collect. Surely a law which requires such burdensome information from one party is grossly unfair when it is absolutely silent as to the other.

These are merely instances of the vicious character of this legislation. I have not attempted to cover them all. I do not believe that industry can function under such a handicap as would be imposed upon it by this legislation.

Not only as an employer but as one interested in the social welfare of our people, I am keenly interested in the development of such activities as will insure that freedom of action to the individual which will give him a definite opportunity to improve his own position and, naturally, that of those dependent upon him. I believe this bill will destroy such individual freedom and strongly recommend to this committee that this destructive bill be defeated.

The CHAIRMAN. We thank you, Mr. Weir.

Mr. WEIR. Thank you, Senator.

The CHAIRMAN. Mr. Larkin.

STATEMENT OF JOHN LARKIN, GENERAL CHAIRMAN EMPLOYEE'S REPRESENTATIVES OF THE WEIRTON STEEL CO.

The CHAIRMAN. Your full name?

Mr. LARKIN. John Larkin.

The CHAIRMAN. Your residence?

Mr. LARKIN. 810 North Sixth Street, Steubenville, Ohio.

The CHAIRMAN. Your occupation?

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Mr. LARKIN. Roller in 48-inch cold strip.

The CHAIRMAN. What is the name of your plant?

Mr. LARKIN. Weirton Steel Co.

The CHAIRMAN. Are you an officer of any employees' organization?

Mr. LARKIN. Yes, sir.

The CHAIRMAN. What office do you hold?

Mr. LARKIN. I am general chairman of the employees' representatives.

The CHAIRMAN. Of what plant?

Mr. LARKIN. Of the Weirton Steel Co. in general, all of them.

The CHAIRMAN. And how many plants are included in that?

Mr. LARKIN. Six.

The CHAIRMAN. Where are they located?

Mr. LARKIN. Clarksburg, Stubenville, and the rest are in Wierton; the other four.

The CHAIRMAN. Do the employees at each of these plants elect their representatives?

Mr. LARKIN. Yes.

The CHAIRMAN. The representatives from each plant sit together?

Mr. LARKIN. Yes; they sit together in each unit, and then they meet in a body and elect their own general chairman.

The CHAIRMAN. You are the general chairman?

Mr. LARKIN. I am the general chairman.

The CHAIRMAN. How many representatives of the employees are there in your committee?

Mr. LARKIN. Forty-nine on my own unit.

The CHAIRMAN. In the combined units?

Mr. LARKIN. Forty-nine.

The CHAIRMAN. The committee will be pleased to hear you.

Senator DAVIS. Is there any provision made for a meeting at the plant at Bethlehem, Johnstown, and Sparrow's Point?

Mr. LARKIN. No; there isn't as yet, but we are writing to each other trying to get some organization of that kind. I have had a couple of letters trying to get a meeting together.

Mr. Chairman and gentlemen, I am general chairman of the employees' representatives of the Weirton Steel Co., and I am here because various witnesses appearing before this committee have claimed that the plans of employee representation in the Weirton Steel Co. and other companies were not the free choice of the employees and are company dominated. While I cannot speak for other companies, as I have been employed by the Weirton Steel Co. for 5 years, I do know that the employee representation plan at the Weirton Steel Co. is not company dominated in any way, and I desire to make a statement about my participation in that case.

The plan of electing employee representatives in our company was not forced upon us by the management. It was put in effect in June of 1933. For 8 years previous to that there had been at Weirton what was known as the "Employees' Relief and Beneficial Association," which had 23 directors, elected by the employees each year by secret ballot. Our representation plan was originally submitted by the management to the representatives of the Employees' Relief and Beneficial Association then in office and they and other employees who had been directors of the Employees' Relief and Beneficial

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Association, as well as foremen and superintendents, discussed it with the various employees. There was a unanimous opinion in favor of its adoption and intense interest in the plan. I personally discussed it with everybody with whom I came in contact in the mill in which I am employed and found not a single objection anywhere to its adoption.

The directors and ex-directors of the Employees' Relief and Beneficial Association, together with other employees, formed themselves into steering committees and chose the first election boards to conduct the first election of employees' representatives. In that election in June, 9,866 employees out of 11,190 eligible to vote, or a percentage of 88.4 percent, participated and 49 representatives were chosen. After our elections the various representatives meet together in conference and elect a general chairman, a general secretary, and various committees, the principal ones of which are committee on rules, committee on appeals, and committee on finance.

The bylaws provide that the rules committee shall outline the rules and procedure of conducting election. The next election after our organization was scheduled for December 1933. Committees of five men were selected to act as clerks and tellers at the polls. No man is permitted to serve on an election board who is a candidate. The bylaws provide that the election takes place in the second week of December of each year, nominations on Monday and election on Friday. The election boards have in their possession lists of eligible voters. The voting is by secret ballot and the voter may vote either for an employee or a nonemployee, for himself or Mussolini, if he desires.

The CHAIRMAN. Did Mussolini get any votes?

Mr. LARKIN. A couple. No electioneering is permitted within 50 feet of any polling place, all booths are screened, and no foreman or person connected with the management has anything to do with the election whatsoever. Our bylaws have been amended from time to time. They permit the election of outsiders, and although a representative of the management may sit on joint committees to confer, they are not present when any voting takes place and have no right to vote. Our plan is entirely independent and there is no domination of any kind by the company.

The CHAIRMAN. Are the men disposed to vote in racial groups?

Mr. LARKIN. Sir?

The CHAIRMAN. Are the men inclined to vote in racial groups?

Mr. LARKIN. I don't understand the question.

The CHAIRMAN. Do the Irish vote for Irish representatives?

Mr. LARKIN. Yes.

The CHAIRMAN. And the Italians vote for Italian representatives and the Poles vote for Polish representatives?

Mr. LARKIN. Yes. That is very interesting, just like any other election. There may be a couple of fist fights too.

On September 26, 1933, a small group of men, calling themselves members of the Amalgamated Association of Iron, Steel, and Tin Workers, called a strike in one department of the tin mill. Within 24 hours all the gates of the mills were closed. No demand had been made on the management so far as we know and there were no complaints about wages or hours. There was intense indignation on the part of the great mass of the employees that they were being prevented

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from working by a small group of Amalgamated members and their organizers. Later the steel company appeared before the National Labor Board, in answer to a complaint of the strikers. Although I had previously sent a telegram to Senator Wagner, advising him that I was a representative of the employees, and had received a reply from him, neither myself nor any other employees' representative was summoned to Washington, and we were not present at the hearing. At that hearing Mr. Weir agreed, on behalf of the company, that representatives of the National Labor Board might supervise the next regular election, which was to be held the second week of December.

The representatives did not approve of this plan because they had not been in on the hearing at Washington but did amend the rules to provide for supervision by the National Labor Board, and sent Senator Wagner a letter, asking that a representative be sent. No reply was had for 2 weeks, and the rules committee decided to go ahead with the election according to its own rules and bylaws. Finally a representative of the Labor Board called and proposed a system of nominating by petition, instead of by secret ballot. The employee representatives were unanimously opposed to this. This is a vicious and un-American system. Those who sign a petition are subject to intimidation, coercion, or reprisals. The 49 elected representatives were unanimously opposed to it. Finally we were summoned to Washington for a hearing before the Labor Board, at which hearing the Labor Board attempted to make us change our rules. We took the position that we represented a large majority of our employees and had a right to adopt our own form of organization and would not accept nominations by petition. Senator Wagner, in the hearing before the Labor Board, threatened to send me to jail for defying, as he said, the Government of the United States. It was obvious that the Labor Board was prejudiced in favor of union labor. While I was speaking before the Labor Board, Mr. Green asked me how many men worked the first day the mill opened. I told him 50 percent. He asked me if I was one of them. I answered "yes." I was then publicly ridiculed by him. He said, "You should be a ashamed of yourself to go back on your fellowmen like that." This brought applause and laughter. I answered him in this manner, "I thought I came before a fair Board, but you are not fair, Mr. Green."

The reason the Labor Board has no standing today is because of its unfair attitude. It has been trying to force national unions upon the workers of the country.

We posted the rules for the election according to our bylaws a week before the election and sent a copy to the Labor Board. We heard nothing further from them. The election was scheduled to begin Sunday night at midnight, as we work in three shifts and the first crew comes on at midnight on Sunday.

The CHAIRMAN. On Monday you elect your nominees to be voted upon finally upon Friday?

Mr. LARKIN. Yes, sir.

The CHAIRMAN. In other words, this corresponds to the primary election?

Mr. LARKIN. Just the same as in West Virginia and Ohio.

The CHAIRMAN. How many do you nominate on Monday?

Mr. LARKIN. Two for one.

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The CHAIRMAN. In other words, if there are 10 places you nominate 20 men, the 20 highest are nominated?

Mr. LARKIN. Yes.

The CHAIRMAN. Then the election on Friday is an elimination or a reduction of those 20 to 10.

Mr. LARKIN. Yes.

The CHAIRMAN. The Labor Board wanted you to nominate by petition?

Mr. LARKIN. The Labor Board wanted us to nominate by petition. In other words, they wanted to vote at the regular election and at the nomination, where they could elect their men, where we have 25 or 40 men for the office, they would just vote for 1, possibly 2 at the regular election, and then they would write 10 names on a piece of paper and nominate that many more.

Saturday afternoon about 3 o'clock the company received a set of rules from the Labor Board, with instructions to post them in the mills. These rules were entirely different than the rules of our organization. They provided for nominations by petition, as well as by ballot, a silly and unworkable scheme. It would have permitted a man's name to be put upon a ballot by a petition signed by 10 persons, and to thereby displace the name of some other man who had waged an active campaign and received a large number of votes. The competition for employees representatives in our organization was very keen. The men had printed campaign literature and fought for the positions on the committee. Imagine the situation of a man who had made an aggressive campaign and received two or three hundred votes, and then have them crowded off the ballot by somebody who was nominated by a petition signed by 10 men who might have been the same men who voted at the primary and whose signatures might have been obtained to the petition by coercion.

Besides that, the rules laid down by the Labor Board provided for 98 representatives instead of 49. In other words, it doubled the number of representatives from every mill. Take, for example, our strip mill, where the bylaws provide for 11 representatives. Campaigns had been going on for weeks and various slates had formed, each upon the assumption that there were 11 representatives to be elected, and on Saturday afternoon, about 30 hours before the voting was to start, comes a set of rules from the Labor Board, directing 22 instead of 11 persons to be chosen from that mill. Why, if the steel company had posted those notices in the mill that day there would have been a riot, and I do not blame them for refusing to post such notices.

We still invited the Labor Board to supervise the election under our own rules and it failed to do so. We went ahead and held the election. Over 83 percent of all the eligible employees voted and the total vote was equal to 98 percent of the men who were at work in the mill that day. I understand Senator Wagner claims that the Weirton Steel Co. broke its contract with the Labor Board. My view, and I think it is the view of the vast majority of our employees, is that the Labor Board's conduct in the matter was shameful and a disgrace to the Government. The 49 representatives chosen at that election are functioning as the representatives of the men and there is very little dissatisfaction with them. The men who are stirring up trouble, going to Washington and making extravagant charges,

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represent a very small minority of our employees. They call mass meetings from time to time, many of which have less than a hundred in attendance, and some of those are not employees. Disinterested investigators coming into Weirton will not hear a murmur of complaint. The men are working steadily and satisfied with their employment. We had a higher percentage of operation during the depression than any other steel company, and still have today. We have never had any difficulty taking up any of our problems with the management. We recently made a demand for a wage increase and obtained it, and obtained a written contract as a result of our demand. I certainly don't think it was the intention of the President or of Congress to make it illegal for us to conduct the kind of an organization that we are conducting. We are perfectly satisfied with it. We are perfectly satisfied with it. We have no desire to send hundreds of thousands of dollars into the tills of union labor officers or organizers. We know our own problems better than they do and we can accomplish more for our men than they can accomplish. Do you imagine for one minute if there was the unrest in Weirton that the labor leaders would make you think there is that we would be operating today and breaking production records? Only last week our 48-inch strip mill broke an all-time world's record for production. Those things do not happen in a mill where 98 percent of the men are dissatisfied, as some of the union agitators would have you think is the condition in Weirton.

All through our controversy the union agitators were in direct touch with the Labor Board and often received advance information as to what the Labor Board was going to do. Is it any wonder that we had no confidence in the Labor Board as a fair and impartial court? In my opinion, Senator Wagner's bill is wholly designed to force unions upon the workers of this country because he has failed in those efforts through the Labor Board as it is now constituted, and the workers at Weirton are vigorously opposed to it.

I have only endeavored to cover the method by which I, as well as the other representatives in our plant are elected, and the other two men from our employees' representation group will outline to you the functioning of our plan and what we have accomplished for the men we represent.

The CHAIRMAN. How is your organization financed?

Mr. LARKIN. It is financed by $25 paid by the company per month for every representative that is elected.

The CHAIRMAN. Each representative gets $25 a month?

Mr. LARKIN. Yes.

The CHAIRMAN. And this takes care of all the expenses? How about the expense of printing ballots and the arranging of elections?

Mr. LARKIN. Why, each man is assessed. The company pays an assessment of 50 cents per head. The representatives asked the company to pay each and every man that works in the company 50 cents, into the fund to finance the organization.

Senator DAVIS. Fifty cents a month?

Mr. LARKIN. Fifty cents a year, for every employee that is eligible to vote.

The CHAIRMAN. In other words, they pay to your organization, or to the representatives of the workers, what is the equivalent of 50 cents a year for each employee?

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Mr. LARKIN. Yes.

The CHAIRMAN. When did you last have a meeting of the employees to determine upon the kind of an organization you desired?

Mr. LARKIN. That is the last meeting?

The CHAIRMAN. I understand you had an election in December. You told us about that.

Mr. LARKIN. Yes.

The CHAIRMAN. When did you have a meeting of your employees to determine upon what kind of an organization you would have?

Mr. LARKIN. We never had a meeting of all of them together.

The CHAIRMAN. This organization where you had the election in December, it was first organized when?

Mr. LARKIN. It was first organized in June.

The CHAIRMAN. Now, in June did you have a meeting and was there a plan submitted to the employees?

Mr. LARKIN. Yes, sir; and it was talked all over the mill, and the Amalgamated was naturally mentioned at that time.

The CHAIRMAN. What was the vote at that time?

Mr. LARKIN. Eighty-three percent voted at that time.

The CHAIRMAN. Eighty-three percent of the employees voted for the plan?

Mr. LARKIN. Nine thousand nine hundred and eighty-six out of eleven thousand five hundred and fifty.

The CHAIRMAN. Each plant voted separately?

Mr. LARKIN. Each plant voted separately in units.

The CHAIRMAN. The total vote was what you have given?

Mr. LARKIN. Yes.

The CHAIRMAN. And the vote was upon the acceptance of a plan of organization such as has been presented here?

Mr. LARKIN. Yes, sir.

The CHAIRMAN. Which I assume was prepared by the employees and employers together?

Mr. LARKIN. Yes, sir; and it has been amended from time to time. The company has nothing to do with the amendment of the bylaws.

The CHAIRMAN. How has it been amended?

Mr. LARKIN. By the majority vote of the representatives. They can amend the bylaws at any time. The company has no voice whatsoever in it.

The CHAIRMAN. Do I understand the bylaws of your organization permit a majority of the employees at any time to set aside that kind of an organization?

Mr. LARKIN. You say to set aside? I don't know about the organization. I do not think they want to set it aside.

The CHAIRMAN. I say if they desire it.

Mr. LARKIN. I suppose they could put anything in the book to amend anything they wanted to.

The CHAIRMAN. This clause, "This plan shall be and remain in force and effect unless and until terminated by a vote of the majority of the employees at an annual election", is that clause in your plan?

Mr. LARKIN. Yes, sir.

The CHAIRMAN. And under that bylaw a majority of your employees could terminate this kind of an organization if it chose?

Mr. LARKIN. Yes, sir.

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The CHAIRMAN. You so understand it?

Mr. LARKIN. Yes, sir.

The CHAIRMAN. It is your opinion, however, that the employees do not care to terminate it?

Mr. LARKIN. They do not, I am sure of that.

The CHAIRMAN. Are there any other questions?

Senator DAVIS. And they could affiliate with any other organization if they wanted to?

Mr. LARKIN. Yes, sir; they can belong to the Amalgamated and be a member of the representatives just the same, there is no difference at all.

Senator DAVIS. That is not my question. My question is that by a vote, a majority vote of those that belong to the organization that you represent, they could vote as a whole to affiliate with any other body that they wanted to?

Mr. LARKIN. Yes, sir; absolutely. They are free to vote any way the want to vote.

The CHAIRMAN. Of course, you know an objection is made here by the proponents of this bill to the system of employers paying the expenses of these company organizations.

Mr. LARKIN. Well, to explain that, there are a lot of men that work in the various mills on laboring jobs, and such as that, and it would be a crime to take money off of a man making 40 cents or 42½ cents an hour working 40 hours a week to pay to any institution, would it not? Would not it be better to get somebody to finance a thing like that? If they had to pay into that institution it would be just robbing them.

The CHAIRMAN. What is the average wage paid in the plant where you work, to the employees?

Mr. LARKIN. The average wage, I haven't got that, but our plant is a strip mill; I would judge there is 25 percent skilled labor there, and 25 percent medium, and 50 percent on a laboring scale.

The CHAIRMAN. Could you give us the average wage of those three groups?

Mr. LARKIN. Not the average wage, I could not give you that.

The CHAIRMAN. Are they paid on a per-hour basis?

Mr. LARKIN. Well, I can give you that. They have been paid on an hourly rate and tonnage in the 48-inch mill. In the heat mill are 553 employees at 37, these 553 are paid an hourly rate of 37 on tonnage.

The CHAIRMAN. Does that hourly rate differ?

Mr. LARKIN. Yes. There are 1,460 in the entire Weirton Steel Co. on different rates and classifications of different jobs.

The CHAIRMAN. What is the minimum wage that any of these employees receive?

Mr. LARKIN. The minimum wage I would say is about 55 to 60 cents an hour.

The CHAIRMAN. How many hours a week do the men work?

Mr. LARKIN. Forty hours. That is just approximately. I do not know, I have no figures on that. I am just taking the high-salaried men and the lower-salaried men together.

The CHAIRMAN. Would you object to telling us what your own salary is?

Mr. LARKIN. Yes, sir; I can tell you that.

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The CHAIRMAN. What is it?
Mr. LARKIN. $200 a month.
The CHAIRMAN. That is on an hourly basis?
Mr. LARKIN. Yes, sir; 96 hours.
The CHAIRMAN. Are there any other employees getting $200 a month?
Mr. LARKIN. Yes, sir. There are some getting more money than I am. I suppose I am the lowest paid roller in the mill. Of course, there are other mills where I would get a larger salary if I got promoted.
The CHAIRMAN. You are getting $200 a month and you are working 40 hours a week?
Mr. LARKIN. Yes, sir.
Senator DAVIS. How many employees are there in the strip mill?
Mr. LARKIN. The one I work in?
Senator DAVIS. The particular strip mill that you work in.
Mr. LARKIN. Seven. In our strip mill alone?
Senator DAVIS. Yes.
Mr. LARKIN. I will give you the right figure. I have that. There are 1,463 men.
Senator DAVIS. That applies to everybody?
Mr. LARKIN. That does not apply to the bosses or anything, just the men that are allowed to vote. Nobody has a right to vote who has a right to hire or fire. They are not listed here, the salaried employees are not listed, only the eligible men that work, the 1,463.
The CHAIRMAN. That is the office help included?
Mr. LARKIN. The office help is not included in this. I suppose at the Weirton Steel Co. there are about 13,000 employees in all six of the plants, including everyone.
The CHAIRMAN. Are you expressing the sentiment here of the other 48 representatives?
Mr. LARKIN. I certainly am. They all helped to write this letter, everyone of them. The different unions sent suggestions in and I wrote it off those suggestions.
The CHAIRMAN. You read it to these representatives, this statement, before you read it here?
Mr. LARKIN. Yes, sir.
The CHAIRMAN. And they approved it?
Mr. LARKIN. Yes, sir.
The CHAIRMAN. That is all. Mr. Girdler.

STATEMENT OF THOMAS M. GIRDLER CHAIRMAN AND PRESIDENT REPUBLIC STEEL CO., CLEVELAND, OHIO

The CHAIRMAN. Will you give us your name?
Mr. GIRDLER. Thomas M. Girdler:
The CHAIRMAN. Where do you reside?
Mr. GIRDLER. Cleveland, Ohio.
The CHAIRMAN. Your occupation or business?
Mr. GIRDLER. I am chairman and president of the Republic Steel Corporation.
The CHAIRMAN. Do you occupy the same position relatively in the Republic Steel Corporation that Mr. Weir occupies in the United States Steel Corporation?

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Mr. GIRDLER. I have two jobs, he only has one. I am chairman and president.

The CHAIRMAN. We will be pleased to hear you.

Mr. GIRDLER. Mr. Chairman and gentlemen——

Senator DAVIS. How many different lines do you manufacture, so that the chairman might know?

Mr. GIRDLER. I think we make everything that is made by any of the steel companies except rails and heavy structural material.

The CHAIRMAN. How many plants have you?

Mr. GIRDLER. We have steel plants at Youngstown, Warren, Niles, Canton, Massillon, Elyria, and Cleveland, Ohio; also in Buffalo and Brooklyn, N. Y.; Pittsburgh and Beaver Falls, Pa., Chicago, Danville, and Moline, Ill.; East Chicago, Gary, and Muncie, Ind.; Detroit, Mich.; Unionville and Hartford, Conn.; and Birmingham, Ala.

The Republic Steel Corporation was formed on April 8, 1930.

The CHAIRMAN. Who organized the company?

Mr. GIRDLER. It was a combination of a number of companies that were organized on April 8, 1930, into the Republic Steel Corporation.

The CHAIRMAN. There was a company known as the Republic Steel Co.?

Mr. GIRDLER. The Republic Iron & Steel Co. was one of the companies. There were four companies that were put together on April 8, 1930. Shortly before that time various of those companies had combined with other companies, so it is really a combination of nine steel companies in the last few years.

The CHAIRMAN. But you have not paid any dividends since your reorganization?

Mr. GIRDLER. We paid some preferred dividends in 1930.

The CHAIRMAN. Tell us what the company thinks about this bill.

Mr. GIRDLER. I gave you a list of the steel plants. We have iron mines in northern Minnesota and Michigan and in Alabama, and we have coal mines in Pennsylvania and Alabama. At the present time, the Republic is employing about 34,000 employees. We are opposed to the Wagner bill.

Senator DAVIS. How many do you employ, Mr. Girdler, in normal times?

Mr. GIRDLER. That would be a pretty hard question to answer, because when the companies were brought together we were able to effect economies in operation, and so forth, so we have no relative figures.

The CHAIRMAN. You have had no normal time since 1930, have you?

Mr. GIRDLER. There haven't been any normal times since the Republic Steel Corporation was formed.

We are opposed to the Wagner bill. It is designed to interfere with direct contact between management and employees and to destroy the friendly relations which now exist. After reading the bill, I think its purpose is to unionize all industry and subject our plants to the domination of national labor unions. This would be a great calamity.

I feel that my experience in dealing with labor entitles me to express an opinion on this subject. I have always worked since I was a boy.

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I worked in a cement plant during vacation while I was going to college. I began work in a steel plant at Pittsburgh in 1902, and was presently made a foreman. Since then I have been continuously in charge of labor. My experience covers work at various plants, including 7 years in the mills of the Atlantic Steel Co. at Atlanta, Ga. I spent 16 years with the Jones & Laughlin Steel Corporation at Pittsburgh, beginning as assistant superintendent in one of its plants and concluding as president of the corporation in charge of 25,000 employees.

For a number of years I was superintendent of the Aliquippa plant of the Jones & Laughlin Co., located on the Ohio River. This plant employed anywhere from 5,000 to 10,000 men, according to the condition of business.

All of the plants of that company were operated on the open-shop basis. We did not have any labor union to tell us what to do, but I made it my business to know the needs of my men. I previously had personal experience working in steel plants, and I thought then and I think now, that I know something about how the workers in steel plants feel about these matters.

My door was open for employees to come to me at any time if they had anything to say, and they did come, singly and in groups. I became acquainted with them and could call hundreds of them by name. I kept in close touch with the work of the plant and impressed upon my staff and all our superintendents and foremen the necessity and the importance of keeping alive to the needs and wishes of our employees. We never had labor troubles of any consequence, even though they were sometimes occurring in the plants of other companies, especially in 1919. I attribute this result to the direct personal contact between our management and our men.

I think that the managers of steel companies generally have long since found that it is for the best interests of their companies to adopt this course in dealing with labor problems, wholly aside from any other consideration. I am personally acquainted with the officers of the large steel companies and many of the smaller ones, and know they are trying to handle this subject in the same way that I am.

It is the general belief of the officers of steel companies that the only successful way to handle the labor problem is through direct personal contact between management and employees. This is the principle on which I have always acted.

The Wagner bill would destroy this personal relation. It invites the men to select a labor union to represent them. One of the stock arguments of labor leaders is that the workers ought to have, as Mr. John L. Lewis said (transcript p. 329):

> The opportunity of availing themselves of skilled counsel in the form of economists, representatives of national labor organizations, attorneys or any other agents, even though they are not employed in the plant.

I know something about the way labor unions work, and the business agents whom they put forward to deal with employers are certainly not economists or lawyers. The arguments which they use are not such as are found in books. They undoubtedly represent national labor organizations, but this is a disadvantage to the workers, as these business agents are acting under the direction of men who are much more interested in the development of their national organization than they are in solving the problems of any particular plant.

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The employee-representation plans that have been adopted since the passage of the National Recovery Act provide generally for the selection of individual representatives as required by the act. They are not company unions or unions in any sense of the word. These plans provide a method of collective bargaining on wages, hours, and working conditions, between management and employees through their own elected representatives, and are so designed to provide a means for collective expression of opinion for negotiation.

There has been a great deal of wild and extravagant talk before this committee about the exercise of coercion and intimidation by employers to make their employees adopt this plan. I desire to say that so far as our company is concerned such statements are absolutely untrue. We did not bring any pressure to bear upon our employees to compel the adoption of this plan, and since its adoption we have not sought to influence in any way the action of these representatives.

The CHAIRMAN. Is your plan similar to that in the plants of the United States Steel Corporation?

Mr. GIRDLER. Very similar and probably more closely like the Bethlehem Steel Corporation than any other, because our operating vice president was for many years with the Bethlehem Steel Co. and had 7 or 8 years' experience working in their plant before he came to work for us.

I will not take the time to explain the details of our system. That will be done by the employee representatives themselves. But there are two points on which I desire to comment. I understand it has been repeatedly stated at this hearing that this plan is in conflict with the law because it provides that the representatives selected shall be employees of the company.

In the first place, I have been told by my counsel that the Federal court in Chicago has held that this clause does not conflict with the National Recovery Act, but is perfectly legal.

In the second place, it is not surprising that in the original draft of any plan there might be clauses which experience would demonstrate should be revised. Even the Constitution of the United States has been amended 21 times.

The other point on which I wish to comment is the charge that employers have exercised undue influence in the selection of representatives. This statement is not true as far as our company is concerned. Nominations were made by secret ballot and the vote on the nominees so chosen was conducted by secret ballot. The only part taken by the company in these elections was to furnish ballots, ballot boxes, supplies, and places for the men to vote. The conduct of the elections was entirely in the hands of the men. I have already said that since the election of these representatives this company has exercised no influence upon their action. Before I leave this subject I desire to amplify that statement. Anyone who thinks that these representatives, chosen by secret vote to represent their fellow workers would be overawed in dealing with their foreman, superintendent, or even the president of the company, certainly does not understand the independence of steel-plant workers. These representatives handle matters referred to them by the men in the group they represent. They meet by themselves and then after that meeting join

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with the company representatives in a meeting in which they discuss the matters presented by their constituents.

In connection with these meetings, 785 meetings were held and the total attendance at these meetings was 6,968. The total amount of money paid by the company on account of time spent at these meetings by representatives averaged approximately 43 cents per employee for 8 months. If the employees were required to pay dues to the American Federation of Labor during these 8 months, it would have cost each employee $8, or a total loss to all employees of $272,000.

These figures clearly indicate that any law which makes it impossible for the company to pay wages to employee representatives for time lost on account of attendance at meetings, immediately imposes a burden of expense on employees if they act through a union.

Senator DAVIS. How much did you say, Mr. Girdler, they would have paid to the American Federation of Labor?

Mr. GIRDLER. $272,000.

Senator DAVIS. Are you of the opinion that the $272,000 would go to the American Federation of Labor?

Mr. GIRDLER. I do not think I understand the question.

Senator DAVIS. Are you of the opinion that that $272,000 would go to the American Federation of Labor?

Mr. GIRDLER. Sure, if they paid dues to it.

Senator DAVIS. You know that the Federation of Labor just gets 1 cent a month per capita of the members of a constituent union, which in your case would be the Amalgamated.

Mr. GIRDLER. I am talking about the American Federation of Labor or an affiliate. I never saw an accounting of the American Federation of Labor. I never saw anyone that ever saw one.

Senator DAVIS. They publish an annual report and they do make an accounting of what they receive. I am satisfied that the Amalgamated publishes a book which gives all that they receive. I do not know so much, though, about the local union publishing their reports but most of the money I think would be left in the community where the union was organized and they just would pay it out for relief and insurance and a good many other things that they themselves have, but it doesn't all come into the Federation of Labor.

Mr. GIRDLER. I do not know about the fountain head or where it goes. I know in 1932 the greatest complaint I heard from them that worked in our companies who had been union members, or were union members, was that they did not know what became of the money, and they always complained about it.

Senator DAVIS. Most of it, if you look into the matter, is paid out by the local union in the community where they are employed, and then a per-capita tax is paid into the national organization. I think it runs all the way from 50 cents and up, something of that kind, into the national organization, and out of that 1 cent a member per month comes into the American Federation of Labor.

Mr. GIRDLER. What I was trying to show here, Senator, is what it would cost the men in our employ.

Senator DAVIS. I thought you said it was paid into the American Federation of Labor.

Mr. GIRDLER. Well, I mean dues to the American Federation or affiliates, branches or subdivisions, dues paid to the union.

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Senator DAVIS. I think I know of you well enough to know that you would not want to make a misstatement.

Mr. GIRDLER. I think you know me pretty well.

These figures clearly indicate that any law which makes it impossible for the company to pay wages to employee representatives for time lost on account of attendance at meetings, immediately imposes a burden of expense on employees if they act through a union.

The best way to test the success of any plan is by the results obtained. I have here a summarized statement of the volume of cases handled under our representation plan during the first 8 months, and I am going to give you these figures in totals, which will speak for themselves.

From June 16, 1933, to March 1, 1934, a period of 8½ months, our employee representatives handled 1,222 cases through the plan. Of this number 886 cases, or 72 percent of the total cases handled, were settled in favor of the workmen and to their satisfaction.

Only 7 percent of the total cases presented by the employee representatives were pending settlement as of March 1, 1934, and the remaining 21 percent were either voluntarily withdrawn by the workmen, compromised, or settled in the negative.

The employee-representation plan is simply a continuation and further development of the principle of direct contact between management and employees, which, as I have told you, constitutes in my opinion the correct way of dealing with labor problems.

I understand that it has been repeatedly stated before your committee that many employees who wanted to join the American Federation of Labor or some of its subsidiary unions have been discharged by employers. I desire to state that, although I have always known that there have been more or less union men working in plants in my charge, I have never fired an employee, either before or since the adoption of the act, simply because he was a labor union man. Some times labor union men who were neglecting their work have been discharged, and this neglect has in some instances been because they were wasting their time and wasting the time of other employees in working hours by talking about labor union matters. Also, employees who were not labor union men have been discharged when they were neglecting their work or interfering with the work of their fellow employees.

You cannot direct successfully the operations of many thousands of men without maintaining proper plant discipline, and I say without qualification that workers generally have a higher regard for an executive who possesses both fairness and firmness than they have for one whose acts are characterized by weakness.

If the Wagner bill is part of a "new deal", it is certainly not part of a "fair deal." Mr. Green and Mr. Lewis have repeatedly said that section 5 of title I constitutes the most vital section of the bill. That section is confined exclusively to a statement of what constitutes unfair labor practices on the part of employers. But nowhere, either in this section or in any other part of the bill, is any statement made as to what constitutes unfair labor practices on the part of employees or on the part of labor unions selected by employees.

Senator Wagner may call this a bill "to equalize the bargaining power of employers and employees;" but I call it a bill to tie the

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hands of employers and turn industry over to the American Federation of Labor.

I shall not, of course, attempt to discuss legal procedure, but the very next section of this act authorizes the United States courts to issue injunctions to restrain acts of employers as defined in section 5, but no provision is made for issuing injunctions against labor unions. I am told that under the Norris-La Guardia anti-injunction law the right of employers to secure injunctions against unfair acts by labor unions has been denied. If you are going to deal fairly with this subject I should think the same rights and remedies should be given to both sides.

There are six clauses in section 5, all important, declaring what shall constitute unfair labor practices by employers. These have already been emphasized by other opponents of the bill, and I need not discuss them in detail. This section is intended to compel employers to recognize and deal exclusively with the American Federation of Labor. It destroys employee representation plans or any other plan in which employer and employees have mutual interest.

Finally, it is declared to be an unfair practice for employers to "engage in any discriminatory practice as to wage or hour differentials, advancement, demotion, higher tenure of employment, reinstatement, or any other condition of employment, which encourages membership or nonmembership in any labor organization."

Under this clause practically every change made in the work of a plant employee becomes immediately a disputed question if he is a member of a labor union. No matter how strongly the employer may testify that such changes were made solely according to the merit or demerit of the worker, we must expect a controversy, and under the provisions of this bill creating a National Labor Board, with its principal office in Washington, we are subject to be called there at substantial expense and inconvenience for the determination of a question which any experienced plant superintendent could dispose of fairly, satisfactorily, and promptly under the present system.

I am told, for, of course, I have not had time to read the entire transcript of this hearing, that many speakers in favor of the bill have undertaken to convince you that the workers themselves resent the employee-representation plan and have flocked to the American Federation of Labor requesting to be taken into that organization. This is absolutely untrue, as far as we are concerned. The facts are that promptly upon the enactment of the National Recovery Act the American Federation of Labor deluged the country with paid professional organizers whose duty it was to set up organizations in places where the American Federation of Labor had not obtained a footing. At our iron-ore mine in Alabama, there had never been, prior to the enactment of the National Recovery Act, any union at all. The employees' representation plan was adopted with enthusiasm by the men and functioned successfully. Several months later the representative of the American Federation of Labor in charge of the southern district, who resides at Atlanta, Ga., appeared at Birmingham and employed a local lawyer and others as organizers in behalf of the American Federation of Labor. They launched an intensive campaign for the purpose of creating a local union to be affiliated with the American Federation of Labor and used all the tactics usually employed in inducing employees to join that local union.

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Then these professional organizers claimed to be the representatives of the men and requested that the company disregard the representatives who had been previously chosen by secret ballot by the workers themselves. Since then we have had nothing but trouble. The sole issue is as to the recognition of the union. There is no other controversy worth mentioning.

This case is typical and illustrates my statement that union leaders were not called in by the employees. Contrasting their action in this case with that of the company, I desire to say that the mere drafting and submission of a plan of employee representation to be adopted only in case of approval by the employees at an election held for that purpose, where the vote is by secret ballot, is insignificant as compared with the active coercion and intimidation practiced by the American Federation of Labor.

I can readily understand the efforts of the leaders of the great national unions to seize this opportunity to try to unionize industry. The National Recovery Act has accustomed the people to expect great changes in the way of doing business, and the current labor strife and unrest presents just the condition in which such activities thrive. The American Federation of Labor has a tremendous incentive to carry on this propaganda. The annual revenue to be derived from union dues, even when paid at the rate of $1 per month, reaches large totals. For every million men which can be enrolled in these organizations, they will receive, if all are paying dues, $10,000,000 to $12,000,000. Mr. William Green has told this committee that the present membership of the American Federation of Labor is in excess of 3 million (transcript 258). This would mean an income of $36,000,000 each year. No political party in this country ever had such an annual revenue with which to build up and maintain its organization.

Just a word more about collecting dues. If the workers are so anxious to join the American Federation of Labor, why should it be necessary for these unions to obtain a compulsory check-off to enforce collection of dues? And yet that is always one of the vital issues in every labor controversy. I know from experience that the great majority do not want to pay union dues, and will not do so except under coercion. Our plant workers are intelligent. They know that these dues reach large amounts, and they have a pretty good idea as to who is getting the most benefit from them, even though an accounting is seldom, if ever, published by the union.

This question is one which they can easily understand. Take the case of Republic Steel Corporation and subsidiaries. It employs about 34,000 employees. If these men were forced into the union and subjected to a compulsory check-off they would be compelled to contribute annually a total of something like $408,000 to the support of the union. This is a free country and none of us can justly object to the proper efforts of labor unions to promote the membership of their organizations by all fair methods. We do have a right, however, to object to legislation which attempts to force industry and employees against its will to unionize.

The steel companies are just beginning to emerge from the most serious business depression the industry has ever known. Their losses have been stupendous. Under the National Recovery Act the better

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conditions which have resulted from somewhat improved prices and much larger volume of business have been to a large degree offset by the increased cost of operation. The passage of the Wagner bill with the consequent labor troubles that are sure to follow will add an intolerable burden to this industry from which I think we can justly ask you to protect us.

The CHAIRMAN. I thank you. The remaining witnesses, Mr. Larkin and Mr. Purnell, president of the Youngstown Steel & Tube Co., are they both in the room? Mr. Larkin is I know. Are there any other witnesses to be heard today other than these two? Then I suggest we adjourn until 2:30 this afternoon.

(Whereupon, at 12:55 p.m., the hearing adjourned until 2:30 p.m., of the same day.)

AFTERNOON SESSION

(The hearing was resumed at 3 p.m., pursuant to the recess.)

The CHAIRMAN. The chairman regrets that he has been detained in the Senate. I am sorry it was necessary to delay the opening of the proceedings this afternoon. Mr. Joseph M. Larkin, will you please come forward?

Mr. LARKIN. Yes, sir.

The CHAIRMAN. Your full name?

Mr. LARKIN. Joseph M. Larkin.

The CHAIRMAN. And your residence?

Mr. LARKIN. Bethlehem, Pa.

The CHAIRMAN. And your occupation or position?

Mr. LARKIN. Vice president, Bethlehem Steel Co., in charge of labor relations since before the war.

The CHAIRMAN. We will be pleased, Mr. Larkin, to have your views about this bill.

STATEMENT OF J. M. LARKIN, VICE PRESIDENT BETHLEHEM STEEL CO.

Mr. LARKIN. Mr. Chairman and gentlemen of the committee, I am appearing before your committee in opposition to the Wagner bill, because I fear that it would legislate out of existence plans of employee representation which are in effect among the employees of many industries in this country, including employees of the company that I represent, and which I know to be good from the point of view of the employees.

Such employee representation plans have been in operation among the employees of our company for more than 15 years. They have provided a happy and successful working arrangement which our men and our management have found mutually advantageous and satisfactory during that period, and we are wholly opposed to any legislation which would destroy or adversely affect them.

In order to make clear our specific objection to the bill, I shall try to present briefly the facts and the principles which lead us to the conviction that employee representation plans such as the employees of our company have are the most practical method by which labor relationship may be carried on, not only from the standpoint of employees and employers, but also from that of the public welfare, and to the conviction that Congress should be most careful not to pass any laws that might adversely affect such plans.

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Our p'ans were adopted because it was believed that they provide the most effective form of handling labor relationships. They were not adopted, as some critics have charged, as a device to forestall unionism, and this was made clear at their inception 15 years ago.

The purpose of the employee representation plans is to establish a continuous day-to-day channel of communication between management and men. They aim to set up a method whereby all complaints can be quickly heard and adjusted and all suggestions can be considered on their merits, and whereby the men can elect their representatives without influence from the management, so that the dealings will be clean-cut and on a sound basis.

The underlying philosophy of the employee representation plans is that the best interests of labor can be served by having the employee and employer sit down together in a friendly and constructive atmosphere and, with a first-hand practical knowledge of their problems, work out a fair and equitable solution. Therein lies the strength of employee representation as contrasted with other forms of collective bargaining which seek to organize employees and employers into separate camps with drawn battle lines. This was the condition which existed in industry 30 years ago. It is a condition to which we must not revert.

This employee-representation idea, of course, is not new. Scores of plans have been in effect for many years, and the criticism of them that has recently developed is due to a large extent to the resistance that the employees themselves have shown to the efforts to organize them which the union leaders have made.

Back in the early post-war years, with their unsettled labor conditions, these plans were already in effect in a number of companies. In that period President Wilson created his Second Industrial Conference, which was called upon to study the cause of industrial unrest and to suggest measures for preventing it. It is significant that such conference made a report in which it recommended employee representation plans as a practical method of fair and effective collective bargaining.

It is also significant that in the recent settlement of the threatened automobile strike President Roosevelt expressed the hope that employees and employers might develop an effective form of direct joint participation through some sort of works council. In both cases it was made clear that the Government did not favor any particular union or form of employee representation. As President Roosevelt expressed it—

> The Government's only duty is to secure absolutely an uninfluenced freedom of choice without coercion, restraint or intimidation from any source.

I believe that that is exactly the atmosphere in which real employee representation plans should operate. My general criticism of the Wagner bill is not so much that it supports unionization as that it will in operation result in enforced unionization for every kind and condition of collective bargaining.

Now, there are several principles with respect to employee representation which are fundamental to its success from any point of view. The first of these is the independence of the representatives. There has been a great deal of dust raised about company domination, and it is assumed by some people that every such plan is dominated by the

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employer company. That is very far from the truth. On the contrary it is generally recognized by employers that, if these plans are to be of any value to anyone, they must provide a forum for free and open discussion of all problems affecting labor, and no company which has had the long and satisfactory relationship with its employees that our company has had would think of denying them the fullest freedom of action in this regard.

Business men have some common sense. They know that they cannot deceive their employees and at the same time preserve their loyalty and good will. No experienced management would attempt to establish a thoroughly dominated company union, with representatives picked out by them for the purpose of scenery. Nothing would be accomplished by such a set-up, and business men know it. They know that if the plans are to operate effectively they must have the support and confidence of the employees.

In dealing with labor as well as in other relationships sincerity and honesty of purpose are the only principles that pay in the long run. That may sound rather obvious and oldfashioned, but it is a good rule of successful business operation, which is not going to change.

From their inception 15 years ago, our employee-representation plans have operated on a fair and above-board basis. They have provided to our employees an opportunity for collective bargaining absolutely free from domination or intimidation and a ready means by which their employment problems have been and are solved.

Our plans expressly provide that no employee representative shall be discriminated against for his activities in representing his constituents. They give the representatives the right to appeal any case to the Department of Labor of the State in which the particular plant is located, or to the United States Department of Labor. I do not see how there can be any guaranty better than that. In fact, I think that there is a danger of our forgetting that in the United States Department of Labor we already have a fair tribunal which should command our respect of the American public.

Our plans further guarantee protection of the men from any discrimination because of creed, race, or union membership. All nominations and elections are conducted entirely by the employees themselves by secret ballot, with proper safeguards, including ample notification of the time and place of nominations and elections.

Another major principle in our employee-representation plans is that of mutual participation in discussions of all problems affecting the employees and the management. This is vital to the success of the plans. It is the very feature which distinguishes them as a method of joint and effective cooperation, as compared with the battle-front method, of settling disputes.

Mutual participation is a two-way street, as much a benefit to the men as it is to the employer. It is an advantage to the men to be able to sit down with an equal number of representatives from the management to discuss face to face on a friendly basis the various problems which arise. If management refuses such participation, it should certainly be criticized for so doing.

But management also desires it, because it believes that an employee who is informed of his employer's policies and problems and is treated fairly will be a satisfied, and, therefore, a better worker.

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In our plans the employee committees are entirely free to meet by themselves, but, as a matter of general practice, the quick and effective route of working out the current problem is found to be in the meeting of joint committees consisting of representatives of the employees and the management.

That a wide range of matters come up for consideration from day to day and week to week is indicated by the fact that 7,078 major cases have been decided in the past 15 years under the employee–representation plans in effect at the plants of our company. Of these, 1,265 cases dealt with wages and 1,497 with working conditions. Then we find such other important matters as relief, pensions, sanitation, operating practices, accident prevention, and employee transportation.

That these plans provide for the employees a practical method of bargaining and that the decisions are not dominated by the employer is seen in the record which shows that 4,813 of the 7,078 cases to which I have referred were decided as the employees recommended, and that an additional 817 cases were compromised. Thus, almost 80 percent of the cases brought up by the employees were decided in accordance with their recommendations or in a manner satisfactory to them.

The next point on which I wish to comment is the provision in our plans whereby the employee representatives are compensated at their regular rate of pay for the time devoted to performing their duties under the plans. Some critics have stated that, if men are paid their wages while they are actually serving on a committee, their views will be necessarily biased. Such a statement is based on the misconception of the whole idea. We have always regarded our plans as an integral part of our organization.

I cannot see any sound reason for discriminating against the employees by requiring that their meetings be held at their expense. As I see it those who think that the representative should serve at his own or the employees' expense cannot have any particular friendship for labor. Indeed, some formal labor agreements which have Governmental sanction definitely stipulate that the employees' representatives shall be permitted to attend to their duties at the employer's expense. Our experience over 15 years has been that elected representatives have performed their duties in a fearless, intelligent manner. Anyone who says that an employee is going to compromise his conscience just because his wages continue while he is attending to committee business has an unjustifiably low opinion of the American worker. I believe that employees generally will subscribe to this view and will resent any legislation that will cause them needless loss of wages.

The CHAIRMAN. What does the employer pay to the representatives of labor in your plant?

Mr. LARKIN. The regular hourly rate for the time that they spend.

The CHAIRMAN. During working hours, while he is serving as representative of the employees, he is paid the wages that he would receive if he had been actually working in the plant of the company?

Mr. LARKIN. That is right.

The CHAIRMAN. There was some evidence here this morning of paying the representatives $25 a month in one company. That is not the practice in your company?

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Mr. LARKIN. No. We pay the regular average hourly rate for the time spent.

The CHAIRMAN. In other words, you feel that they are working for the company when they are engaged in settling disputes and in considering problems for the welfare of the employees and for the development of collective bargaining between the employer and employee?

Mr. LARKIN. We feel that they should not suffer a loss by reason of the contribution which they are making to the employees and the company.

"The proof of the pudding is in the eating." Plans such as ours that have provided 15 years of industrial peace prove themselves—they stand on their own merits. Millions of employees are organized under such plans for collective bargaining agreed upon by the employees and the employers, and I am confident that there cannot be the slightest justification for upsetting them.

In industries where employee representation plans have operated successfully the best of working conditions will be found to exist. In commenting upon the spirit with which all parties entered into the negotiations leading to the settlement of the threatened automobile strike, President Roosevelt said:

> It (that is, the settlement) is a complete answer to those critics who have asserted that managers and employees cannot cooperate for the public good without domination by selfish interest.

This, I believe, expresses the philosophy underlying the success of employee representation plans.

It would be a calamity to do anything by legislation or otherwise to undermine these plans in any way. On the contrary, I cannot think of any better contribution to the general welfare of labor and the public than a careful safeguarding and further extension of these plans.

The employees at our various plants have recently conducted elections under their employee representation plans. All told, 42,000 employees were eligible to vote. I think that it is very significant that in some of our largest plants more than 90 percent of the employees participated in such elections and that more than 86 percent of the employees in all our plants participated in them.

Mr. Senator, there appeared before your committee the other day a representative, an alleged representative of the employees of our Sparrows Point plant. He made some assertions with respect to the elections there which were forced, and with your permission I would like to enter an affidavit in the record signed by the manager of the plant in which he answers an inquiry I made as to the charges which were made.

The CHAIRMAN. The affidavit may be entered in the record.

(The document referred to is as follows:)

DISTRICT OF COLUMBIA,
City of Washington, ss:

Stewart J. Cort, being duly sworn, deposes and says:

I am the general manager of the Maryland plant of Bethlehem Steel Co., a Pennsylvania corporation, located at Sparrows Point, Md.

I have read the transcript of the record of the testimony given by George H. Powers on March 28, 1934, before the Senate Committee on Education and Labor at the session of its hearings on that date on the so-called "Wagner labor disputes bill" (S. 2926). I have had an investigation made regarding the state-

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ments made by Mr. Powers in giving his testimony and I hereinafter set forth the facts as I have found them to be on such investigation.

Many of the statements made by Mr. Powers are inaccurate and false and to me it is to be regretted that any witness before such committee should be allowed to make such inaccurate and false statements without punishment on account of them.

Mr. Powers is not an employee of Bethlehem Steel Co. at its Maryland plant and never has been. My investigation shows that he is president of the Sheet and Metal Workers Industrial Union, which is regarded as a communist organization of Baltimore.

The sheet and tin mills of Bethlehem Steel Co. at its Maryland plant constitute one department under a single organization. The company employs therein a total of about 5,000 employees, that being about 40 percent of the total number of employees at such plant.

Nominations by secret ballot for employee representatives under the employees-representation plan in effect at the Maryland plant were held by the employees at that plant on March 12, 13, and 14, 1934. Such nominations were conducted by a rules committee elected by the employees themselves without any interference, restraint, or coercion in any respect on the part of Bethlehem Steel Co. or any of its officials, managers, superintendents, or others having any authority over the employees at such plant.

On March 20 and 21, 1934, elections also by secret ballot were held at the Maryland plant by the employees for the election under such employee-representation plan of employee-representatives from among those nominated on the nominations held as I have stated. The number of employees in the sheet and tin mill department who were eligible and available to vote (out of the total employed there of about 5,000 employees) and the result of such elections are as follows:

Eligible and available to vote, 4,972; blank ballots cast, 116; employees not voting, 1,161; spoiled and void ballots, 65; ballots in regular and valid form properly designating representatives, 3,630; ratio of the number of the employees who cast regular and valid ballots to the total number of employees eligible and available to vote at the elections, 73 percent.

The facts are, therefore, that of the total number of employees in such department eligible and available to vote at the elections above referred to 73 percent voted by secret ballot in favor of representatives to represent them in collective bargaining and for other purposes with the management of the company. It should be particularly noted that the blank ballots, void and spoiled ballots, and the number of employees who did not vote are not counted in determining the percentage above stated.

While it may be all right to refer to the employee-representation plan at the Maryland plant of Bethlehem Steel Co. pursuant to the provisions of which the above-mentioned nominations and elections were held as a "company union" it is entirely inaccurate and without foundation in fact to say (or even to say anything from which it may be properly inferred) that the above-mentioned nominations and elections were in any way dominated or controlled or even influenced by any person or persons representing Bethlehem Steel Co. Such nominations and elections were held and conducted by a committee selected by the employees themselves at such Maryland plant without any interference, restraint, or coercion whatsoever on the part of any official or representative of Bethlehem Steel Co.

The statement made by Mr. Powers that in the sheet mill of the sheet and tinplate department only 1,500 workers are employed and that of such workers only 76 voted for the representatives under the employee-representation plan is entirely false. So also is the statement of Mr. Powers that there were many workers who cast ballots without marking them and that such ballots were counted in favor of representatives who were declared to be elected in such elections entirely false. None of the ballots cast at above-mentioned elections were counted as votes for representatives unless they were regularly marked as required by such ballot and clearly evidenced an intention on the part of the employees who cast such ballots to vote for the representatives therein indicated. The facts are that there were 1,219 employees in such sheet mill eligible and available to vote at the above-mentioned election and that 767 or about 63 percent of the total cast regular and valid ballots.

The statement made by Mr. Powers in giving his testimony to the effect that 2 days before the above-mentioned elections Bethlehem Steel Co. brought down over 25 agents of the Immigration Department and of the Labor Department of

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the United States and that they cavassed the workers in the plant in checking up on those who were noncitizens and also the statement that foremen and company superintendents went around from man to man carrying ballot boxes telling the employees that if they didn't vote their jobs would be in danger is absolutely false and without any foundation in fact. I have inquired about the agents of the Immigration Department and the Labor Department and am reliably advised that none such agents were present at the Maryland plant or canvassed the employees there or checked upon those who are not American citizens.

It is also false that the committee on rules at the Maryland plant to which Mr. Powers referred and which conducted the above-mentioned election were selected by the management of Bethlehem Steel Co. The members of such committee were elected solely by the employees at such plant. The statement made by Mr. Powers that, although in many departments the majority of the men refused to participate in the elections, the so-called "company union" representatives were forced upon the men and that the committees that were elected in certain departments were not recognized by Bethlehem Steel Co. is also entirely false.

I have thoroughly investigated the conduct of the rules committee at the above-mentioned elections and I am certain that none of the foremen or superintendents or anyone else representing the management of Bethlehem Steel Co. took any part in the conduct of such elections, and to the best of my knowledge and belief none of the foremen or superintendents or other representatives of such management at such plant made any remarks or statements to any employee there that might properly be regarded as a threat with reference to the vote at such elections by the employees or any action in connection therewith. The rules committee ran the elections with the help of those whom they had selected to act thereat, and I am positive after the most thorough investigation such elections were conducted by the employees themselves without any interference, restraint, or coercion whatsoever on the part of the management of Bethlehem Steel Co.

I am making this affidavit because I feel that the committee of the Senate on Education and Labor should know the facts, and that the statements made by Mr. Powers in giving his testimony before the committee are, in the respects to which I have referred above, inaccurate or misleading or false.

I shall be very glad to appear before the committee to testify orally, if it shall so desire.

(SEAL) STEWART J. CORT.

Subscribed and sworn to before me this 5th day of April 1934.

JOHN W. CRAGUN, *Notary Public.*

My commission expires April 5, 1936.

Mr. LARKIN. I know that as a practical business matter, the management of our company has always desired to know the sincere and frank opinions of the men on all subjects related to their employment. Our plans have been amended from time to time when local conditions seemed to make it desirable, and we are concerned with these changes only to the extent that they make the plans more workable and effective. Such amendments and suggestions are brought forward by our men from time to time; legislation is not necessary to accomplish any really desirable changes. We favor everything that will foster the free expression by our employees of their views on labor matters to our management.

The National Labor Board has emphasized that it has settled labor disputes involving more than a million persons. That is highly commendable. It does not appear whether that number of employees were directly involved in such cases; but, however that may be, it must be remembered that there are over 23,000,000 workers that have not required such mediation.

The very fact of the existence of such a board as the National Labor Board has tended to promote agitation on the part of professional strike fomenters. A disgruntled minority will always try to

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capitalize such a situation, and the public welfare is concerned, if such a Board allows itself to be misdirected into encouraging discord.

I think it unfortunate that so much attention has been paid and that so much emphasis has been put upon the relatively small number of cases where there has been dissatisfaction. These I think have obscured the real situation existing in industry. Indeed, it is perhaps surprising that, with all the effort in some quarters toward capitalizing the emergency and creating unrest, more trouble has not developed. It is, of course, natural that where the points of disturbance have been somewhat important, unusual attention has been attracted to them. Nevertheless, when we think in terms of national policy, we must not lose sight of the fact that the normal average condition in industry is one of peaceful cooperation between employee and employer.

We are opposed to any bill which would set up a restrictive, militant system in place of methods which have worked successfully in our experience for all concerned over many years. The whole philosophy of this proposed legislation, based as it is upon the fomented dissatisfaction of a small area of our national industrial life, seems to me to be wrong. We feel that further legislation at this time is entirely unnecessary. Industrial relationships do not demand it; section 7 (a) of the Recovery Act is a sufficient guarantee to workers and it should stand as it is, all interested relying upon existing powers of enforcement as sufficient. We believe that it would be the part of wisdom to change the whole approach to this problem of improving industrial relations, which can readily be done without legislation, and that no one method of collective bargaining should be created by legislative edict to the exclusion of other methods—certainly not, until the constructive things that have been done by industry and labor in the application of those other methods shall have been thoroughly examined and weighed and found wanting.

The CHAIRMAN. Thank you. Mr. Larkin, has your company a plant in Massachusetts?

Mr. LARKIN. We have a ship-building plant at Quincy, Mass.

The CHAIRMAN. What is it called?

Mr. LARKIN. The Fall River plant of the Bethlehem Shipbuilding Corporation.

The CHAIRMAN. Are the employees in that plant organized?

Mr. LARKIN. They are operating under this employee representation plan.

The CHAIRMAN. The same as in your other plants?

Mr. LARKIN. A similar plan; yes.

The CHAIRMAN. Thank you.

Senator DAVIS. How many wage earners in the whole country are there? Twenty-five or twenty-six million? Do you remember?

The CHAIRMAN. In the whole country?

Senator DAVIS. In the whole country.

Mr. LARKIN. Forty-nine million.

Senator DAVIS. That are gainfully employed. Forty-nine million gainfully employed is different than wage earners. I have forgotten myself, and I am just trying to get it in my mind.

Mr. LARKIN. The figure which I used here, Senator, is the figure which was used by the National Recovery Administration.

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Senator DAVIS. That is, gainfully employed.

Mr. LARKIN. Those who would be subject to the various codes.

The CHAIRMAN. Mr. Purnell. Your full name, please?

Mr. PURNELL. Frank Purnell.

The CHAIRMAN. Your residence?

Mr. PURNELL. Youngstown, Ohio.

The CHAIRMAN. And you are an officer in the Youngstown Sheet & Tube Co.?

Mr. PURNELL. The president of that company.

The CHAIRMAN. Is that an individual company or is it a series of plants or companies?

Mr. PURNELL. In its steel-making capacity, it is an individual company. It has some subsidiaries in other lines of business.

The CHAIRMAN. Thank you.

Mr. PURNELL. May I be seated while I read this, please?

The CHAIRMAN. Certainly. You are speaking for that company now, of course?

Mr. PURNELL. Yes, sir.

STATEMENT OF FRANK PURNELL, PRESIDENT, THE YOUNGSTOWN SHEET & TUBE CO.

Mr. PURNELL. My name is Frank Purnell and I am president of the Youngstown Sheet & Tube Co., a large employer of labor. Throughout the depression years we employed as many of these men as we possibly could by means of staggering the work or dividing such work as was available among as many men as possible. At the present time we are employing about 16,000 men. We have plants in the Youngstown district and in the Chicago district. We make and sell iron and steel products.

It is very doubtful if I can add anything that has not already been said in reference to the Wagner bill which is now before us. I am very strongly of the opinion, however, that to take such drastic measures as proposed in the bill would so completely upset relations between employer and employee that it would be very harmful to the purposes of the National Recovery Act. It is impossible to change overnight basic principles in any line of endeavor or in any line of business. We believe that section 7 of the National Recovery Act should be given a fair trial in protecting the rights of labor, and if its obligations are made reciprocal, it would be an outstanding step in defining the rights of labor.

Granting that in some instances there have been abuses on both sides, it would only lead to great strife if radical revisions were made without giving ample time for education and trial under the National Industrial Recovery Act. In the main, manufacturers have tried honestly to live within this act. Naturally, there have been accusations from both sides that the spirit or the letter of the law was not complied with, and no doubt some of these cases are based on fact, but I personally do not feel that there have been any more violations on the part of employers than there have been on the part of labor. Statements have been made by labor organizers and in a few instances by some employees within the plants that have not been in accordance with all the facts.

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It is impossible to get a large number of men associated together without having some few disgruntled workmen who no matter what the conditions were would still be objectors. This is true in every walk of life as you gentlemen, with long experience in Government affairs, know full well. It is unfortunate that these objectors, who are usually a very small minority, generally speak the loudest——

The CHAIRMAN. Some think that is true even of the Senate.

Mr. PURNELL. Yes. Whereas, the bulk of the men, who are generally peaceful home-owning American citizens, are satisfied to work out their problems in a peaceful, harmonious manner and are averse to any strife which involves notoriety and publicity causing losses to both employee and employer.

The very fact that representation plans have received such favorable support, regardless of the contention of labor leaders that there was coercion on the part of the employer, leads us to believe that the great mass of peaceful workmen and the backbone of the American working men have accepted this experiment and are giving it full cooperation, and it will only be after a reasonable trial that anyone can say as to whether or not modifications are necessary. We, of course, always have felt that coercion by outsiders on the men to join special labor unions or organizations is just as offensive as if coercion was used by the employer to have the workingmen follow any particular plan of his own.

Therefore, with this general brief statement we express the hope and desire that we may be allowed to go along and try to develop through experience under the plans under which we are now working before any further legislation is inaugurated tending to destroy the satisfactory relationship existing between most employers and their men, and that nothing will be done to disturb present efforts under the Recovery Administration.

Our plan is 15 years old, and I just would like to recite how it started.

During the World War our employees, like the employees of most other steel companies, organized a "Patriotic committee" for raising money for the Red Cross, Knights of Columbus, Y.M.C.A., and war chest purposes, and for the sale of Liberty Bonds. The committee was made up of about 600 men from all departments and included foremen, skilled, and unskilled employees. During the campaign for the sale of the Fourth Liberty bonds the "Patriotic committee" at the Camden plant alone obtained subscriptions to about $3,500,000 from approximately 13,000 employees or an average of $264.20 per subscriber.

The work of this committee brought about very close relationships between employees and management and developed the idea of some plan of permanent employee representation for the purpose of maintaining these close relationships between employer and employees. The committee voted unanimously in favor of the adoption of some plan of representation, and the matter was discussed between the management and employees with the suggestion that company officials, salaried employees, and those having the power to employ and discharge should not be included in the representation plan.

As a result of this discussion, the matter was given thorough consideration and on November 29, 1918, the form of plan or representation was agreed upon and was adopted by the employees of the com-

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pany and the management. Under its provisions company officials, salaried employees, and those vested with power to hire and discharge have no participation in the plan. It permits amendment from time to time but neither the employees nor the management found it necessary to request any important changes from the original plan. The preamble to the plan reads as follows:

> The Youngstown Sheet & Tube Co., of Youngstown, Ohio, and its employees establish this plan of representation of employees in order to provide effective communication and means of contact between the management and the men on matters pertaining to industrial relations, and to insure justice, maintain tranquillity, and promote the common welfare.

The plan provides for consideration of the following subjects:

> Wages, employment, hours of work and working conditions, housing, domestic economics and living conditions, safety and prevention of accidents, sanitation and health, transportation of employees, works practice, methods and economics, education and publication, recreation, athletics and entertainment, continuous work and reconstruction problems.

Wages and hours of work are among the basic questions which arise for discussion and adjustment between the employees' representatives and the management. The employees' representatives are earnest, sincere, and agressive in all these matters and complete frankness on both sides prevails in these discussions, which bring out matters of importance both to employees and the company, including employees' welfare, general business conditions, competitive conditions affecting the company and otherwise, wage rate adjustments, costs of living, and allied subjects.

The manner in which the plan has been accepted by the employees is illustrated by the number of employees who participate in the election of representatives. In 1919, 44.3 percent of the eligible working employees voted for representatives; in 1923, 56.2 percent voted; in 1933, 88.5 percent of the eligible working employees voted. The elections are conducted entirely by the employees through their own representatives, and voting is by secret ballot; no interference, restraint, or coercion from any source is tolerated. The management has no part in the elections at any time and it has not had any part in them over the 15-year life of the plan.

Representatives are secured against any discrimination on account of any of their actions as representatives. The plan provides that if a representative believes he is being discriminated against in any manner on account of any action he has taken in his representative capacity he may appeal from the president of the company to the Secretary of Labor of the United States, and the decision of the latter shall be final. No claims of discrimination have been made.

The company always has pursued a policy of providing for the comfort, convenience, and safety of its men; but in spite of this diligence on our part representatives have suggested many additional items of this kind, and we, like other companies, have spent large sums for these purposes. There could be presented a long list of matters suggested by representatives and discussed with the management.

During the first 2 months of this year 142 items have been presented to the management by the representatives, and these have been disposed of as follows:

In 93 cases the requests of the representatives were granted; in 2 cases negative answers were made; in 19 cases the matters were with-

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drawn by the representatives; 6 cases were compromised; and 22 cases are pending.

More than 2,000 committee meetings have been held by representatives since the inception of the plan.

An important subject from the standpoint of employees and representatives is the matter of safety. The representatives developed a system of meetings of workmen for the purpose of spreading the safety idea and of informing the workers upon ordinary safety rules. When the attendance at these meetings became as high as 700, the representatives suggested that loud-speaker equipment would be advantageous, and the company installed this equipment. One safety meeting was attended by approximately 3,000 employees. In 1926 there was an average of 76 accidents per month and this average gradually decreased until in 1929 it was 31.5 accidents per month and in 1933 it was 4.4 accidents per month.

This brief history of the purpose and results of the representation plan in effect among the employees of the Youngstown Sheet & Tube Co. is given for the purpose of indicating the development of the representation plan at our plants. We believe the men are well satisfied with it. Our investigations lead us to believe that they do not wish to have it changed.

The real object of any plan of industrial relationship between employees and employers should be to bring about a feeling of confidence and mutual respect, to allay suspicion, to guarantee freedom of action, and to encourage hearty cooperation. Kindness toward and consideration for each other are constantly stressed. The fact that in the main interests of employers and employees are common and mostly identical is brought out by frank discussion of all matters.

If the Wagner bill, the subject of this hearing, should be enacted, it is doubtful if the plan could be continued because the company would have to become entirely dissociated from it and treat it as a stranger. And if the bill should be modified, as we understand has been suggested, it would still be doubtful in our opinion whether the plan could be continued.

The representation plan in all its phases is based upon conserving the mutual interests of both parties—employees and management—and any inflexible substitute which destroys this close relationship, this mutual confidence and trust, this ability of employers and employees to discuss and settle all their problems between themselves, would be ineffective.

The plan provides that the employees select their own representatives in their own manner without any interference or restraint from any source. It is our belief the effect of the Wagner bill would be to deny to labor the right so to organize with any help or encouragement from employers and its practical effect would be to force the closed shop and compel the joining of a labor organization. Reference is made to paragraph 6 of section 5 of the bill.

The bill, as drafted, appears grossly unfair to employers for the reasons which have been stated by other witnesses, who are employers, before this committee. The penalties of the bill operate exclusively against the employer and do not impose any obligation on employees or labor organizations.

It would seem that any friendly or social contact between employees and employer might well be construed by the proposed National Labor

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Board as an attempt to impair the rights of employees with respect to concerted action. Reference is made to section 5.

We submit that under the representation plan in effect in our plants there never has been any suggestion of coercion on the part of the management in any election at any time during the 15-year life of the plan. Our plan permits any employee who believes he has a grievance to go to his foreman, directly or through his representative, or to the superintendent. If he does not obtain satisfactory adjustment, the employee may take his case to the management's representative and thence to the operating officials of the company, to a joint committee on appeals, and then to the president of the company. If he still believes that full justice has not been rendered him, he may request and obtain arbitration, as set forth in the plan.

I would like to say there that that applies to the individual right of each man on the pay roll; no collective group at all. Each man has the right to take his own case up through arbitration.

The plan provides for joint committees with representatives of the management, and the management's representatives can at no time coerce or curb the employees, and the employer's representatives have no authority to prevent any individual or group of individuals from carrying their case clear through the various steps until it comes to arbitration for final decision.

Through the medium of this plan problems of employees and management have been presented and discussed from time to time since its adoption. During the years of operation many benefits for the employees were procured, including extended credit.

I might say that that came up during the depression, when some men did not want to rely upon local charity, and the company undertook to extend them such credit with easy payments back when they went back to work again. Also employees' gardens, formation of a mortgage bureau in the chamber of commerce to protect employees' homes, appearance by attorneys in the claim department of the company in courts to protect employees from garnishments, attachments, and other forms of oppression, and the company cooperated in the amendment of the garnishment laws for the benefit and protection of employees, the building and sale to employees of homes at cost, employee operation of company financed stores where provisions and other articles are sold at cost. Some of these matters might be branded as unfair labor practices and prohibited.

Under the representation plan the men do not make any payments in the form of dues or assessments for the benefits they receive.

I might pause there to say that we pay them their exact earning rate for the time that they serve as representatives.

The association and close contact possible under this employees' representation plan between the men and the officers of the company have been very beneficial to the employees and to the management, and its destruction or any weakening of its importance and dignity of standing in our judgment would be a serious and grave mistake.

A number of our employees have signified their desire to appear before this committee and testify and they will tell you in their own way whatever their experience has been and their opinions about the representation plan.

We most sincerely and earnestly protect against the Wagner bill and against any legislation which would prevent employees and em-

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ployers from cooperating to develop and maintain a plan of employees' representation and a method of selecting representatives to handle their problems among themselves and with each other. We believe this legislation is unnecessary and prejudicial to the interests of employers and employees. We believe it is particularly harsh and unfair to employers, because it seeks to treat them as oppressors and makes it difficult, even dangerous, for employers to try to be humane, or friendly, or sincerely interested in the problems of their men, either as groups or as individuals.

The CHAIRMAN. I will state for the benefit of those who are interested that the first bound volume of evidence that the committee has heard is now in print and available. Those who are interested in procuring copies of the evidence, can obtain the same by communicating with any member of the committee.

If there is no other person to be heard today, the committee will stand adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 3:45 p.m. an adjournment was taken as noted.)

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TO CREATE A NATIONAL LABOR BOARD

FRIDAY, APRIL 6, 1934

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The committee met, pursuant to adjournment, at 10 a. m., in room 318, Senate Office Building, Washington, D. C., Senator David I. Walsh, chairman, presiding.

Present: Senators Walsh (chairman), Thomas, Erickson, and Davis.

The CHAIRMAN. The committee will come to order.

There are five representatives of the employees of the Bethlehem Steel Co. present. Will they come forward as their names are called? Ellwood Smith, Joseph Leary, Oliver Werst, Fred Rooney, Daniel Boyle.

(The gentlemen whose names were called came forward.)

The CHAIRMAN. Mr. Smith, you are chairman of this group?

Mr. SMITH. Yes, Senator.

The CHAIRMAN. And you desire to present your views concerning the pending legislation to the committee?

Mr. SMITH. That is our object.

The CHAIRMAN. Do any of the other members of the committee desire to speak?

STATEMENT OF ELLWOOD H. SMITH

Mr. SMITH. If it is your desire to listen to a statement of where the company spends funds in an endeavor to get back-pay allowance for the United States Government, I would be only too glad to have our secretary go over that matter.

The CHAIRMAN Who is the secretary?

Mr. SMITH. Mr. Werst.

The CHAIRMAN. Have any of you other than yourself statements which we can insert in the record and save our time without having to listen to repetitions from each of the speakers?

Mr. SMITH. Our statement is all contained in one.

The CHAIRMAN. Are you all here freely and voluntarily?

Mr. SMITH. Yes; absolutely.

The CHAIRMAN. At the request of your employers or your organization of workers?

Mr. SMITH. Our organization of workers.

The CHAIRMAN. The others all may be seated except Mr. Smith. Mr. Smith, you may stand or be seated as you choose. Will you state your full name?

Mr. SMITH. Ellwood H. Smith.

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The CHAIRMAN. Where do you reside?
Mr. SMITH. 1738 West Broad Street, Bethlehem, Pa.
The CHAIRMAN. What is your occupation?
Mr. SMITH. Loader of steel products, structural shapes.
The CHAIRMAN. In which part of the company are you employed?
Mr. SMITH. Sawcon plant of the Bethlehem Co.
The CHAIRMAN. What are your wages?
Mr. SMITH. My wages are on a tonnage basis.
The CHAIRMAN. Depending upon how much tonnage you produce each week?
Mr. SMITH. Tonnage per day. Of course, that is all summed up for the pay period.
The CHAIRMAN. Are you among the high-paid employees or the medium-class paid employees or the lower paid?
Mr. SMITH. I would say in our own division of the structural shaping yards I may possibly be among the higher brackets.
The CHAIRMAN. Are you members of the employees' representation organization? Is that what it is called?
Mr. SMITH. Ours is called the "plan of employee representation." I am chairman of the general body of that organization.
The CHAIRMAN. How were you selected as chairman of the general body of this organization?
Mr. SMITH. By the vote of the entire body.
The CHAIRMAN. Does the entire body elect the chairman or does the entire body elect the representatives and they choose the chairman?
Mr. SMITH. All our employees who are eligible to vote elect representatives. Then the representatives get together and organize and elect their officers.
The CHAIRMAN. You first had to be elected as a representative?
Mr. SMITH. First as a representative.
The CHAIRMAN. When were you elected as a representative?
Mr. SMITH. Last week I was reelected, the 20th of March.
The CHAIRMAN. When were you elected before that?
Mr. SMITH. I have been on this body for the last 15 years.
The CHAIRMAN. At the election last March you were elected as the representative of the particular plant where you work or the department in which you work?
Mr. SMITH. We elect them through the entire Bethlehem plant.
The CHAIRMAN. How many voters participated in the election?
Mr. SMITH. In our election on March 19th and 20th we had 6,599 eligible voters.
The CHAIRMAN. How many representatives were elected?
Mr. SMITH. Seventy-eight.
The CHAIRMAN. Were they all elected on one ballot?
Mr. SMITH. No sir; we elected according to divisions or crafts.
The CHAIRMAN. That is what I thought. You were elected to represent some division of the plant?
Mr. SMITH. I was elected representing the structural shaping yards.
The CHAIRMAN. How many employees participated in your election?
Mr. SMITH. In our election I think, as near as I recall, there were 308 eligible voters.
The CHAIRMAN. Were there any other representatives, other than yourself, elected from that division?
Mr. SMITH. Two.

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The CHAIRMAN. So, yourself and two others were elected?
Mr. SMITH. Yes, sir.
The CHAIRMAN. Are they among those here today?
Mr. SMITH. No, sir.
The CHAIRMAN. They represent other divisions of the Bethlehem Steel?
Mr. SMITH. Yes, sir.
The CHAIRMAN. How many votes were cast and how many votes did you receive?
Mr. SMITH. How many did I personally receive?
The CHAIRMAN. Yes.
Mr. SMITH. That I could not say right now because I have no jurisdiction over the teller and election board and keep away from them.
The CHAIRMAN. Is it not made public, the result of the vote?
Mr. SMITH. We make it known but we have not been publishing the number of votes cast. It is there and anyone can get that information.
The CHAIRMAN. In any event, you were declared with two others to be elected. to have a majority of the votes. or to be the three highest?
Mr. SMITH. The three highest.
The CHAIRMAN. How many candidates were there?
Mr. SMITH. At the election there were nine candidates.
The CHAIRMAN. And only three could be chosen?
Mr. SMITH. Yes.
The CHAIRMAN. After you were elected a representative all the representatives from the various divisions met, and that number was how many?
Mr. SMITH. All the representatives will be called this week as soon as we return to Bethlehem for election of officers. That is a body of 78.
The CHAIRMAN. So that you are now chairman from a previous election?
Mr. SMITH. Until this coming organization election. I have been chairman of the general body for the past 7 years.
The CHAIRMAN. Did this group of representatives have a meeting for the purpose of discussing their attitude toward this proposed legislation?
Mr. SMITH. We had a special meeting called for this purpose.
The CHAIRMAN. And was there a discussion of the pending bill?
Mr. SMITH. There were just a few remarks made as to whether we opposed the bill in its entirety or just certain articles.
The CHAIRMAN. What did you decide to do? I suppose it is in your statement?
Mr. SMITH. Yes.
The CHAIRMAN. Did you submit this statement you are about to read to the committee, to the other representatives?
Mr. SMITH. That has not been done. We generally publish that after our meeting.
The CHAIRMAN. Were you authorized to prepare the statement?
Mr. SMITH. Yes, sir.
The CHAIRMAN. And did anybody collaborate with you?
Mr. SMITH. My committee.

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The CHAIRMAN. So they all have cognizance of the views expressed in the statement?

Mr. SMITH. Yes, sir.

The CHAIRMAN. And approve of it?

Mr. SMITH. Exactly.

The CHAIRMAN. You may proceed with your testimony.

Mr. SMITH. To the Hon. David I. Walsh, chairman Senate Committee on Education and Labor: We, the duly elected officers of the general body of employees' representatives under our plan of employees' representation, Ellwood H. Smith, chairman; Joseph Leary, vice chairman; Oliver Werst, secretary; and members of rules committee, Fred Rooney and Daniel Boyle, of the employees of the Bethlehem Steel Co., Bethlehem Plant, Bethlehem, Pa., authorized by attached resolution, submit this statement:

For your information, Mr. Chairman, I will read the resolution.

The CHAIRMAN. Is the resolution long?

Mr. SMITH. Not very.

The CHAIRMAN. Very well.

Mr. SMITH [reading]:

Hon. DAVID I. WALSH,
Chairman Senate Committee on Education and Labor:

We, the undersigned employees' representatives under the plan of employees' representation, of the Bethlehem plant of the Bethlehem Steel Co., located at Bethlehem, Pa., at a special meeting of the general body held at Bethlehem, Pa., March 26, 1934, to dispose, say, and approve:

Whereas the pending Wagner bill seeks to destroy our present plan of employees' representation, which has been in operation in our plant from January 28, 1920, to the present date, March 26, 1934, covering a period of 15 years, and through which period our fellow workmen have experienced whole-hearted cooperative dealings in the matter of conducting our election of representatives without any interference of said company.

Subjects acted upon and considered were as follows: Wages, hours and working conditions, safety, transportation, pensions, relief, and general welfare of employees.

We approve of having a committee consisting of our chairman and two or three representatives to enter a protest against the said Wagner bill—United States Senate Bill No. 2926—before the Senate Committee on Labor and Education.

Whereas the pending Wagner bill—United States Senate No. 2926—seeks to destroy the present plan of employees' representation: Be it

Resolved, That we, the undersigned representatives of the workingmen of our individual departments to a total of about 6,600 men, do wish to go on record as opposed to the said Wagner bill—United States Senate No. 2926—and are wholly in favor of continuing our present plan of employees' representation: Be it

Resolved further, That, as our plan does not provide dues creating any funds, we do hereby request the Bethlehem Steel Co. to compensate our representatives for expenses on said trip to Washington, D.C.

(Approximately 103 signatures were attached to the above petition.)

Mr. SMITH. Senator, this resolution is signed by our entire body of employees' representatives, as well as the ones who are taking office after April 1.

The CHAIRMAN. What is the total number of signatures?

Mr. SMITH. The total number of signatures, I believe, is 103.

We favor our present plan of employees' representation having the following definite aims: To furnish facilities to adjust grievances and prevent injustice; to serve as a means for collective bargaining on wages, hours, and working conditions; to provide for the ex-

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change of information and opinions between management and employees; to educate employees and executives to understand the viewpoint and problems of each other; to promote efficiency, economy, safety, and to strengthen morale.

Our plan of employees' representation, which has operated successfully from January 1920 to the present date, a period covering almost 15 years, is proof that it has encouraged the early settlement of disputes in the shop or department in which they originate. Differences that cannot be adjusted in this way may be taken up with standing committees composed of employees' representatives only, or at joint committee of employees' representatives and representatives of the management, and if complainant is not satisfied with the decision, same can be appealed to the president of the company, and then may be submitted to arbitration, and any discrimination can be carried to the State department of labor, which happens to be the department of labor of the State of Pennsylvania, or the secretary of the United States. Up to this time we have never had cause to appeal to the president of the company or the labor department.

Our opponents hold that since employees' representatives receive their regular wages while attending meetings their freedom of action is thereby limited. This is not true, as we have been representatives for these may years and therefore know the absolute freedom with which any representative can discuss any questions and push them to an equitable adjustment, with absolute freedom, and the committees can pass resolutions as they see fit.

Our meetings deal largely with wages, hours, working conditions, safety measures, sanitation, efficiency of operating methods, and similar matters for which work the employer would have to pay others if it were not handled by our representatives. Therefore, we think we are entitled to reimbursement for time lost at work in order to attend meetings or our representative duties.

In connection with that I will submit a personal earnings slip for time spent at one of our meetings.

The CHAIRMAN. That is the only compensation you receive as a representative?

Mr. SMITH. That is the only compensation.

The CHAIRMAN. That is the amount of money that you would receive were you attending to your regular duties rather than in attendance upon the meeting of the representatives' council?

Mr. SMITH. That payment is made on the basis of the average hourly earnings for the pay period. We pay 2 weeks and my average hourly tonnage rate for these 2 weeks is the rate I am paid.

The CHAIRMAN. How often do you meet?

Mr. SMITH. I am called in there about three times a month.

The CHAIRMAN. Are there any other expenses connected with your organization?

Mr. SMITH. The only other expenses connected with our body there are the election expenses.

The CHAIRMAN. Who pays those?

Mr. SMITH. The company stands for the election expenses, making of ballot boxes, booths, printing of ballots, and the distribution of same.

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Our plan of employees' representation provides machinery for handling grievances and complaints. The employee who feels that he is being unfairly treated has only himself to blame if his case is not investigated fully and impartially. In thousands of cases, wrongs have been redressed and incipient injustices have been corrected since the start of our 15 years of active service under the representative plan.

The nominations and elections of employees' representatives of the Bethlehem Steel Co. employees, Bethlehem, Pa., are conducted by the employees themselves in accordance with the rules and regulations prescribed by the employees' committee on rules.

We will also submit a list of the nominations and election return data, sample election poster, sample nomination and election ballots, poster showing nominees for election, certificate of election, percentage sheet, voters' list, rule book, rule-book data, a pension book, employment cards, employment record cards, a letter requesting work schedules, and a letter requesting the preparation of a voters' list.

The CHAIRMAN. If your organization, or the members of your organization, the employees of the Bethlehem Steel Co., desire to change the form of their organization, for example, and join the American Federation of Labor or some other trade union, what would be the procedure?

Mr. SMITH. We are open to do as we see fit. We are not tied down through any membership card or any promise or anything, and if the employees choose to affiliate with any other organization that is their privilege.

The CHAIRMAN. I asked you what would be the procedure? Would it not be to take advantage of the bylaws which were submitted to us yesterday, which permit a majority vote of the employees to terminate their organization?

Mr. SMITH. We could at any time call the body and take that matter up.

The CHAIRMAN. That could be done, and then they could have another meeting and choose some other form of organization?

Mr. SMITH. Yes, sir.

The CHAIRMAN. So, the first step would be to terminate by a majority vote the present organization?

Mr. SMITH. Yes, sir.

The CHAIRMAN. Very well, will you proceed?

Mr. SMITH. The rules committee arranges the schedule of elections with the assistance of the officers of the general body of employees' representatives, and also appoints the tellers to their respective polls. The tellers are selected from among the representatives. No representative is allowed to act as teller in the unit or department which he represents. There is no interference, coercion, or restraint permitted in the elections and every employee has absolute freedom of choice as to voting, both in nominations and elections. No company supervisor or management representative is allowed to in any way take part in, for or against any candidates. We do not countenance any interference whatsoever.

The CHAIRMAN. From your observation, has that regulation been strictly adhered to?

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Mr. SMITH. Absolutely.

The CHAIRMAN. Have you known of any efforts made, directly or indirectly, by the employers to influence these elections?

Mr. SMITH. We have had reports, but upon investigation we found them to be unfounded.

Among the various candidates, all the crafts are represented, as the 50 election units are divided in such manner as to insure a representative from all the different crafts for every 100 employees or major fraction thereof.

Our recent election, held during March, has shown conclusively that our fellow employees approve of the plan, inasmuch as our election returns show a 91.8 percent vote of total eligible voters. The number of eligible voters was 6,599, available voters on date of elections, March 19, 20, 1934, was 6,234, ballots cast was 5,987, of which 198 were void and 68 blanks; ballots recorded, 5,721. No record kept of those refusing to exercise their right of voting.

The percentage of available voters casting a proper legal ballot was 91.8 percent.

Somewhat over 600 employees have participated as representatives at some time or other, and were duly elected by their fellow employees of their certain unit or craft.

We object to the Wagner bill, S. 2926, or any other act that would have a feature included in it, similar to section 5, article III and IV of the Wagner bill, S. 2926.

Our objection to the pending Wagner bill is that it would prevent and eliminate the company from participation in our plan; also prohibit the company from compensating or reimbursing our representatives for time spent in meetings or for other representative duties. We feel that it would be an injustice to prevent or eliminate the company from participation on such grounds. Inasmuch as our plan of employees' representation provides no dues or assessments to be paid by the employees, and we have no funds to cover for meetings time, election expenses, and so forth. It is only fair to have the company participate and help out in this way in our plan.

We sincerely prefer to have the company take part in this active, worthwhile endeavor to promote that welcome cooperation essential to a tranquil industrial life. We feel that the company should have a perfect right to convene with us at stated or requested dates in order to debate, discuss and adjust the problems facing us, as the same are most vital and essential to both employee and employer.

The injection of a third or any outside party to displace as congenial a program as we now enjoy would be a most disastrous blunder, as it would have a tendency to upset the structure we have labored consistently to perfect to its present status and demonstrated worth.

Senator DAVIS. You, as representative of the workers in Bethlehem, have no contact with the workers in Sparrows Point, or the shipbuilding works at Quincy?

Mr. SMITH. Senator Davis, I would say that directly with that body I do not. I do, however, in another activity. It happens that I also am the president of the Bethlehem Steel Co. fund.

The CHAIRMAN. Don't tell us you are a member of the Moose.

Mr. SMITH. I will not inject that.

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In that way I do get in contact with the representatives from all the eastern plants once a year, every February.

Do you wish to hear about the endeavors in regard to the back pay?

Senator DAVIS. Mr. Chairman, may I say to the representatives there that I am thoroughly familiar with this question of back pay of the Bethlehem workers that is due them because of the war. I believe that they are entitled to it. While I was Secretary of Labor I had it up with the War Department and I think it was the Army officials who objected to the pay. I believe Secretary Weeks wanted to make the back payment, and we have had a bill or two up in Congress. I recommended to the committee that the bill pass.

Mr. SMITH. We had quite a controversy at that time in regard to it.

Senator DAVIS. You might put your information in the record.

Mr. SMITH. We have a written statement of it; Mr. Werst would have gladly given you an oral statement if you wished to have it.

Senator DAVIS. I would suggest that you prepare a statement and then insert it in the record at this particular point.

Mr. SMITH. We will gladly do that, Senator Davis.

The CHAIRMAN. Thank you, sir.

There are six representatives of the Fore River plant, Bethlehem Shipbuilding Corporation, Quincy, Mass. Will they step forward as their names are called? William G. McDermott? Charles Mac Kenzie? Ambrose Gorman? William Mullaney? Owen Cheverie? Edmond J. Saundeis? Are you all here?

Mr. MCDERMOTT. Yes, sir.

The CHAIRMAN. Mr. McDermott, you represent the full group, do you?

Mr. MCDERMOTT. Yes, sir.

The CHAIRMAN. And you have a statement you would like to make to us in the name of all six of these representatives?

Mr. MCDERMOTT. Yes, Senator.

The CHAIRMAN. The other representatives have no statement they wish to present?

Mr. MCDERMOTT. No.

The CHAIRMAN. Mr. McDermott, where do you reside?

Mr. MCDERMOTT. Quincy, Mass.

The CHAIRMAN. What street and number?

Mr. MCDERMOTT. 609 Willard Street.

The CHAIRMAN. Where are you employed?

Mr. MCDERMOTT. Bethlehem Shipbuilding Corporation, Fore River Plant, Quincy, Mass.

The CHAIRMAN. What is your particular occupation?

Mr. MCDERMOTT. Shipwright.

The CHAIRMAN. What are the occupations of the others?

Mr. MCDERMOTT. Mr. Mullaney represents the pipe fitters, plumbers, and coppersmiths; Mr. MacKenzie represents the molders and the railroad division; Mr. Gorman represents the ship fitters, crane operators, and ship erectors; Mr. Cheverie represents the electricians, and Mr. Saundeis represents the mold loft, that is, the department that manufactures the molds for the construction of the ship.

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The CHAIRMAN. Very well; how many employees are there in this company at Quincy?

Mr. MCDERMOTT. Two thousand two hundred eligible under our plan as workmen.

The CHAIRMAN. Is the number of employees large or small?

Mr. MCDERMOTT. At the present time?

The CHAIRMAN. At the present time.

Mr. MCDERMOTT. Small.

The CHAIRMAN. So you are running with a reduced force?

Mr. MCDERMOTT. Yes, our normal capacity, Senator, is about 4,000.

The CHAIRMAN. You all may be seated except Mr. McDermott. Mr. McDermott, what is the name of the organization at the Fore River plant of the Bethlehem Shipbuilding Corporation?

Mr. MCDERMOTT. The Employees' Representation Plan.

The CHAIRMAN. How many members has that organization?

Mr. MCDERMOTT. You mean representatives? Eighteen.

The CHAIRMAN. How many members in the organization?

Mr. MCDERMOTT. Two thousand and two hundred.

The CHAIRMAN. All the employees?

Mr. MCDERMOTT. All the employees.

The CHAIRMAN. When did you last have an election of representatives?

Mr. MCDERMOTT. Last March.

The CHAIRMAN. This past month?

Mr. MCDERMOTT. Yes, sir.

The CHAIRMAN. And were you elected at that time?

Mr. MCDERMOTT. Yes.

The CHAIRMAN. Previous to that time when was there an election?

Mr. MCDERMOTT. One year ago.

The CHAIRMAN. One year previously?

Mr. MCDERMOTT. Yes, each March.

The CHAIRMAN. How long have you been a representative?

Mr. MCDERMOTT. Since 1923, since its inception.

The CHAIRMAN. And you have not lost your job yet?

Mr. MCDERMOTT. I am a good politician.

The CHAIRMAN. You are now, at the present time, chairman of this group of representatives from the various shops or the various divisions?

Mr. MCDERMOTT. Yes, Senator.

The CHAIRMAN. How many representatives are there in the organization of which you are chairman?

Mr. MCDERMOTT. Eighteen now.

The CHAIRMAN. You may proceed with your statement.

Mr. MCDERMOTT. I am William G. McDermott, and as chairman of the employees' representation body, made up of 2,200 employees of the Bethlehem Shipbuilding Corporation, Quincy, Mass., have been authorized by them to appear before this committee as their representative, to file protests on their behalf against the Wagner bill, S. 2926.

Our body opposes the Wagner bill for the following reasons:

First, the provisions of the bill are in absolute opposition to the plan under which we have operated for the past 11 years, and, in our opinion, it is a violation of section 7 (a) of the N.I.R.A., which states

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that employees have the right to organize and shall be free from interference, restraint, or coercion of employers of labor or their agents in the designation of such representatives, or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Second, this bill may force us into closed-shop conditions, which is considered against our best interests as guaranteed by section 7 (a) of the N.I.R.A.

Third, this bill, by prohibiting management and employees from discussing mutual problems on equitable basis will tend to destroy the friendly relations and cooperative action that exists today under the present Employees' Representation Plan.

Fourth, this bill will prohibit the reimbursement of employees for time taken from their regular work in the interests of their fellow employees for the betterment of working conditions.

Fifth, this bill may inject into discussion between employees and management a third party who may or may not know local conditions, and would, therefore, create interference rather than aid in the settlement of matters ordinarily handled without difficulty in the plant itself.

Regarding our protests against this bill, which tends to undermine our employees' representation plan, which has been in effect at our plant for the past 11 years, we wish to emphasize that this plan in no way conflicts with the rights of employees to belong to labor unions.

During the 11 years of experience in this plan, due to the cooperation on the part of employees and management, no labor trouble has occurred, and all disputes have been promptly settled or adjusted satisfactorily.

The CHAIRMAN. Have you had many disputes?

Mr. MCDERMOTT. I think we have had 2,500 cases which we disposed of satisfactorily since the inception of the plan.

The CHAIRMAN. In what period of time?

Mr. MCDERMOTT. In 11 years.

Senator DAVIS. Mr. McDermott, do any of the workers in the Quincy plant belong to any other labor organization outside of this?

Mr. MCDERMOTT. I believe there are some, Senator; yes. I might say one thing, we have two members of the American Federation of Labor sitting on our committee.

The CHAIRMAN. Do they share the sentiments you are expressing?

Mr. MCDERMOTT. Yes.

The CHAIRMAN. So far as this plant is concerned?

Mr. MCDERMOTT. Yes.

The CHAIRMAN. Very well.

Mr. MCDERMOTT. Previous to the adoption of this plan, by the employees in 1923, it was not uncommon to see walk-outs very frequently. It has been our great satisfaction to be able to settle all of our difficulties without calling in a third party to effect a settlement. We feel that the settlements that have been accomplished under this plan have been due to the fact that the disputes were taken care of in time and the representatives had actual contact and understood the conditions clearly, which, of course, could not have been true of any outside element who could not have had the same contacts.

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Nominations and elections for representatives under our employees' representative plan are held annually in the month of March, and at our last election, held on March 16, 1934, 96 percent of the 2,200 eligible voters in the yard endorsed this plan by secret ballot. We wish to state emphatically that the management in no way interferes, coerces, or dominates these nominations or elections. A day is set aside, and the balloting is absolutely secret, carried on by a committee of rules which is comprised of employees only. The guaranteeing of independence of representatives is as follows:

Section 11 of our plan reads as follows:

> It is understood and agreed that each representative shall be free to discharge his duties in an independent manner, without fear that his individual relations with the company may be affected in the least degree by any action taken by him in good faith in his representative capacity.
>
> To insure to each representative his right to such independent action, he shall have the right to take the question of an alleged personal discrimination against him, on account of his acts in his representative capacity, to any of the superior officers, to the general joint committee, and to the president of the company.
>
> Having exercised this right in the consecutive order indicated and failing a satisfactory remedy within 30 days, a representative shall have the further right to appeal to the State department of labor or the Secretary of Labor of the United States. The company shall furnish the said Secretary or the said State department of labor with every facility for the determination of the facts, and the findings and recommendations of the said Secretary or the State department of labor shall be final and binding.

Our employees' representation plan is divided into three groups, and those particular groups have a committee of 12 each, 6 representatives of the employees, and 6 representatives of the management, which shows equal representation.

Through these committees our employees have dealt satisfactorily with all things pertaining to and concerning their welfare, including wages, bonus, and piecework; employment and working conditions; continuous employment and conditions of industry; safety and prevention of accidents; pensions and relief; and employees' transportation and traffic.

Since the inception of the plan, 2,578 cases have been brought before them and settled satisfactorily.

A third committee is a committee set up to handle all cases where the other two committees have been unable to effect a settlement. In case of failure of settlement, the matter can be referred to the Secretary of Labor in Washington. In the history of the plan no such appeals have been found necessary. From time to time amendments have been made to the plan which have improved the method of procedure, and these changes have been developed through cooperation between the employees and management in a satisfactory manner.

Through our employees' representation plan we have been able to form our Fore River plant community-chest fund, through which funds are raised to assist in every way employees at the Fore River plant. Since the formation of this fund in 1927, more than 1,300 cases of assistance to needy employees have had relief.

In addition to the Fore River plant community chest fund, there have been organized relief and pension plans for the further benefit of the employees.

In view of the very satisfactory relations which have existed between us and our employers through the employees' representation plan, we urge that this bill be defeated so that it may not become law

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and do away with the mutual understanding and mechanism for the adjustment of all our problems.

The CHAIRMAN. Have you, during the time that you have been representative of the employees, had any dispute or any negotiations with the management over wages?

Mr. MCDERMOTT. Yes, sir.

The CHAIRMAN. Will you illustrate the procedure that you undertake when such a condition arises, having in mind some specific case?

Mr. MCDERMOTT. Well, the way we handle all our questions, Senator, is through a meeting of the 18 representatives.

The CHAIRMAN. Do you recall any time when the 18 representatives representing the employees felt that a time had come for asking for an increase in wages in any particular department or in the plant as a whole?

Mr. MCDERMOTT. Oh, yes; we have that quite frequently in the adjustment of rates. Do you mean a general increase?

The CHAIRMAN. Yes.

Mr. MCDERMOTT. Well, since the depression we took a reduction, and through the shipbuilding code a minimum rate has been established and the maximum hours.

The CHAIRMAN. Through the code?

Mr. MCDERMOTT. Through the shipbuilding code brought about here in Washington.

The CHAIRMAN. But previous to the depression, do you recall any specific case where you negotiated successfully or unsuccessfully with the management in reference to wages?

Mr. MCDERMOTT. I think it was back in 1927 there was an increase of 10 or 12 percent.

The CHAIRMAN. Who initiated it?

Mr. MCDERMOTT. The men.

The CHAIRMAN. And did the representatives of the men proceed to take the matter up with the management?

Mr. MCDERMOTT. Yes; through the regular procedure.

The CHAIRMAN. Did you sit in conference with them?

Mr. MCDERMOTT. Yes, sir.

The CHAIRMAN. Did you meet with the management there at the plant in Quincy or were representatives from the plant at Bethlehem present?

Mr. MCDERMOTT. No; just the local management.

The CHAIRMAN. How long did this negotiation last?

Mr. MCDERMOTT. I do not know; a period of 6 weeks—5 or 6 weeks.

The CHAIRMAN. You met at different times?

Mr. MCDERMOTT. Yes.

The CHAIRMAN. What was the result?

Mr. MCDERMOTT. I think it was a 12-percent increase at that time.

The CHAIRMAN. What did you ask for?

Mr. MCDERMOTT. I think it was 15 percent. It was a compromise.

The CHAIRMAN. And you reached a compromise of 12 percent?

Mr. MCDERMOTT. Yes.

The CHAIRMAN. I omitted to ask if you were here voluntarily?

Mr. MCDERMOTT. Yes, sir.

The CHAIRMAN. And the men with you?

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Mr. McDERMOTT. Yes, sir.

The CHAIRMAN. They are witnesses before this committee voluntarily?

Mr. McDERMOTT. Yes, Senator.

The CHAIRMAN. I have no other questions.

Senator DAVIS. Have you had any reduction in wages since that time?

Mr. McDERMOTT. Oh, yes. Due to the depression?

Senator DAVIS. Yes.

Mr. McDERMOTT. Yes.

Senator DAVIS. Did the company discuss that with you?

Mr. McDERMOTT. Yes.

Senator ERICKSON. You oppose this bill in its entirety, do you?

Mr. McDERMOTT. Not so much, not on the Labor Board end of it; we are not really interested in that.

Senator ERICKSON. Do you think it could be amended to meet your objection?

Mr. McDERMOTT. If you took out the part I have in mind, I imagine the bill would not have any teeth in it. That is, we want the type of organization we have now and we feel that that provision under section 5 which takes away that right from us—we are reimbursed for the time spent on committee work which we think is fair and it certainly does not bias us in any sense of the word. This has been in this plant since 1923.

The CHAIRMAN. You think your fellow members are unanimous in the view that the system has worked satisfactorily?

Mr. McDERMOTT. Yes, Senator, practically speaking.

Senator DAVIS. Do you think these representatives of the American Federation of Labor that are on your council are in accord with the statement that you made?

Mr. McDERMOTT. Yes, they said—do you mean on the question of the Wagner bill?

Senator DAVIS. Yes.

Mr. McDERMOTT. They oppose it.

The CHAIRMAN. They are in accord with the views you express?

Mr. McDERMOTT. Sixteen of the eighteen voted for it.

The CHAIRMAN. Sixteen of the eighteen voted for what?

Mr. McDERMOTT. Our position here.

Senator ERICKSON. And two of them favored it?

Mr. McDERMOTT. Two of them favored it, that is correct.

The CHAIRMAN. Any other questions?

(No response.)

The CHAIRMAN. You may withdraw.

There are eight representatives of the Youngstown Sheet & Tube Co. I will call the names and ask them to step forward as their names are called: Neil Gordon? Thomas Cleary? Floyd H. Ransom? Horace Howell? William Donlin? John McGowan? Edward Fitz? Ray Welsh? There are eight of you altogether?

Mr. CLEARY. Seven.

The CHAIRMAN. Who is the chairman?

Mr. CLEARY. Mr. Gordon is chairman of the Campbell works. I am chairman of the Brier Hill division. Mr. Ransom is chairman of the Chicago district.

The CHAIRMAN. Who desires to speak for the group?

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Mr. CLEARY. I believe we each have a little statement, Mr. Chairman.

The CHAIRMAN. We will begin with Mr. Gordon. The others may be seated for the moment.

What is your full name?

STATEMENT OF NIEL GORDON

Mr. GORDON. Niel K. Gordon.

The CHAIRMAN. Your residence?

Mr. GORDON. Fifty-three Poland Avenue, Struthers.

The CHAIRMAN. What plant are you employed in of the Youngstown Sheet & Tube Co.?

Mr. GORDON. Campbell works of the Youngstown Sheet & Tube.

The CHAIRMAN. Where is that located?

Mr. GORDON. Located partly in Youngstown and partly in Struthers.

The CHAIPMAN. What is the product produced at that plant?

Mr. GORDON. Practically all lines of steel products.

The CHAIRMAN. What is your particular occupation?

Mr. GORDON. Rougher in a 9-to-12-inch merchant mill.

The CHAIRMAN. You are the elected representative of the employees in the division where you work?

Mr. GORDON. Yes, sir.

The CHAIRMAN. How long have you been a representative?

Mr. GORDON. Approximately 10 years.

The CHAIRMAN. And you have been elected annually for 10 years?

Mr. GORDON. Yes.

The CHAIRMAN. When were you last elected?

Mr. GORDON. In June of last year.

The CHAIRMAN. When is your next election?

Mr. GORDON Next June.

The CHAIRMAN. So your elections are held annually in June?

Mr. GORDON. Yes, sir.

The CHAIRMAN. Now, we will be pleased to have any statement you wish to make to the committee.

Senator DAVIS. Is your mill continuous or is it the old-fashioned plant?

Mr. GORDON. It is continuous, I would say, partly old-fashioned and new-fashioned; continuous roughing and the old-fashioned finishing.

Senator DAVIS. You have the stanners and the poker-ins and the finishers?

Mr. GORDON. Yes.

The CHAIRMAN. You may proceed, Mr. Gordon.

Mr. GORDON. Mr. Chairman and gentlemen, I have served as a representative for a period of approximately 10 years, and I believe that I am qualified to speak authoritatively on the subject of employees' representation.

I want to assure you that I have no quarrel with, and I hold no brief against, any labor ogranization.

My sole purpose in appearing before this committee is to voice my protest against any and all legislation which might tend to disrupt the fine spirit of cooperation which has existed between employee and employer since the adoption of the employees' representation plan in our plant.

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Our plan has been in operation for a period of 15 years, and during this period of time it is my belief that this plan has been of benefit to both employee and employer.

Section 7 (a) of the National Recovery Act guarantees to employees the right to select and choose their own form of representation for the purpose of collective bargaining.

Our representation plan does this and much more. Our plan is not confined solely to collective bargaining, but includes such other subjects as extended credit, garden projects, employees' cooperative stores, athletics, and housing conditions.

The CHAIRMAN. Have you cooperative stores?

Mr. GORDON. Yes, sir.

The CHAIRMAN. How much cheaper are the employees able to purchase in these stores than in the independent or chain stores of the community?

Mr. GORDON. I would say approximately between 12 and 15 percent.

The CHAIRMAN. You may proceed.

Senator DAVIS. Is credit extended in those cooperative stores?

Mr. GORDON. During the depression; yes, sir.

The CHAIRMAN. It was during the depression?

Mr. GORDON. Yes, sir.

Senator DAVIS. Does the company keep it out of your pay envelop when credit is extended?

Mr. GORDON. We have a coupon-book system.

Senator DAVIS. How would you pay for your coupon?

Mr. GORDON. Out of your earnings.

Senator DAVIS. Would the company deduct it from the pay envelop?

Mr. GORDON. Yes, sir; by our authorization.

The CHAIRMAN. You have a coupon and you give one to the cooperative store and they turn it into the officers of the management and it is deducted from your wages?

Mr. GORDON. That is right.

The CHAIRMAN. Who manages these stores?

Mr. GORDON. We have a manager selected jointly by the employees and the management, approved by the management and the body of representatives.

The CHAIRMAN. So it is a joint undertaking?

Mr. GORDON. I would not exactly say that it is joint. You might say that it is entirely a representative undertaking in behalf of the employees.

The CHAIRMAN. In other words, you think it is managed and directed mostly by the employees?

Mr. GORDON. Yes, sir.

The CHAIRMAN. Do those who are in charge of this store report to your council of representatives?

Mr. GORDON. Yes; monthly.

The CHAIRMAN. Monthly?

Mr. GORDON. Yes.

The CHAIRMAN. They give you a statement of what has been taken in and paid out?

Mr. GORDON. Yes, sir.

The CHAIRMAN. And you adjust and fix the salaries of the employees in the cooperative store?

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Mr. GORDON. To a certain extent, yes, sir.
The CHAIRMAN. Very well.
Senator DAVIS. Where is this store located?
Mr. GORDON. We have five stores. One is located at the Brier Hill works, one in Struthers——
Senator DAVIS. That is, the stores are located near the works?
Mr. GORDON. Near the vicinity of the plant.
The CHAIRMAN. The five different plants?
Mr. GORDON. They are located in four different sections, you might say, of the city.
The CHAIRMAN. Four different sections of the city?
Mr. GORDON. Of the two cities.
The CHAIRMAN. Where the employees would reside?
Mr. GORDON. Yes.
The CHAIRMAN. Would other persons than employees patronize these stores?
Mr. GORDON. No, sir.
The CHAIRMAN. And the business is done entirely on the coupon system?
Mr. GORDON. Yes, sir.
Senator DAVIS. Struthers is about 2 miles from Youngstown?
Mr. GORDON. Yes.
Senator DAVIS. And Brier Hill about a mile and a half?
Mr. GORDON. Yes, sir.
Senator DAVIS. What is the other location?
Mr. GORDON. One in Campbell, that is East Youngstown.
The CHAIRMAN. What commodities are sold in these stores?
Mr. GORDON. Practically all lines of groceries, safety shoes——
The CHAIRMAN. Any dry goods?
Mr. GORDON. A very small amount of dry goods.
The CHAIRMAN. Mostly provisions and foods?
Mr. GORDON. Yes, sir.
The CHAIRMAN. Very well, sir.
Senator ERICKSON. Do the managements of these stores report to the company as well as to you?
Mr. GORDON. The report is sent into the body of representatives, a monthly report, which is on file at all times for the benefit of anyone who wishes to see them.
Senator ERICKSON. Where are these reports filed?
Mr. GORDON. In the representatives room, with the secretary of the representative body.
Senator DAVIS. Are the salaries and wages paid to those who manage the store from the profits of the store or are they paid by the company?
Mr. GORDON. Paid from the profits of the store.
Senator ERICKSON. What is done with the profits beyond that?
Mr. GORDON. We have what we call a sinking fund which we carry on. We try to keep as near the actual cost of the products as possible, but from month to month that sometimes fluctuates up and down, and we keep a small reserve amount for that reason.
Senator DAVIS. Could you use some of the profits for general relief?
Mr. GORDON. Only in the way of extending credit. For direct relief we have never done that.

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The CHAIRMAN. Your objective is, of course, to buy these goods and sell them to the employees at the actual cost?

Mr. GORDON. That is true.

The CHAIRMAN. And this sinking fund is carried over from month to month so that in the months when the receipts are below the costs of running the store you draw upon the sinking fund?

Mr. GORDON. Yes, sir.

The CHAIRMAN. But the objective is to try to furnish the employees with the bare cost of what is paid for the goods plus the expenses of the store?

Mr. GORDON. That is true.

The CHAIRMAN. You may proceed.

Senator DAVIS. What sort of commodities do you sell at the store?

Mr. GORDON. All lines of groceries, shoes, work clothes, and mostly that line. We do sell some dress shoes, very little in the dry goods end, mostly the provision end.

The CHAIRMAN. You may proceed, sir.

Mr. GORDON. Nominations and elections have always been conducted by the employees themselves without any interference of the management.

Meetings of the representatives are conducted in a manner permitting the frank discussion of any subject which may arise, and to my knowledge no subject ever raised at any committee meeting has ever been ruled out of order.

We do not contend that our plan is perfect, but we have the right to amend the plan as we deem necessary.

The CHAIRMAN. Thank you, sir. The next witness is Mr. Cleary.

STATEMENT OF THOMAS CLEARY

The CHAIRMAN. Where do you reside?

Mr. CLEARY. Youngstown, Ohio.

The CHAIRMAN. What plant are you employed in?

Mr. CLEARY. Brier Hill.

The CHAIRMAN. What is your occupation?

Mr. CLEARY. First helper in the open hearth.

The CHAIRMAN. You are the representative of that plant in the general council?

Mr. CLEARY. General chairman, Association of the Brier Hill Division.

The CHAIRMAN. How many representatives are there in this group?

Mr. CLEARY. We have 14.

The CHAIRMAN. How long have you been a representative?

Mr. CLEARY. Well, I helped start the plan in Brier Hill in, I think, 1925.

The CHAIRMAN. And you have been a representative from that time on?

Mr. CLEARY. No; in 1928 I was not reelected, and then the fellow that was elected left the employ and we had another election and I finished his term out.

The CHAIRMAN. So that these representatives are changed, dependent upon whether they are able to command a majority of the vote or not?

Mr. CLEARY. Yes, sir.

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The CHAIRMAN. You may proceed with your statement.

Senator DAVIS. What wages does the first helper get now?

Mr. CLEARY. About $10 a day, roughly; it is all tonnage.

In regard to the store, I might clear up a point on that. Our management would like to get rid of them but we want them.

The CHAIRMAN. So there is a contest between management and employees as to the wisdom of retaining the stores?

Mr. CLEARY. We have a lot of complaints from the retail merchants' association because they would like to see them thrown out, because we can buy so much cheaper there, and we all patronize them, of course. It got so bad that we had to issue identification cards to our employees to keep outsiders out of our store.

We ran a test on six or eight nationally advertised articles, and compared them with the chain stores and we were from 16 to 20 percent under the chain stores.

The CHAIRMAN. Who made that test?

Mr. CLEARY. Our manager of stores for the benefit of the representatives.

The CHAIRMAN. And they reported this to the representatives?

Mr. CLEARY. Yes, sir.

Senator DAVIS. Did I understand you to say the management wanted to discontinue the stores?

Mr. CLEARY. We have had several discussions there because the merchants would like to have them done away with, so we would patronize their stores in regard to those products. There is always the old-time mill store which was charging exorbitant prices, but our stores, as I tried to bring out, are from 16 to 20 percent under the chain store in the vicinity. I think there was just one-and-a-fraction percent profit made last year and I think we lost it all in December.

During the depression we charged more for articles in the luxury class and then we sold staple goods like hams and sugar and potatoes for almost under what it would cost, and that was to help out the fellow who needed those things.

We were selling sugar at one time at less than we could buy it in carload lots, and the retail merchants' association protested. We figured that if a fellow could afford to pay for luxuries he could help out the man who needed the necessaries of life. I just wanted to make that clear.

The CHAIRMAN. Up to the present time the employers have surrendered their judgment to the employees and have permitted the stores to be carried on?

Mr. CLEARY. Yes, sir.

The CHAIRMAN. It is the wish of the employees that that should be done?

Mr. CLEARY. We think a lot of our stores, Mr. Chairman.

Gentlemen: My name is Thomas A. Cleary. I am employed by the Youngstown Sheet & Tube Co.

I was an employee of the Brier Hill Steel Co. when it was taken over by the Youngstown Sheet & Tube Co. about 1922. The Youngstown Sheet & Tube Co. then had the employees' representation plan at the Campbell Works, but we in the Brier Hill division did not have it. We employees at the Brier Hill plant often talked about getting the representation plan at Brier Hill and finally, about 1925, we sent a committee of employees to the management requesting the

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representation plan be adopted at Brier Hill. They agreed and the employees in each department appointed delegates to hold a nomination and election. This was the beginning of the representation plan at Brier Hill.

We believe in the representation plan because our experience has shown us that at least 90 percent of our grievances are minor ones although to the individual concern they are major ones and can be quickly straightened out satisfactorily without leaving the Department. On the questions that cannot so easily be straightened out and have to be carried on up, there is in our plan a statement that protects the employee's argument and that is, he must be satisfied, if he is not he has the right to carry it up for adjustment by means of arbitration.

Our experience has shown us that our company leans over backward to keep out of mixing in on our nomination and election. When we were first starting in 1925 and tried to get some help from the company they told us it was strictly up to us.

Our company in 1930 started a relief plan in which they expended close to three quarters of a million dollars in relief work. Our representative worked jointly with the management in handling this relief proposition and we could easily get thousands of testimonials from our employees testifying to the fact that they would not have known what to have done if it were not for this help that they were given.

We don't believe our representation plan is yet perfect, but we have not yet seen a plan that is perfect. Inasmuch as the plan provides for amendments we will be able to make the plan a much better plan and we are all constantly working toward that end and we are absolutely against any law or part of a law that will deny us the right of choosing a representation plan to do our collective bargaining if we desire it.

The CHAIRMAN. Thank you. The next witness is Mr. Ransom.

STATEMENT OF FLOYD H. RANSOM

The CHAIRMAN. Your full name?

Mr. RANSOM. Floyd H. Ransom.

The CHAIRMAN. Your address?

Mr. RANSOM. 4524 Van Buren Street, Gary, Ind.

The CHAIRMAN. You are employed in what plant?

Mr. RANSOM. I am employed in the tin mills of the Youngstown Sheet & Tube Co., at the Indiana Harbor plant.

The CHAIRMAN. How many employees in that plant?

Mr. RANSOM. In the tin mill you are speaking of?

The CHAIRMAN. Yes; where you are.

Mr. RANSOM. There are 1,700 in the tin mill.

The CHAIRMAN. You are a representative of the employees of that mill?

Mr. RANSOM. I am.

The CHAIRMAN. How many other representatives are there?

Mr. RANSOM. There are 5 representatives in the tin mill division; 19 altogether in the Indiana Harbor plant.

The CHAIRMAN. Have you a company store in your plant?

Mr. RANSOM. We have not.

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The CHAIRMAN. You may proceed with your statement.

Senator DAVIS. Are the tin mills working on the old-fashioned way or with the new strip mill?

Mr. RANSOM. We have 20 mills working on the old-style flat mill. There is one continuous mill that has an automatic device for rolling, and then we have a cold strip mill that went into operation 2 weeks ago that rolls cold strip.

The CHAIRMAN. Proceed.

Mr. RANSOM. The representation plan has been in operation in our plant for 9 months.

The purpose of the representation plan, in my personal observation, is, that it provides an effective means of communication and contact between employees and management on matters pertaining to industrial relations; that it insures justice, maintains tranquillity, and promotes the general welfare. This is the foundation upon which our plan is founded.

The fact that labor and capital cannot exist independently of each other is a known quantity; therefore we must accept this as a fact and both work for mutual results.

The possibilities of the representation plan are unlimited in promoting better working conditions and, in turn, this promotes efficiency of operation. The cycle is completed in the form of better returns for both employee and employer. But any plan is a failure when there is not cooperation on the part of both parties.

My personal contact with the management of this company as an employee representative convinces me that they recognize a man as a man, regardless of his position or the clothes he wears, and that they are willing to give consideration to his viewpoint on matters affecting his welfare. Their decisions are always just, to the best of their ability, with due regard to their responsibilities. I am certain there is sincerity on the part of the management and that perpetual friendliness is accorded at all times. We are all employees after all, and amicable agreements can be attained by cross-the-table conferences which gives insight to the problems of each other.

The representatives are chosen by secret ballot at elections conducted by the men themselves without interference by the management.

Meetings of the representatives are conducted in such a way as to permit free discussion of any subject presented to such meetings.

In view of what I have observed in the workings of the plan, I am not in favor of any law that would in any way whatsoever deprive the men of the right to bargain directly with the company pertaining to their welfare.

The CHAIRMAN. How long have you been an elected representative?

Mr. RANSOM. We have had the plan 9 months.

The CHAIRMAN. And you were elected at the election when?

Mr. RANSOM. The election was June 1933.

The CHAIRMAN. Senator Thomas, we are hearing this morning employees from various steel plants in the country who are appearing in opposition to this bill and explaining to us the plan of representation which is in existence in practically all the steel mills of this country.

Senator THOMAS. I am very sorry I had to be late.

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The CHAIRMAN. There are here now nine representatives of the American Rolling Mill Co., and will they come forward as I call their names? Robert F. Colley, Michael Enright, Fay T. Walls, Arnold Skinner, John Watson, Melville Sarchet, Chalmers Essig, John Hogan, and Paul Berry?

Have I named all that are here? You are all employed by the American Rolling Mills Co.?

Mr. BERRY. Yes.

The CHAIRMAN. In one plant or different plants?

Mr. BERRY. Different plants.

The CHAIRMAN. How many of you desire to address the committee? Three of you? That is Mr. Skinner, Mr. Berry, and Mr. Colley? Are you all representatives of the employees for the various plant you represent here?

Mr. BERRY. We are.

The CHAIRMAN. You may all be seated except the first witness. Who desires to speak first? Mr. Skinner?

STATEMENT OF ARNOLD SKINNER

The CHAIRMAN. What is your full name?

Mr. SKINNER. Arnold Skinner.

The CHAIRMAN. Where do you reside?

Mr. SKINNER. Middletown, rural route, no. 2.

The CHAIRMAN. Where are you employed?

Mr. SKINNER. American Rolling Mill Co., sheet roller at the east works.

The CHAIRMAN. And your occupation?

Mr. SKINNER. Sheet roller.

The CHAIRMAN. At the east works?

Mr. SKINNER. In the east works.

The CHAIRMAN. How long have you been employed by the company?

Mr. SKINNER. Twenty-three years.

The CHAIRMAN. You are appearing here as a representative of the employees of that particular company?

Mr. SKINNER. I am appearing here as a representative of the division in which the four men that I here come from——

The CHAIRMAN. Four of these men are from your division?

Mr. SKINNER. Four of them are from divisions which I represent.

The CHAIRMAN. You represent, then, more than one division?

Mr. SKINNER. Yes.

The CHAIRMAN. Are you elected by all four divisions?

Mr. SKINNER. I am elected by the divisions with these four men, not from the whole.

The CHAIRMAN. I don't understand that.

Mr. SKINNER. Maybe I better go back a little way. We have the Amalgamated Association of Iron, Steel, and Tin Workers, and they took in more than just our own division at the time of the Amalgamated Association. So, the men in our division at one time were members of the Amalgamated Association, and we have brought men along with us who were members of the Amalgamated Association when they were employed. It takes in more divisions than just the sheet mills at the present time.

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The CHAIRMAN. When were you elected as a representative?
Mr. SKINNER. This time?
The CHAIRMAN. Yes, sir.
Mr. SKINNER. In December.
The CHAIRMAN. And when, previous to that, were you elected as a representative?
Mr. SKINNER. This time?
The CHAIRMAN. Yes.
Mr. SKINNER. In December.
The CHAIRMAN. And when, previous to that, were you elected as a representative?
Mr. SKINNER. I have been on committees for practically 15 or 16 years.
The CHAIRMAN. Continuously?
Mr. SKINNER. No; at different times.
The CHAIRMAN. Were you each time elected?
Mr. SKINNER. Yes.
The CHAIRMAN. How many employees participated in the election in December when you were elected a representative?
Mr. SKINNER. Of our department?
The CHAIRMAN. Of your department.
Mr. SKINNER. About 350, just in our division.
The CHAIRMAN. All your division?
Mr. SKINNER. Yes.
The CHAIRMAN. How many candidates were there out?
Mr. SKINNER. Twenty-one.
The CHAIRMAN. How many elected?
Mr. SKINNER. Seven.
The CHAIRMAN. You are one of the seven?
Mr. SKINNER. I am one of the seven.
The CHAIRMAN. You are not only representative of that division, but you are a chairman of a group?
Mr. SKINNER. I am not.
The CHAIRMAN. You are just a representative of that division?
Mr. SKINNER. Just elected as spokesman for this meeting.
The CHAIRMAN. Do you sit in with representatives of other divisions?
Mr. SKINNER. Yes, sir.
The CHAIRMAN. So that these seven, of whom you are one, meet from time to time with representatives of other divisions?
Mr. SKINNER. Of the whole division. We never meet without the whole division.
The CHAIRMAN. How many are in all the divisions?
Mr. SKINNER. Ninety-seven.
The CHAIRMAN. How often do these 97 representatives meet?
Mr. SKINNER. Once a month.
The CHAIRMAN. You may proceed.
Senator DAVIS. Were you a member of the Amalgamated?
Mr. SKINNER. Yes, sir.
Senator DAVIS. Were you formerly on the mill committee of the Amalgamated?
Mr. SKINNER. Yes, sir.
The CHAIRMAN. Is there any difference between serving on the mill committee of the Amalgamated and this committee?

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Mr. SKINNER. Yes, sir.

Senator DAVIS. Would you care to tell us the difference?

Mr. SKINNER. We deal more directly as the employees' representative than we did through the Amalgamated.

Senator DAVIS. What three divisions do you represent?

Mr. SKINNER. Now?

Senator DAVIS. Yes.

Mr. SKINNER. I am only representing now two divisions, that is the shears and the sheet mill.

Senator DAVIS. That is what we would term the "hot mill" and the shearmen?

Mr. SKINNER. Yes; and cold-rolled scrip.

Senator DAVIS. But you have the modern strip mill in your works?

Mr. SKINNER. Under our division.

The CHAIRMAN. Has the Amalgamaged organization gone out of existence?

Mr. SKINNER. As far as I know, in Middletown.

The CHAIRMAN. When was it merged into the representative plan that you now have?

Mr. SKINNER. That was back in 1904. We always carried representatives outside the regular mill committee, we always had divisions outside the mill committee since 1904.

The CHAIRMAN. Since that time there has been no organization known as the "Amalgamated organization" that has represented the employees in dealing with management?

Mr. SKINNER. Since 1904 we have had a separate committee that dealt with the management.

The CHAIRMAN. From the Amalgamated?

Mr. SKINNER. Yes.

The CHAIRMAN. When did they cease to deal with the management?

Mr. SKINNER. When the Amalgamated pulled away from us, we just took over the dealings and went right straight along.

The CHAIRMAN. So there was at one time an organization under the representative plan, and an organization of Amalgamated workers?

Mr. SKINNER. They were all combined together.

The CHAIRMAN. But there was a separate organization of certain employees who chose to belong to the Amalgamated organization?

Mr. SKINNER. They belonged to the Amalgamated Association and also did this extra work.

Senator DAVIS. As I understand it, they all belonged to the Amalgamated Association at that particular time, and there was an additional committee known as the "advisory committee"?

Mr. SKINNER. The advisory board; yes.

The CHAIRMAN. Are those two groups in existence today?

Mr. SKINNER. The Amalgamated is not.

The CHAIRMAN. Since when?

Mr. SKINNER. Since 1909.

The CHAIRMAN. So that the only organization there is at these plants is the organization of which you are a representative?

Mr. SKINNER. Yes, sir.

The CHAIRMAN. And the Amalgamated had apparently ceased to exist?

Mr. SKINNER. Yes, sir.

Senator DAVIS. Ceased to exist in your plant?

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Mr. SKINNER. Yes, sir.

The CHAIRMAN. You may proceed.

Mr. SKINNER. In the department which these four men and myself represent, we represent practically 1,000 men. I appreciate this opportunity to appear before you to tell you what my fellow workmen think about Senate bill 2926.

The men in our department have worked for the American Rolling Mill Co. from 5 to 33 years, and during most of this time we have belonged to a union, the Amalgamated Association of Iron, Steel and Tin Workers, so we know what a labor union is.

We are opposed to this bill because of the following reasons: Section 7 (a) of the National Industrial Recovery Act says we do not have to join any labor organization unless we want to, but the Wagner bill would make us join. We should not have to join any organization unless we want to.

We do not believe our taxes should be used to support another expensive board in Washington.

Under the bill the labor board could appoint friends without an examination of any kind. The board could pay these people anything they want to pay them.

If the Wagner bill becomes a law it would set up a wall between men and management. Spite fences promote fights.

For many years we have dealt with our management on many problems and always got a fair deal. The Wagner bill seems to say that the workmen and the management do not know how to deal together.

The bill would do away with our plan of employee representation which we are entirely satisfied with.

We would hate to work in a place where we couldn't meet on equal terms with the management to talk over our problems.

The management of our company were workers in our ranks a few years ago. They know our problems. The men and management all work for our company and are paid from the same pocketbook. When we speak of the company it means the men in the plant just as much as the management. Team work is what counts.

The Wagner bill would force us to deal with outsiders who would not know anything about our conditions. These outsiders would tell us what we could or could not do. We can settle our affairs better by our plan of employee representation. Outsiders would not be as interested in our problems as we are for they do not get their bread and butter by working as we do.

We are coming out of the depression and we can't see why we should stop progress by unwise laws. What we want is steady work and not strikes.

We believe a man should hold his job on his merit and not because he belongs to a labor organization.

The Wagner bill would take away our right to select our own men to represent the workers. In our opinion the workers should continue to elect their own representatives by secret nomination and secret ballot.

If the bill becomes a law we would lose many benefits such as our group insurance, mutual aid, sick and death benefits, free hospital service, free gardens, and other services. These benefits would come under section 7, paragraph 1, as "influence."

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While we were members of the union, for many years, in fact since 1904, we elected an advisory board much the same as our present employee-representatives committee. We solved many problems with the management without taking them to the national lodge.

Senator DAVIS. Just a minute. When you were on the mill committee for the Amalagamated Association, did you insist on keeping incompetent men at work—an incompetent roller, an incompetent rougher, or an incompetent catcher, whatever it might be? Did you insist that that fellow should have his job when he could not do it?

Mr. SKINNER. There were times when the company has told us a man could not do the job and we took it up with the company. We had to under the Amalagamated Association, take it up, and try to get the man his job back, you know.

Senator DAVIS. Did you ever get anybody's job back?

Mr. SKINNER. I will say yes, we did.

Senator DAVIS. Did you threaten to strike if he did not get it?

Mr. SKINNER. No, sir.

Senator DAVIS. The company gave it back just because they wanted to, they were not forced to.

Mr. SKINNER. That is right.

Senator DAVIS. You would not have gone out on strike if they did not give it back?

Mr. SKINNER. I do not believe we would, because if the man is not capable of doing his job, you would not want to hire somebody who could not do the job.

Senator DAVIS. I know in my day in the mill that was the philosophy of the worker in the mill, because if the roller gang was paid on a tonnage basis, and did not want him, and would not work with him, they would insist on everybody being competent to do the work.

Mr. SKINNER. But in your day you did have men working for you when you would like to have someone better, but you would not throw him out because of his family or something like that.

Senator DAVIS. That applies today.

Mr. SKINNER. I know I have had men on a crew that I would—when I would like to have someone better, but I did not say anything about it.

Senator DAVIS. I know some of the men who manage the affairs at Middletown, and they are very splendid men.

Mr. SKINNER. They are. Mr. Hook is one of the swellest men I know of.

In 1929, while we still belonged to the Almagamated Association of Iron, Steel, and Tin Workers, the officials of this union called a strike on us, even though we had been working under an agreement with the company for approximately 3 months. We did not have a chance to vote whether we wanted to go out or not. In our opinion this strike could have been stopped, but when final negotiations were to be held some of the union officials could not be found. When the strike was called only 31 men refused to go to work out of 690. We do not want to do business with any union that causes this kind of trouble. Time will not permit me to give you all the details of this trouble, so I am giving you a statement of facts in the case.

Gentlemen, in conclusion, we hope you will do everything you can to prevent this bill being passed.

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Senator DAVIS. What was the cause of the strike in 1929, at the Middletown works of the American Rolling Mill Co.?

Mr. SKINNER. It was a dispute on whether or not a universal bar was a bar.

Senator DAVIS. What did the company decide? What did you men of the Amalgamated at that time decide it was?

Mr. SKINNER. The men of the Amalgamated Association, when they signed up the scale, agreed that it was a universal bar, and about 3 months after, they came back, they said it was not a universal bar, but we had signed an agreement and we felt we could stand by the agreement whether it was right or wrong, that we had signed it and should stay with it. That is the reason we went back to work, we had signed an agreement, and if we had something put over on us, that was our business but we would go back to work.

The CHAIRMAN. Thank you. I think it is fair to say, I am sure, that if Senator Wagner were present, he would indicate to you that some of the complaints you find fault with in this bill are not justified.

Senator DAVIS. I wish Senator Wagner were here. I would like to have a discussion with him myself.

The CHAIRMAN. Thank you, sir. Mr. Berry.

STATEMENT OF PAUL D. BERRY

The CHAIRMAN. Your full name?

Mr. BERRY. Paul D. Berry.

The CHAIRMAN. Where do you reside?

Mr. BERRY. 1203 Yankee Road, Middletown, Ohio.

The CHAIRMAN. Where do you work?

Mr. BERRY. At the general offices of the American Rolling Mill.

The CHAIRMAN. What is your occupation?

Mr. BERRY. I am employed in the credit and collection department.

The CHAIRMAN. Are you appearing here as the representative of the employees in this plant?

Mr. BERRY. I am appearing here as the chairman of the group comprising the employees of the general offices, both the chairman and the authorized representative of the general office group.

The CHAIRMAN. Is the general office group organized separately from the other employees?

Mr. BERRY. Yes.

The CHAIRMAN. Do they have representatives who—of the general council of employees?

Mr. BERRY. No.

The CHAIRMAN. They operate independently from the other employees in their dealings with the management?

Mr. BERRY. Yes.

The CHAIRMAN. How many members in the group to which you belong?

Mr. BERRY. The representatives?

The CHAIRMAN. No. How many employees?

Mr. BERRY. About 275; I think there is a vary, of course.

The CHAIRMAN. How many representatives have you?

Mr. BERRY. We have about 32 now.

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The CHAIRMAN. When did you hold your election for representatives of the group?

Mr. BERRY. Our election for representatives in this group was first held in August of last year, and then in December of last year there was another election held on the amended plan on which we are working.

The CHAIRMAN. You were not organized prior to that time?

Mr. BERRY. We were organized as an advisory committee, ever since I have been with the American Rolling Mill, 16 years ago, and prior to that.

The CHAIRMAN. In December you organized under a new plan?

Mr. BERRY. Yes, sir.

The CHAIRMAN. Did all the employees take part in the election in December?

Mr. BERRY. Yes, sir.

The CHAIRMAN. And how many representatives did they elect?

Mr. BERRY. Just the number we have now, 32 or 33.

The CHAIRMAN. Are those 32 from one plant, or are they representatives of clerical forces in other plants?

Mr. BERRY. They are representatives of the clerical force in the general offices in Middletown.

The CHAIRMAN. How many offices are there in Middletown?

Mr. BERRY. We have the general office itself, and then we have the metallurgical research. We have the factory research, and we have offices similar to that.

The CHAIRMAN. You may proceed with your statement.

Mr. BERRY. Mr. Chairman, my name is Paul D. Berry. I have been an employee of the American Rolling Mill Co. for 16 years. I am privileged to speak to you as chairman and authorized spokesmen for the employee representatives comprising both hourly and salaried employees of the general offices of the company at Middletown, Ohio. While I am now a salaried employee I have also had some experience as a member of a trade union as I was a pattern maker by trade, carried a union card and was also secretary of our local.

Our group, feeling the Wagner bill was of vital interest to all of us, discussed it thoroughly at a recent committee meeting and felt they should go on record as opposing its passage owing to the effect it would have on us both as individuals and a group. A copy of this resolution was sent to this committee, but with your permission, I would like to quote it:

Hon. DAVID I. WALSH,
Senate Committee on Education and Labor,
Washington, D.C.:

At a meeting of an employees' representative group representing 300 employees of the American Rolling Mill Co., Middletown, Ohio, the merits and the possible results of the Wagner bill were thoroughly discussed. A motion was made, voted upon by secret ballot, and carried by an overwhelming majority that this group go on record as being fully satisfied that the present employees' representative plan functioning 100 percent for the benefit of all employees represented without any coercion, intervention, or even suggestion from the management. That the fullest cooperation has always been received from the American Rolling Mill Co. on any adjustment, correction of condition, and suggestion for the benefit of any portion or all of the employees represented by this group. That the passing of the Wagner bill would create a condition intolerable to the employees it represents and would create a condition so radical it would contribute greatly

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to retard and even eliminate the progress made so far in recovery and could not function as effectively, efficiently, and as amicably as the present plan of employees' representation. That, in the interest of all employees represented by this group, a copy of this motion be sent to each Senator and Representative requesting that he use his influence and vote in the defeat of the passing of this bill.

THE AMERICAN ROLLING MILL CO.,
P. D. BERRY,
Chairman Employees' Representative Committee.

The first and second paragraph of section 2 of this proposed bill makes a statement that we most emphatically take exception to. Because isolated cases here and there which unfortunately are the only ones that have come to the attention of the Labor Board have not been fair to the employees do not place all of us in the same category. We haven't been coerced by the management. They haven't even attempted to influence us. I can truthfully say that in every matter we have taken up with the company we have received their cooperation and they have never refused to entertain any reasonable request or suggestion. I don't want to leave you under the impression that everything we ask for is granted. We try to be reasonable but when we feel we are right we go to the mat with the management and I assure you we don't come out on the short end often.

This Board in its investigations probably has come in contact with some conditions which should be corrected. If anyone is not living up to the National Recovery Act handle them individually. Don't impose a condition on the majority of us which would eliminate the basis for friendly contact we have had for years. Collective bargaining and friendly contact such as ours can't be legislated into existence. You must have mutual understanding, confidence, and respect. You can't have either unless we can discuss our mutual problems in a friendly manner. Certainly you will not realize this if you inject a third party into the picture who doesn't have our individual interests at heart as we employees do.

Collective bargaining isn't new to us. We didn't need N.R.A. to obtain it. We have had it for years in our advisory committee upon which I have served several times. The present plan varies but little. It has only been dressed up somewhat to suit the occasion and the employees have had their hand in the dressing. May we suggest gentlemen, if you feel legislation is necessary that before you take this step you make a survey of the employee-representative plans which have been functioning successfully and then develop your legislation from the result of this side of the question.

The Wagner bill implies we are interfered with, influenced, restrained, and coerced. Perhaps I can answer that by briefly telling you how our plan works. First, all elections are by secret ballot both for nomination and election. Second, they are conducted by employees only and the first knowledge the management has of who is nominated and elected is when we tell them. Third, no one in a supervisory capacity is permitted to serve as representative or even allowed to vote. Fourth, no member or representative of the management is permitted to attend our meetings except by invitation. Fifth, no employee representative can be discriminated against for any action he has taken as representative. We have never had a case of such discrimination, but if there was we could take the matter up through each superior officer to our president, if necessary, and then, if not satisfied, to an arbitrator selected by mutual agreement.

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The employees of the general offices voted over 99 percent in favor of this plan.

I am sorry to say there was one vote against it.

The CHAIRMAN. Did you have a direct vote on the question?

Mr. BERRY. A direct vote and a secret vote. The question was on the adoption of the plan that we are working under at the present time.

The employee representatives went on record 100 percent that their chairman request you gentlemen please very carefully consider any action which would destroy this friendly and satisfactory medium of contact which has been serving our purpose for years.

Thank you.

The CHAIRMAN. Thank you, Mr. Berry. Mr. Colley.

STATEMENT OF ROBERT F. COLLEY

The CHAIRMAN. State your full name.

Mr. COLLEY. Robert F. Colley.

The CHAIRMAN. Where do you reside?

Mr. COLLEY. Butler, Pa.

The CHAIRMAN. Where are you employed?

Mr. COLLEY. American Rolling Mill plant at Butler, Pa.

The CHAIRMAN. What is your occupation in that plant?

Mr. COLLEY. I am a roller on the wheel mill.

The CHAIRMAN. How many employees in that plant?

Mr. COLLEY. Two thousand one hundred.

The CHAIRMAN. Are you a representative?

Mr. COLLEY. I am.

The CHAIRMAN. Were you elected by these 2,100 employees?

Mr. COLLEY. No.

The CHAIRMAN. By a division of the 2,100?

Mr. COLLEY. By a division of the 2,100 employees. We have 21 divisions, and each department elects their own group.

The CHAIRMAN. Which is your division?

Mr. COLLEY. I am in the wheel works.

The CHAIRMAN. How many voted in the election?

Mr. COLLEY. 138.

The CHAIRMAN. How many candidates were there?

Mr. COLLEY. Three successful candidates.

The CHAIRMAN. Three from each division?

Mr. COLLEY. Three from each division; 1 division has 4, on account of having more men.

The CHAIRMAN. What was the total number of candidates that were elected?

Mr. COLLEY. Eighty-four all through the plant.

The CHAIRMAN. And how many candidates were there against you?

Mr. COLLEY. Nine.

The CHAIRMAN. Nine candidates, and three elected?

Mr. COLLEY. Yes.

The CHAIRMAN. You may proceed with your statement.

Mr. COLLEY. Two other officers of the executive committee and I have been sent here by the employee representatives of our works to present to you their views on the Wagner bill. The resolution unanimously passed by our representatives last Wednesday, March 28, contain the following points:

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1. We feel that this bill would force us to join a national union and thus compel us to pay dues.
2. We feel that this bill would destroy the friendly relationship that exists between our managment and ourselves.
3. We would lose many valuable benefits which we have long enjoyed such as company contributions to group life insurance, employees' benefits association, and so forth.
4. This bill seems to anticipate that trouble may arise between the working organization and the managemnt which cannot be satisfactorily adjusted. Our experience does not bear this out.
5. We fear any legislation which will tend to destroy the harmony we now enjoy with our company.
6. We also insist upon the right to choose for ourselves the form of employee representation we are to have and strenuously object to any possibility of the closed shop.
7. We will not be satisfied with any amendment of the Wagner bill. Regardless of whatever changes might be made it would still be regarded as a union labor victory and advertised as such by union organizers.

I would like to explain how employee representation is conducted in our plant. We have 64 representatives elected from 21 groups or districts. These men are elected for a period of 1 year. Elections are conducted by means of a secret ballot and no one in a supervisory position or higher is eligible for election or may in any way be connected with the conduct of the election. The management of the polling places, counting of the ballots and certifying of the results is done exclusively by the workmen.

Our meetings are conducted secretly and the only time we have a visit from any member of the management or from any one in a supervisory position is when we invite them in for consultation or advice.

Employee representation is not a new thing in our plant; it was started in 1928 when the American Rolling Mill Co. acquired the property from the Columbia Steel Co., and long before any collective bargaining legislation was enacted. At the first meeting we had with the officials of tke company we were told that American Rolling Mill Co. wanted the viewpoint of the working organization on all matters of mutual concern. It was explained to us at that time that as an aid in securing this kind of cooperation they had a formal plan of employee representation which they wanted to extend to our organization. We accepted and have operated under this principle from that day to this and we know that both management and men have profited thereby.

The workmen were so confident they wanted to continue the American Rolling Mill Co. plan to the exclusion of all other collective bargaining plans, that after the National Industrial Recovery Act was enacted we so expressed ourselves in a secret vote which resulted in 660 "yes" and 254 "no." The company at that time expressed the desire that we rewrite the plan then in existence to make it still more suitable to our needs. This we did by asking for suggestions from every workman in the plant.

These suggestions were embodied in a revised plan which after 6 months of trial and observation was accepted on a secret ballot by the overwhelming majority of 1,729 to 104. The provisions of this plan were accepted as a signed agreement between the employee representatives and our management. This revised plan provides a well defined routine of procedure all the way up to and including arbitration.

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As to our specific objections to the Wagner bill or to any other legislation designed to force restrictions or conditions on either labor or management, time does not permit me to enter into. We simply want to point out that we believe our viewpoint of the open shop, where workmen may or may not join any labor organization, as they see fit, is the viewpoint of the vast majority of American workmen and we resent the coercion and continual annoyance of union organizers who work on us with the story that if we are to be patriotic, if we are to be loyal to our esteemed President and our Government, and if we are to aid recovery, we must join their union. We do not believe it, and for that reason we do not want any part of the Wagner bill, amended or otherwise, because we know that we would then be hounded to join the American Federation of Labor. In addition to this we would be working and living under the continual threat of strikes and the closed shop. Many of us have had all of this in the past in our plant and we want no more of it.

The CHAIRMAN. Thank you, sir.

Mr. COLLEY. May I submit our plan of employee representation?

The CHAIRMAN. Yes.

Mr. COLLEY. Our plan was approved and signed by every man but one who was out hunting at the time. While it is not perfect, we feel it is satisfactory.

The CHAIRMAN. That may go in the record.

(The plan of employee representation of the American Rolling Mill Co. presented by Mr. Colley, is attached to the transcript.)

BUTLER, PA., *November 1, 1933.*

To all employees of the Butler works, the American Rolling Mill Co., Butler, Pa.

We, the undersigned, being your representatives elected in August 1933, submit the following plan of employee representation which we believe to be acceptable to you. The plan is published in full below, together with a statement by the management.

BUTLER ARMCO PLAN OF EMPLOYEE REPRESENTATION

INDEX

I. Employee representation.
II. Qualifications of representatives and voters.
III. Nominations and elections.
IV. Term of office of representatives and vacancies.
V. Employees' committees.
VI. Management's representatives and joint committees.
VII. Committee meetings.
VIII. Procedure for adjustments.
IX. Representatives' guarantee.
X. Termination and amendments.
Supplement A. Voting districts and the number of employee representatives in each district.

BUTLER ARMCO PLAN OF EMPLOYEE REPRESENTATION

The mangament and the employees of the Butler works of the American Rolling Mill Co. agree to this Butler ARMCO plan of employee representation in order to provide an effective communication and means of contact between the employees and the management on all questions regarding the conditions and provisons of their employment. It is the purpose of the plan to maintain in the organization a spirit of confidence and an understanding of the problems in which we are mutually interested and to provide a convenient and effective method for the prompt day-to-day adjustment without prejudice of all the problems which confront us in our relationship with each other

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This plan of employee representation is also established to comply with the intention of the Congress and the President of the United States, as expressed in the National Industrial Recovery Act, as follows: "SEC. 7 (a). Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions:

"(1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

"(2) That no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and

"(3) That employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President.

"SEC. 7 (b). The President shall, as far as prcaticable, afford every opportunity to employers and employees in any trade or industry or subdivision thereof with respect to which the conditions referred to in clause (1) and (2) of subsection (a) prevail, to establish by mutual agreement, the standard as to the maximum hours of labor, minimum rates of pay, and such other conditions of employment as may be necessary in such trade or industry or subdivision thereof, to effectuate the policy of this title; and the standards established in such agreements, when approved by the President, shall have the same effect as a code of fair competition, approved by the President under subsection (a) of Section 3."

I. EMPLOYEE REPRESENTATION

1. Representation shall be by voting districts which shall comprise departments or sections of the works. There shall be 1 employee representative for each 50 employees or major fraction theerof, based on the number of employees in the voting district on the 15th of the month prior to the annual election, but no district shall elect less than 3 representatives.

2. It is urged that care be taken in the nominations and elections so that each turn, group, and character of work in each voting district be represented. Whenever it is necessary to group small departments, due regard shall be given to community of interest.

3. The voting districts and the number of employee representatives from each district are listed in supplement A. Changes in the voting districts may be made by action of the joint executive committee.

II. QUALIFICATIONS OF REPRESENTATIVES AND VOTERS

1. The officials of the company and persons having the right to employ or discharge, or regularly holding purely supervisory positions, shall not be eligible for election as employee representatives or qualified to vote for employee representatives.

2. Every ARMCO employee, except those excluded by paragraph 1, who has been in the continuous service of the company for 1 year or more as of December 1 prior to the election, who is then on the active pay roll of the Butler works, who is 21 years of age or over, and who is an American citizen, is eligible to be elected as a representative.

3. Every Butler Works employee, except those excluded by paragraph 1, who is on the active pay roll as of December 1 prior to the election is entitled to vote for employee representatives.

4. This plan shall in no way discriminate against any employee because of race, sex, or creed, or abridge or conflict with his or her right to belong or not to belong to any lawful society, fraternity, union, or other organization.

III. NOMINATIONS AND ELECTIONS

1. Nominations and elections shall be held annually in the month of December.

2. Nominations shall be held on the first Tuesday, and elections on the following Tuesday, unless these days fall on holidays, in which event read Wednesday, instead of Tuesday.

3. In the event of slack operations in any voting district, nominations and elections may be postponed by decision of the employees executive committee until more complete operations are resumed.

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4. The total number of representatives shall be chosen at each annual election.
5. Nominations and elections shall be conducted by the employees themselves with such assistance from the management as the employees may request.
6. There shall be not more than three persons nominated for each person to be elected.
7. Nominations and elections shall be by secret ballot.
8. On the day of nominations each qualified voter shall be furnished with a nominating ballot indicating the number of persons whom he is entitled to nominate.
9. A voter may place no more than two names in nomination for each representative to be elected. Where within one district there are two or more persons of the same name, the voter's preference shall be indicated by adding the check number to the name.
10. If on any nominating ballot the same name is placed in nomination more than once, it shall be counted but once.
11. Should the number of persons nominated on any ballot exceed the permissible number, the ballot shall be void.
12. Those who have received the largest number of votes up to three times the number of representatives to be elected shall be declared nominated and shall be candidates for election.
13. On the day of election each duly qualified voter shall be furnished with a ballot indicating the number of persons for whom he is entitled to vote, on which the names of the candidates shall be printed in alphabetical order. The voter shall indicate his preference by placing a cross opposite the names of the candidates of his choice.
14. The candidates to the number of representatives to which a district is entitled may be voted for. If this number is exceeded, the ballot shall be void.
15. The candidates receiving the highest number of votes shall be declared elected.
16. In the event of a tie in either nominations or elections the choice shall be determined by lot.
17. Candidates not elected at the annual election shall serve as alternates in order of votes received at such election.
18. Ballots shall be counted under the direction of the employees executive committee and lists, in triplicate, showing the number of votes cast for each person shall be prepared. One of these lists shall be posted in a conspicuous place in the district, one forwarded to the management's representative as evidence that the persons elected are duly accredited, and one retained by the committee.
19. Persons shown by such certified lists to have been elected as provided herein shall take office on January 1 of the succeeding year and shall be the representatives of the district for the ensuing year or until their successors are elected and qualified.

IV. TERM OF OFFICE OF REPRESENTATIVES AND VACANCIES

1. Employee representatives shall be elected for a term of 1 year or until their successors are elected and qualified and shall be eligible for reelection.
2. An employee representative may be recalled upon the approval by the employees' executive committee of a petition signed by two thirds of the voters in the voting district represented.
3. An employee representative shall be deemed to have vacated his office upon the discontinuance of his employment, or upon being transferred from one voting district to another (excepting that he shall hold his office for 3 months from the date of such transfer, providing the voting district in which he was elected so desires), or upon his appointment to such a regular position as would make him one of the persons described in section II, paragraph 1, hereof.
4. Vacancies in the office of employee representative shall be filled by the alternate, or if there is no alternate as described in section III, paragraph 17 hereof, may be filled for the unexpired term by special elections conducted in the same manner as the annual elections.

V. EMPLOYEES' COMMITTEES

1. Before the Monday in December immediately following their election the representatives within each district shall organize and select a chairman. They shall then be known as the "Departmental employees committees and departmental chairmen", respectively.

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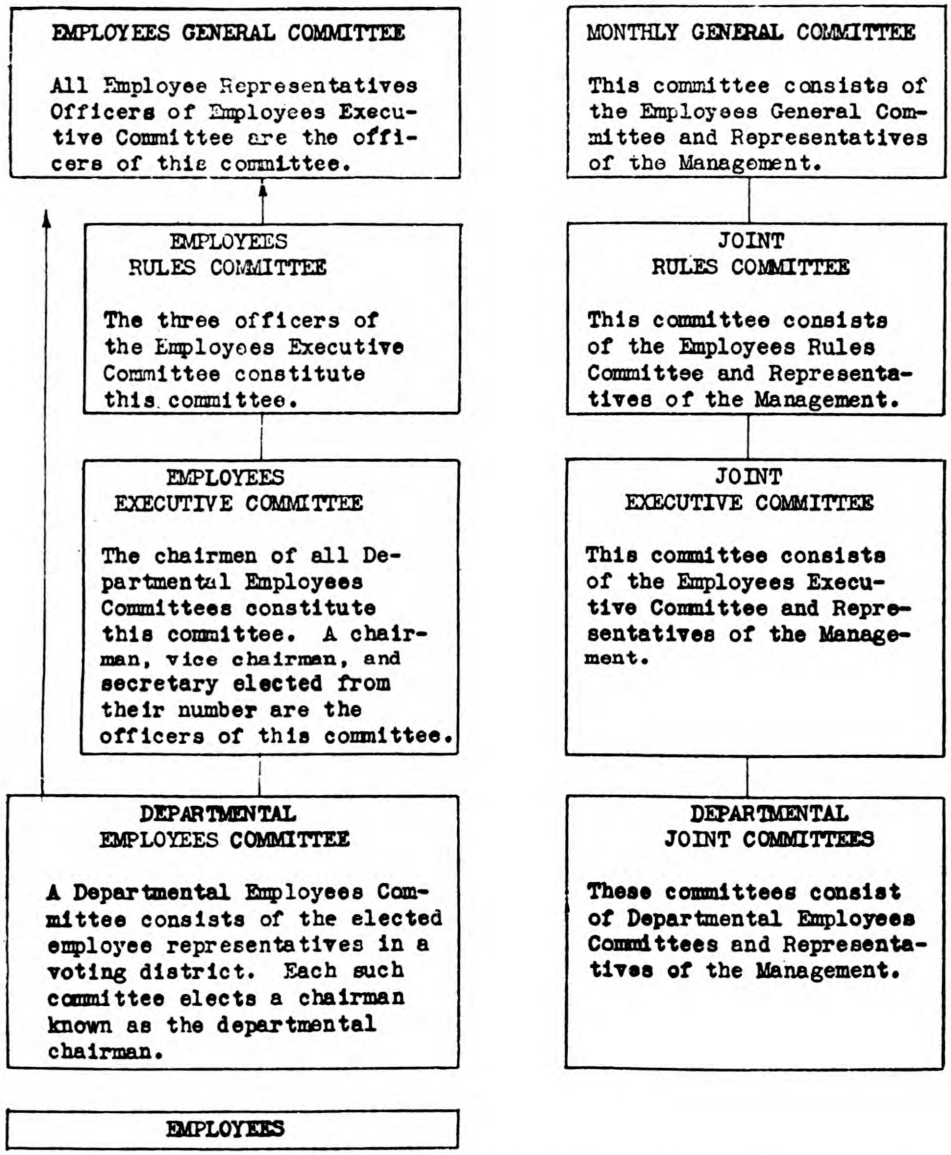
2. All the departmental chairmen shall constitute the employees executive committee.

3. On the Monday of December immediately following their election the employees' executive committee shall meet, organize, and elect from among their own number a chairman, vice chairman, and a secretary.

ORGANIZATION OUTLINE
BUTLER ARMCO PLAN OF EMPLOYEE REPRESENTATION



4. These three officers shall constitute and be known as the "Employees' rules committee."

5. The employees' executive committee may from time to time appoint such subcommittees as they deem necessary to consider any subject. These committees may be either standing or special, but the subjects of employment, working conditions, wages, safety, and training, shall be considered by the executive committee as a whole.

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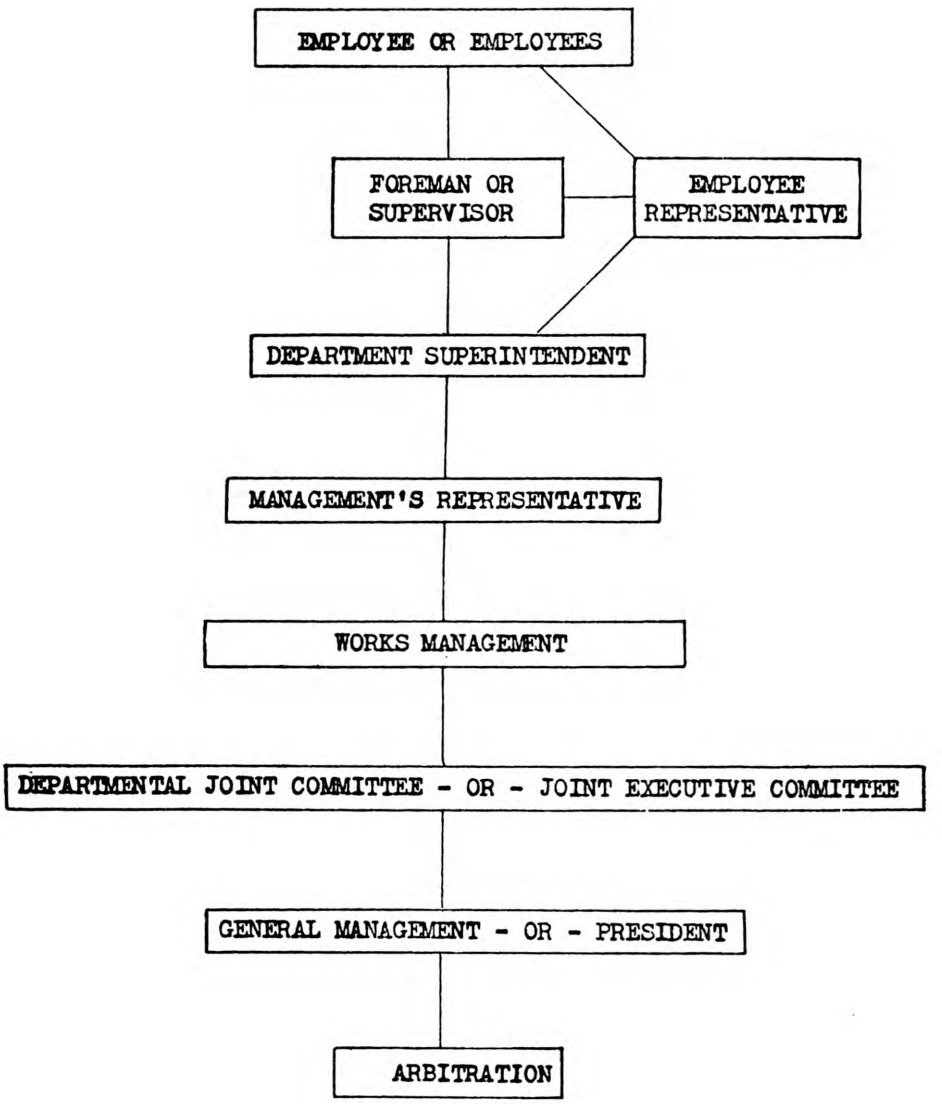
6. All the employee representatives shall constitute the employees general committee and officers of the employees' executive committee shall be the officers of the employees' general committee.

7. Any officer of the employees' executive committee may be removed from office at any regular meeting of the executive committee by a two thirds vote of all members of the employees' executive committee, due notice in writing setting forth the reason having been given to the officers and to all members of the executive committee at least 30 days in advance.

PROCEDURE FOR ADJUSTMENTS



VI. MANAGEMENT'S REPRESENTATIVES AND JOINT COMMITTEES

1. The management shall appoint a management's representative to facilitate close relationships between the management and the employee representatives, their officers and committees, and represent the management in negotiations with them. He shall respond promptly to any request from representatives, and shall interview all of them, from time to time, collectively or separately, with reference to matters of concern to the employees.

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2. For each voting district the management shall appoint a responsible executive and may from time to time appoint other representatives. The total number of management representatives, whether the responsible executive be one of that number or not, shall never exceed in total the number of employee representatives constituting the departmental employees' committee. When the management representatives and the departmental employees' committee meet together they shall constitute the departmental joint committee.

3. The management shall appoint representatives from time to time to a number which may equal but not exceed the number of departmental chairmen who constitute the employees' executive committee. When these management representatives meet with the employees' executive committee they shall together constitute the joint executive committee.

4. The management shall appoint representatives from time to time to a number which may equal but not exceed three (the number of officers of the employees' executive committee who constitute the employees' rules committee). When these management representatives meet with the employees' rules committee they shall together constitute the joint rules committee.

5. The management of the company and the direction of the organization, including the right to employ, suspend, or discharge for proper cause or transfer, and the right to relieve employees from duty because of lack of work or for other legitimate reasons, is vested exclusively in the management and except as expressly provided herein these rights shall not be abridged by anything contained herein. Any grievance arising under this paragraph shall be adjusted as set forth in section VIII hereof.

VII. COMMITTEE MEETINGS

1. Employee representatives shall hold their meetings at their convenience without attendance thereat of any representative of the management.

2. In addition the departmental employees' committee shall meet at least once each month with representatives of the management. This shall be known as "the monthly meeting of the departmental joint committee."

3. At least once each month the employees' executive committee shall meet with the management's representatives. This shall be known as "the monthly meeting of the joint executive committee."

4. On call by either management or employees the employees' rules committee shall meet with the management representatives. This shall be known as "the called meeting of the joint rules committee."

5. A representative of the management shall be the chairman of all joint-committee meetings. He shall supply minutes of the meetings to each member of the joint committee."

6. Special meetings of any or all joint committees may be called at any convenient time by either the employee representatives or the management's representative.

7. At least once each month, except in the heat of the summer, there shall be a meeting of all employee representatives and representatives of the management known as "the monthly general committee meeting", at which a representative of the management shall preside, to provide a means for the promotion of a proper understanding of Armco policies and their application throughout the organization and to provide an easy, convenient, and regular means of exchanging such ideas as will be mutually helpful to management and men.

8. The meetings of the departmental joint committees and the joint executive committees shall be held during regular business hours excepting in case of emergency or by agreement. The monthly general committee meeting shall usually be held in the evening.

9. An employee representative shall be paid at his average earning rate by the company for time necessarily lost in attending any joint or monthly general committee meeting.

10. The management will upon request provide a suitable place for all employee representative, joint, and monthly general committee meetings.

VIII. PROCEDURE FOR ADJUSTMENTS

1. Any matter which in the opinion of any employee (or employees) requires adjustment, and which such employee has not been able to adjust with his superior, may be taken up either in person or through any employee representative of his department.

First, with the superintendent concerned.

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Second, with the management's representative.

Third, with the works management who shall endeavor to affect an agreement, or who may, with the approval of the employees concerned, refer the subject to the departmental joint committee or the joint executive committee.

2. If a satisfactory agreement is not effected within a reasonable time, the employee may notify any member of the general management or the president of the company in person or through any employee representative. If the president and employees executive committee agree thereto, the matter shall be referred to one or more arbitrators to be agreed upon at the time according to the nature of the discussion.

IX. REPRESENTATIVES' GUARANTY

1. The employee representatives can function constructively to the best interest of the men and manngement only in proportion to their appreciation and acceptance of responsibility. It is understood and agreed that each representative shall be free to discharge his duties in an independent manner, without fear that his individual relations with the company may be affected in the least degree by any action taken by him in good faith in his representative capacity.

2. To insure to each such representative his right to such independent action, he shall have the right to take the question of an alleged personal discrimination against him on account of his acts in his representative capacity to any of the superior officers in order to the president of the company personally or through his departmental employees committee or employees executive committee.

3. Having exercised his right in the consecutive order hereinabove indicated and if the decision of the president is not satisfactory to him, then the question shall be settled by an arbitrator selected by mutual agreement.

X. TERMINATION AND AMENDMENTS

1. This plan shall remain in effect during the term of the National Industrial Recovery Act and thereafter may be terminated by the management or by a majority of the employees upon 3 months' notice.

2. This agreement may be amended by a two-thirds vote of the employees of the works voting thereon, the management concurring, provided that a copy of the proposed amendment shall have been posted on the bulletin boards within each voting district for at least 30 days before the vote is taken. Such vote shall be by secret ballot. All employees on the active pay roll of the works except those excluded by section II, paragraph 1, shall be eligible to vote on the amendments.

SUPPLEMENT A

	Number of employee representatives
Open hearth	4
Slab milling	3
W. W. pressing and rolling, slicing, die, and maintenance	3
W. W. finishing, inspecting and shipping	3
Hot strip	3
Cold reduction	3
Anneal and pickle	3
Box anneal	3
Temper rolls	3
Finishing, process	3
Shipping, reclamation	3
Strip-mill maintenance	3
Machine pipe, and smith shops, and maintenance office	3
Rigging, locomotive, and carpenter shop	3
Boiler house, substations, and electrical shop	3
Masonry	3
Labor (including employment reserve)	3
Transportation	3
Strip-mill administration and production	3
Works office, personnel service, and purchases and stores	3
Inspection, metallurgical, and chemical laboratory	3

It is our recommendation that this plan be adopted by a "yes or no" vote and that, on the same ballot, representatives be nominated on the first Tuesday of December and that representatives be elected on the second Tuesday of December, 1933, in accordance with the provisions of this plan.

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Open hearth.—Jos. L. Clark, Floyd E. Davis, J. Clair Arble.
Slab mill.—John Gingle, George Anderson, Frank Barnhart.
W. W. press and rolling, slicing, die, and maintenance.—R. F. Colley, W. E. Kerr, Ora Plaisted.
W. W. finishing, inspection, and shipping.—Frank King, Louis B. Dittmer, Walter Petroski.
Hot strip.—M. A. Fruher, Frank A. Hart, E. A. Woods.
Cold reduction.—Toddy Jones, Jos. Daller, Chester V. Cypher.
Anneal and pickle.—Roy M. Miller, H. E. Thorn, Ben Olson.
Box anneal.—Frank E. Cooper, C. Ray Hutchison, Leonard J. Steighner.
Temper rolls.—W. C. McDowell, H. E. Neeley, John A. Cooper.
Finishing process.—Nick Russin, Clyde Fisher, Joseph H. Moniot.
Shipping reclamation.—Lee Shields, Sidney Pithers, Peter Zawotuk.
Strip-mill maintenance.—R. Hobangh, John F. Snidgrass, T. E. Barry.
Machine, pipe, and smith shops, and maintenance office.—John Gerrtner, S. R. Zeigler, Ralph C. Albert.
Rigging, locomotive, and carpenter shop.—D. B. White, T. W. Morgan, John Daller.
Boiler house, substations, and electrical shop.—Michael Enright, Chas. F. Vencel John W. Brady.
Masonry.—Sherman Rauset, J. F. Widenhoper, John Stefanko, Jr.
Labor (including employment reserve).—J. M. Houble, M. L. Spinnucucks, John Trucci.
Transportation.—Samuel B. Horne, Paul C. Kradel, E. Denver Rummel.
Strip-mill administration and production.—J. L. Redick, Fay T. Walls, Raymond J. Geibel.
Works office, personnel service, and purchase and stores.—Jno. G. Bayer, F. G. Yost, Chas. E. Leasure.
Inspection, metallurgical, and chemical laboratory.—J. L. McCormick, C. R. Finilley, E. E. Miller.

To all employees, Butler works:

The management, after consulting fully with your elected representatives is, in accord with their recommendations regarding the foregoing Butler ARMCO Plan of Employee Representation.

HARRY HOLIDAY, *Works Manager.*

The CHAIRMAN. There are three representatives of the Wheeling Steel Co. here. Will you three gentlemen come forward as I call your names? Frank Chase. Guy E. Mitchell. Lee Robinson. You three gentlemen represent the Wheeling Steel Co.?

Mr. CHASE. Yes, Mr. Chairman.

The CHAIRMAN. Which plant are you from, Mr. Chase?

Mr. CHASE. What they call the Portsmouth works, situated in New Boston, Ohio.

The CHAIRMAN. Mr. Mitchell?

Mr. MITCHELL. Steubenville works.

The CHAIRMAN. Mr. Robinson?

Mr. ROBINSON. Benwood, W. Va.

The CHAIRMAN. I understand that Mr. Mitchell and Mr. Robinson desire to speak. Mr. Mitchell, will you step forward? The others may be seated.

STATEMENT OF GUY E. MITCHELL

The CHAIRMAN. Your full name, Mr. Mitchell?

Mr. MITCHELL. Guy E. Mitchell.

The CHAIRMAN. And you reside where?

Mr. MITCHELL. Steubenville, Ohio.

The CHAIRMAN. And you are employed where?

Mr. MITCHELL. Wheeling Steel Corporation, Steubenville works.

The CHAIRMAN. What is your occupation?

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Mr. MITCHELL. Cold roller in the new process department.
The CHAIRMAN. How many members in the plant?
Mr. MITCHELL. The total?
The CHAIRMAN. Yes.
Mr. MITCHELL. Approximately 4,300.
The CHAIRMAN. What division of that plant do you represent?
Mr. MITCHELL. The new process department.
The CHAIRMAN. How many employees in that department?
Mr. MITCHELL. Between 900 and 1,000.
The CHAIRMAN. When were you elected?
Mr. MITCHELL. Last year.
The CHAIRMAN. How many were elected?
Mr. MITCHELL. From the department?
The CHAIRMAN. Yes.
Mr. MITCHELL. Two.
The CHAIRMAN. Was it secret ballot?
Mr. MITCHELL. Yes.
The CHAIRMAN. How many participated in that election?
Mr. MITCHELL. I will give you those figures. On the date of the nominations, June 8, there were 1,897 employees entitled to vote, and 1,589 cast ballots. There were no blanks or spoiled ballots of any consequence, to my knowledge, and this means 83.7 percent of all the employees who were entitled to do so, took part in the primary.
The CHAIRMAN. Will you give us the result of the primary?
Mr. MITCHELL. The election was held a week later. Between that interval, operations were increased and there were more men on the pay roll at the election, so that out of 2,504 eligible to vote, 2,258, or over 90 percent, cast ballots. Of course, on any election day there are some men who are not working that particular day and are at home, and many of them do not come down to the mill for the purpose of voting solely, so I regard a 90-percent vote as much as anyone could expect in the steel mill.
The CHAIRMAN. Did you have a primary election first and the election afterward?
Mr. MITCHELL. Yes, sir; that was held on Monday. That was held on June 8 of last year and the general election——
The CHAIRMAN. How many candidates were there in the election?
Mr. MITCHELL. Every man in the company.
The CHAIRMAN. Was a candidate?
Mr. MITCHELL. Yes.
The CHAIRMAN. How many were elected to be candidates for the final test?
Mr. MITCHELL. Four from each department.
The CHAIRMAN. And then how many were finally voted the later day when the election was held?
Mr. MITCHELL. We voted on three in our department. It is according to the number of employees in the different departments, how many representatives they have.
The CHAIRMAN. Then there were three to be chosen in your department?
Mr. MITCHELL. Yes, sir.
The CHAIRMAN. And you were one of those chosen?
Mr. MITCHELL. Yes.

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The CHAIRMAN. You may proceed with any statement you desire to make.

Mr. MITCHELL. I am a cold roller in the Steubenville plant of the Wheeling Steel Corporation. This company has had an employees' representation plan in force since 1921. I have been actively connected with the plan during the 10 years that I have been employed by them and for the last 6 years have been one of the representatives chosen by the employees to deal with the management. I know that this plan has proven very beneficial to the employees of the company and in the general morale of the employees and the efficiency of the plant's operation, and I am appearing here to voice the opposition of the men in my plant to the passage of the Wagner bill. I know their sentiments, their loyalty to the employees' representation plan, and I have talked to hundreds of them about it. We are opposed to this bill because it is designed to make it very difficult or perhaps impossible to conduct collective bargaining by the employees' representation plan, which we have been using for many years.

I have heard that these plans have been referred to as "company dominated" by a number of the witnesses who have appeared here. From personal experience I can state that the plan in force at the Wheeling Steel Corporation is not dominated by the company at all. In our elections no officer or superintendent of the company has anything to do with the voting or the counting of the ballots. It is entirely under the control of the representatives of the men elected by secret ballot. No foreman or officer of the company is permitted to have anything to do with the election. We run it ourselves and there has never been any complaint on the part of anyone of any unfairness or coercion in our elections, as far as I know.

The employees' representatives are elected by secret ballot and the employees select the best men in their department to represent them. These representatives are free to discharge their duties in an independent manner, without fear that they will be discriminated against for their action. For this reason our representatives have the confidence of the majority of all employees.

I read that in regard to the election. Do you want me to repeat it?

The CHAIRMAN. No, please. You need not.

Mr. MITCHELL. Our plan of employee representation does not require us to elect fellow employees. We may choose outsiders if we decide to do so, but I feel sure that the employees of our company will continue to choose fellow employees as their representatives because of the long history of our successful dealings with the management through this organization.

The CHAIRMAN. Wait a moment. Do your bylaws permit you to choose outsiders?

Mr. MITCHELL. It has been amended to read that way; yes, sir.

The CHAIRMAN. Can the body that is called the representatives select an outsider to appear for them before the management?

Mr. MITCHELL. It has to be voted on by the men in the mill.

The CHAIRMAN. It has to be before that is done?

Mr. MITCHELL. Yes. If somebody would put somebody's name on the ballot from the outside, if that would go through with the majority, he would be one of the representatives.

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Senator DAVIS. Then you operate your organization by the majority vote?

Mr. MITCHELL. Yes, sir.

Senator DAVIS. The majority interest?

Mr. MITCHELL. Yes, sir.

The CHAIRMAN. Proceed.

Mr. MITCHELL. We elect our representatives by a majority vote, and then we form our organization after our organization has been elected.

Senator DAVIS. But the representatives are all elected by a majority vote?

Mr. MITCHELL. Absolutely.

There are a number of cases or complaints that come up in different departments that are settled by the representatives of said department and foreman without being taken before full committees. Also, for the 6 years that I have been on the board, on no occasion have I had to take any complaint beyond the department superintendent.

Senator DAVIS. What effect would it have if you would elect someone who had extreme views on your board of representatives? What effect would it have if someone would get on and keep agitating all the time that we should run our factories here in this country just as they do in Russia, every meeting you would have that brought up?

Mr. MITCHELL. It would be voted down. Anybody can bring up any complaint and it is thoroughly investigated.

Senator DAVIS. For you as a representative, that would not be pleasant to have that at every meeting?

Mr. MITCHELL. No; absolutely not. You have had experience in those things, Mr. Davis, yourself.

The CHAIRMAN. We have had some such experiences in the Senate.

Mr. MITCHELL. He is an old steel mill man, and I know his brother quite well.

This plan is very beneficial both to employees and employers, as any differences can be settled by being in close contact with conditions as they exist.

In our distressed years of 1931 and 1932, our board of representatives, with the balance of the employees who had work at that time, contributed a share of their earnings to help the employees who were not getting any work at all. In so doing, we helped as high as 250 families per month, supplying food, clothing, fuel, and rent. In all, the amount contributed and needed for this purpose was close to $28,000 for 8 months.

In bringing this before you, I am doing it to show that the representation plan is better for employees to deal with their employer free from outsiders that do not know the conditions as they are.

We have had an average of 23 representatives in our plant and from these we select 12 committees to look after the general welfare of all employees.

In the 3 years that I was chairman of the representatives, I have seen cases that came up and the way in which they were settled. The majority of our employers feel that the bill now pending is entirely too drastic as it takes away our own personal liberty.

Trusting your committee will give these facts some consideration, I thank you.

The CHAIRMAN. Mr. Robinson.

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STATEMENT OF ROBERT LEE ROBINSON

Mr. ROBINSON. Yes, sir.
The CHAIRMAN. Will you state your full name?
Mr. ROBINSON. Robert Lee Robinson.
The CHAIRMAN. Where do you reside?
Mr. ROBINSON. Benwood, W.Va.
The CHAIRMAN. You are employed where?
Mr. ROBINSON. Wheeling Steel Corporation, Benwood plant.
The CHAIRMAN. In what capacity?
Mr. ROBINSON. As a welder in the bell weld.
The CHAIRMAN. You are the representative of that division?
Mr. ROBINSON. Yes, sir; the bell weld furnaces.
The CHAIRMAN. How long have you been a representative of the employees?
Mr. ROBINSON. Thirteen years.
The CHAIRMAN. When were you last elected?
Mr. ROBINSON. Last July.
The CHAIRMAN. Your elections are held every July?
Mr. ROBINSON. Yes, sir.
The CHAIRMAN. They are secret?
Mr. ROBINSON. Secret ballot.
The CHAIRMAN. If you have a statement, we will be pleased to receive it.

Mr. ROBINSON. My name is Robert Lee Robinson. I am an employee of the Wheeling Steel Corporation and work at the Benwood plant. I live in Benwood and have been in the employ of the Wheeling Steel Corporation for 23 or 24 years.

For 13 years I have observed the workings of the employee representative plan and I have been elected as a representative from the bell weld furnaces year after year during all this time. I have served as chairman and secretary of the employees' representatives and I appear here to protest against the Wagner bill because I think it is designed to make it impossible for the employees' representation plans to continue.

During my 13 years as an employee representative, I have taken part in negotiations with the management concerning wages, working conditions, pensions, and other matter brought to me by various men in my department and there is no single case in which there has not been a satisfactory settlement worked out. I do not see how anyone not connected with the company could really understand the many problems that arise. I know for certain that the officers of the Amalgamated Association who run its affairs would never take the interest in our men that the employees' representatives take. The Amalgamated Association was in the Benwood plant many years ago and was completely repudiated by the employees after the strike in 1919. I talk to our employees daily and I know that the vast majority of them were so thoroughly disgusted with national unions in 1919 that they are very bitter against them now. We believe in the plan that we have and we want it to continue and we are opposed to this bill because it is designed to help the national unions.

The management has no part in our elections whatever. No foreman, officer, or representative of the company has anything to do with the elections. We conduct them ourselves. There has never

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been any charge of coercion or intimidation that I know of and I know for one thing that our elections are a lot fairer and freer than the elections that are held by the national labor associations. There is always talk of the manner in which the national officers control their elections. Nothing like that happens when we choose our representatives.

It is true that the men receive compensation for the time which they lose in working on these committees. I cannot see anything wrong with that. The company is interested in having the men satisfied. When we take up a problem and work it out so that everyone is pleased, we have rendered a service, not only to the men, but to the company, and the small amount that the company pays for the time of any representative when he is working on a committee or attending a meeting, amounts to nothing compared with the satisfaction and quiet that comes about as a result of taking up these questions and working them out right.

I understand that this bill would make it wrong for the management to even tell us what their views were on any labor question. These seems to me to be all wrong. After 13 years of building up friendly relations between us and the management, we would then start to go the other way and build up unfriendly relations. There are about 1,700 men in our plant and there is no dissatisfaction that I know of. The representatives have their regular meetings every month. They are always well attended and we think we have accomplished a lot for our men. No one can say that our organization is dominated or controlled by the company. Another point that our men object to is the cost of belonging to the union. In 1919 when the union had a strike at our mill, there were supposed to be strike benefits paid. Nobody got anything. The only thing was that if you could manage to get to Wheeling some way and were married, you could get a basket of provisions.

After all the years of paying money into the union, we got no benefits out of it and the men were thoroughly disgusted with it; $1.50 a month may not seem like very much money to you but to a man working in the mill it seems like a lot, and when the union is in a plant, the men practically have to pay this money, whether they want to or not. If you take into account the hundreds of thousands of men who pay in $1.50 to $1.75 a month, besides the initiation fees, which are charged, there are tremendous sums of money that go to somebody and this is a cause of dissatisfaction on the part of the workers. We don't have anothing like that in our employee organization.

The CHAIRMAN. Thank you.

Senator DAVIS. You discussed the question of the dues in the union. It has been discussed here by many of the employers. Were you formerly a member of the Amalgamated?

Mr. ROBINSON. Yes.

Senator DAVIS. You belonged to the local union?

Mr. ROBINSON. I did.

Senator DAVIS. You belonged to the local lodge at Benwood?

Mr. ROBINSON. I did.

Senator DAVIS. Did you ever hold office?

Mr. ROBINSON. Yes, sir.

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Senator DAVIS. Did you know where the money went to after you paid your $1.50?

Mr. ROBINSON. Positively I did not know.

Senator DAVIS. You did not know?

Mr. ROBINSON. No, sir.

Senator DAVIS. You know the most of it remained in Benwood for the disposition of the local lodge, and just a small part of it went to the national headquarters?

Mr. ROBINSON. I would say that I think most all of it went to Wheeling. I do not think there was any of it left in Benwood?

Senator DAVIS. But the local lodge of the Amalgamated received that money, and they expended it in accordance with the vote of the lodge. That is, if they were going to have expenses of the workers going to a convention, they would be paid out of that particular fund, and only just a small portion of that in the form of the per capita tax went to the general headquarters?

Mr. ROBINSON. That was supposed to be so; yes.

Senator DAVIS. Did you know that most of that went there?

Mr. ROBINSON. I would not say.

Senator DAVIS. Did you know that after it went to the Amalgamated headquarters, that 1 cent a month went to the American Federation of Labor?

Mr. ROBINSON. That was supposed to be.

Senator DAVIS. I just wanted to be sure and make the record clear, to show that most of the money paid into the local union remained in the local, the local union's treasury, and was disbursed from that local treasury by a majority vote of that particular union. Now, if you were representing a union, they would pay your expenses to come here. I take it for granted that since you are a representative of a similar organization, that your expenses are paid by the company and not by the men?

Mr. ROBINSON. That is the only way I would get here.

Senator DAVIS. That is the only point I wanted to clear up to get the record right for the benefit of the other members of the committee who are unable to attend the meeting.

The CHAIRMAN. Thank you. James Moore, Mart Murphy, Eugene R. Roderick, Joseph E. McArdle, E. J. Mulligan. Will you gentlemen step forward please? You are the representatives of the Republic Steel Corporation?

Mr. RODERICK. Yes, sir. I have been asked to speak as spokesman.

The CHAIRMAN. Mr. Roderick, you are the spokesman for this group?

Mr. RODERICK. Yes, sir.

The CHAIRMAN. And are the members of the group all representatives of employees of the different parts of the Republic Steel Corporation?

Mr. RODERICK. These members are all chairmen of general bodies at various divisions of the Republic Steel Corporation. We are all general chairmen.

The CHAIRMAN. Mr. McArdle, and Mr. Mulligan would like to file statements.

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(The statement of Joseph E. McArdle, Republic Steel Corporation, Massillon, Ohio, plant, is as follows:)

My name is Joseph E. McArdle. I am 35 years of age and live in Massillon, Ohio. My present occupation is schedule clerk on the finishing mills. I have been with the corporation about 14 years. My position in the employees' representation plan is chairman of the general body.

I have had knowledge of the employees' representation plan in Massillon from its beginning, acting on the election committee and can positively say there was no undue influence exercised by the corporation at the election.

I feel that the great majority of the men are satisfied with the employees' representation plan.

The plan works in giving closer contact from the employees to the foremen, superintendent, and management. The employee also has at his disposal the services of the representative in his department.

In 9 months the employees' representation plan has handled 71 cases, 48, or 68 percent of which were settled in favor of the employees, 7, or 10 percent were refused. Six cases, or 8 percent, were withdrawn by the employees and as of February 28, 1934, there were 10 cases pending.

I believe that the plant has created confidence and has certainly given better cooperation and understanding between the employees and the management.

To my knowledge, and I believe I have a fairly good knowledge of the plant, there has never been any influence on the employees to refrain from joining the American Federation of Labor or to accept the employees' representation plan.

(The statement of E. J. Mullingan, Republic Steel Corporation, Warren, Ohio, is as follows:)

I am appearing before this committee voluntarily and as an individual to give my conception of the representation plan.

In June of 1933, the representation plan was presented to a group of men selected by the management from the various departments of the Warren district of Republic Steel Corporation for their consideration. My understanding is that the individual members of this group were selected by the management because of their length of service in the corporation and their common knowledge of the general operating and labor conditions in the plant. The representation plan, as presented, was explained in detail by the management at the first meeting of the forementioned group of employees, at which meeting no definite action in accepting the plan was taken, but the subject was carried over for discussion at a second meeting.

At a second meeting of this group of chosen employees, a temporary employees' committee was appointed which made all arrangements for the nomination and election of the permanent representatives, including the appointment of tellers for such election.

On the day designated for the nominations employees were presented with a blank ballot and each employee could place in nomination the names of two men for each representative to be chosen from his respective department the election to be by secret ballot. Such nominations were of the employees' own choosing from among employees. The names of the three men receiving the highest number of votes for each representative to be chosen were then placed on printed ballots for an election which was held a few days after the nomination. The election was by secret ballot and the man or men receiving the highest vote in any department depending on the number of representatives to be chosen in that department were declared duly elected by the temporary committee in the Warren district.

Subjects brought up under the plan are taken up directly by the employee or with his departmental representative and departmental superintendent. If the grievance is not settled to the satisfaction of the employee then the subject is carried through the regular committee of the representation plan as are necessary. If no satisfactory action is obtained through the various committees the subject is presented to the president of the corporation for arbitration.

Under the employees' representation plan it has been my experience that the men are never hesitant about bringing before the management such matters as concern their general welfare and the plan has developed a much closer relationship between the management and the employees than has ever existed at this plant before. It has also given the employees a much better understanding of the management's side as regards plant operation.

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From my personal contact with the employees of Republic Steel Corporation I have in most instances found the men who are working under it to be well satisfied with the operations and accomplishments of the plan. The plan is that flexible that it has been found capable to remedy a condition in one department which condition may not exist or apply to another department. To date there have been 105 items handled through the various committees of the plan 61 percent of which were settled to the satisfaction of the employees. In addition to this number there have been approximately 500 to 600 items handled by direct contact with the departmental superintendents and I believe there has been approximately 70 percent of such items settled in the employees' favor.

From my personal observation I would say that our position is unique in that we have both the A. F. of L. and the employees' representation plan functioning amicable in our plant.

The CHAIRMAN. We will hear you first, Mr. Roderick.

STATEMENT OF EUGENE R. RODERICK

The CHAIRMAN. What is your full name?

Mr. RODERICK. Eugene R. Roderick.

The CHAIRMAN. Where do you live?

Mr. RODERICK. Canton, Ohio.

The CHAIRMAN. Where are you employed?

Mr. RODERICK. I am employed in the Canton works of the Republic Steel Corporation.

The CHAIRMAN. What is your occupation?

Mr. RODERICK. A roller on an 8-inch bar mill.

The CHAIRMAN. You are a representative of the group in that plant?

Mr. RODERICK. I personally represent the bar-mill group.

The CHAIRMAN. When were you elected?

Mr. RODERICK. June 19, 1933.

The CHAIRMAN. How many years have you been a representative?

Mr. RODERICK. Since June 19, 1933.

The CHAIRMAN. You may proceed with your statement.

Senator DAVIS. How much does a roller on an 8-inch mill make now?

Mr. RODERICK. We are working fairly good right now, and made about—a large part of it is tonnage and you cannot tell exactly—about $425 a month.

Senator DAVIS. How small do you roll it, three-sixteenths?

Mr. RODERICK. .220, seven-thirty-seconds.

Mr. Chairman and Senators, I have a short statement here I would like to read in support of the employees representation plan. [Reading:]

My name is Eugene R. Roderick, of Canton, Ohio. I am 36 years old and have worked in various departments of the same plant for the past 19 years.

I am employed as a roller on an 8-inch mill in the Canton works of the Republic Steel Corporation and am also chairman of the general body of employees representatives of the Canton plants, where we have a plan of representation which we think has proved very successful as the records of 91 cases handled between July 15, 1933, and February 28, 1934, will show:

	Percent
Number settled in favor of employees	60–66
Number refused	20–22
Number withdrawn by employee	5–6
Number pending settlement	6–6

These figures do not include cases recorded as items which were granted immediately by the foremen without the necessity of writing them up and handling in the usual way, which provides that they be presented to the foreman, super-

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intendent, general superintendent, and the management, at which time, failing to come to a satisfactory agreement the cases are referred to joint committee of employees representatives and management's representatives of equal numbers, their decisions being final. In case of a deadlock in the committees, provisions are made to refer the cases to the president of the corporation, if necessary, who will, together with the employees representatives, agree on arbitrators.

As the employees are represented by men from their own departments, our plan provides for day by day adjustments of claims or complaints by representatives who are familiar with conditions concerned and can get more speedy action.

I was a member of the original temporary committee on elections which was made up entirely of employees, who conducted the nomination and election of representatives.

These elections were carried on absolutely free of any influence or coercion on the part of the company and only what help we requested was given by them.

Considerable interest was shown at the election and between 85 percent and 90 percent of the men working on election day voted for representatives.

The continued success and fairness of this plan has made for a much closer relationship between the management and the employees than ever existed before, and it is my opinion that by far, the largest majority of the men in the Canton plants prefer this plan to any other form of organization, although we have been free to join any union we preferred without interference or influence by the company.

We are glad to say that this plan of representation has been accepted, not for the duration of the N. I. R. A., but for always, we hope.

Also, I would like to have you know we feel that the passage of the Wagner bill could certainly do nothing for us but declare an everlasting war between the company and we workers.

The CHAIRMAN. Thank you, sir.

Senator DAVIS. How many tons of, say, three sixteenths round, do you produce in 8 hours?

Mr. RODERICK. We roll 0.220, seven thirty-seconds, which is one thirty-second bigger than three sixteenths. On 0.220, we can roll about 32 tons in 8 hours.

The CHAIRMAN. Mr. Moore.

STATEMENT OF JAMES MOORE

The CHAIRMAN. What is your full name?

Mr. MOORE. James Moore.

The CHAIRMAN. Your residence?

Mr. MOORE. 9523 Zimmer Avenue, Cleveland, Ohio.

The CHAIRMAN. What plant are you employed in?

Mr. MOORE. The Upson plant.

The CHAIRMAN. How many employees in that plant?

Mr. MOORE. Eleven hundred.

The CHAIRMAN. Are you the representative from that plant?

Mr. MOORE. Yes, sir.

The CHAIRMAN. Representing how many employees?

Mr. MOORE. Two hundred and five.

The CHAIRMAN. When were you elected?

Mr. MOORE. Last June.

The CHAIRMAN. You may proceed with your statement.

Mr. MOORE. I have been a bricklayer for the same company for 11 years and when we adopted a representation plan my name was one of the three receiving most votes in the primary election. On the following day in the regular election, the department which I represent, elected me by a large majority. I have read in the papers of many complaints that men of other shops were influenced how to vote by their employer, however, this I wish to deny so far as our shop is concerned.

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Our employees appreciate the benefits which this organization has already brought to them and believe it would be stepping backward to make a change at this time.

In case an employee has a difference with his foreman or his working conditions, he refers the case, in writing, to the committee of which I am chairman and, whatsoever the case may be, we call a meeting and act on the case, returning our findings to the complainant who, if not satisfied, has the option of taking his case further, like to the president of a corporation. If he is still not staisfied, he may refer it to arbitration. We have handled 99 cases up to our last meeting, of which 90 were decided in favor of the workers. We have access——

The CHAIRMAN. You have handled that number of cases since last June?

Mr. MOORE. Yes, sir. We have access at all times to the management's office, and from that source have been able to get management and employee closer together. Management has not influenced or compelled our employees to refrain from joining any organization, leaving that to the individual's own choice.

Personally, if I may so speak, I have obtained more good for myself and the people whom I represent in the short time the shop representation has been in effect, than from any labor union and understand, I was a member of the Bricklayers Union for many years. I am opposed to any legislation which will injure this representation plan.

The CHAIRMAN. Are there any other of the employees who are members of the Bricklayers Union?

Mr. MOORE. No, sir; there are not.

The CHAIRMAN. Could they be if they desired?

Mr. MOORE. Yes, sir.

The CHAIRMAN. That is all.

Senator DAVIS. I presume the company plan of financing your organization is perfectly satisfactory to you?

Mr. MOORE. Satisfactory; yes, sir.

STATEMENT OF MARTIN MURPHY

The CHAIRMAN. Mr. Murphy.

The CHAIRMAN. Your full name?

Mr. MURPHY. Martin Murphy.

The CHAIRMAN. You reside where?

Mr. MURPHY. Youngstown, Ohio.

The CHAIRMAN. And you are employed where?

Mr. MURPHY. In the Bessemer plant of the Republic Steel Corporation, at Youngstown.

The CHAIRMAN. How many employees there?

Mr. MURPHY. I represent the Youngstown district, and there are approximately 7,300 in that Youngstown district.

The CHAIRMAN. When were you elected the representative of the employees?

Mr. MURPHY. We never had the plan until June 15 of last year, and I was elected chairman at that time.

The CHAIRMAN. Did you have any plan prior to that time?

Mr. MURPHY. Never.

The CHAIRMAN. Was this the first time the men at this plant were in an employee organization?

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Mr. MURPHY. No; that would not be true. When I say I am in the Youngstown district, I personally am in the Bessemer plant, which includes the old Brown & Bonnel plant, which was always an Amalgamated mill.

The CHAIRMAN. Were you a member of the Amalgamated organization?

Mr. MURPHY. I tried to join them one time. I paid $3.25 in 1919, and I am still waiting for my card.

The CHAIRMAN. Who got the $3?

Mr. MURPHY. I don't know. I think he was a cigarmaker who was sent there to organize the Youngstown district.

The CHAIRMAN. You may proceed.

Senator DAVIS. There is no puddling in the old Brown & Bonnel mill any more?

Mr. MURPHY. Not any more. There is no puddling down there at all.

Senator DAVIS. There were 60 or 70 puddling furnaces in there, were there not?

Mr. MURPHY. I believe, if I remember right, the old no. 4 itself was the biggest puddling mill in the United States at one time.

My name is Martin Murphy. I have been continuously in the employ of the Republic Steel Corporation in the capacity of blooming mill engineer for more than 27 years. These mills were originally known as the Brown & Bonnel plant, and all were operated under the Amalgamated Iron and Steel Workers agreement——

Senator DAVIS. That plant at the foot of Market Street there, is it not?

Mr. MURPHY. Exactly. So, I can speak with full knowledge of what I am saying when I say that the employees' representation plan of the Republic brings more good to more people than did that of the Amalgamated. This employees' representation plan is new, has been in operation only 8 months or so, but in that limited time, I have seen much good accomplished under it, and I honestly believe that it should be given a fair chance. I know that the men in the steel game do not need the assistance of outside experts, so-called. I might say that in the strike of 1919, the expert sent in to organize the Youngstown district was, if I remember right, a cigarmaker.

Senator DAVIS. You remember his name?

Mr. MURPHY. I think I can say—his name was something like McFadden, or McAdden. He had a good old Irish name like Murphy, and I paid him $3.25, and I am still waiting for my card.

Senator DAVIS. Inasmuch as you gave it to an Irishman, it was all right.

Mr. MURPHY. Men in the mills are concerned not so much with who represents them as they are with what is in their pay envelope at the end of a pay period. They are capable and competent of doing their own collective bargaining and I feel that this can be accomplished more efficiently by one of their own number, who is familiar with the working conditions, than anything we can hope for from a cigarmaker.

To the charge that undue influence was exercised by the company in the election of employees' representatives, I can answer with this statement. I was named temporary chairman and as such I had the authority to name the eighteen men who had charge of the election in

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the Youngstown district, and I can truthfully say to this committee that I knew but three of these men personally, of the eighteen I named, and one of these three was an old Amalgamated man and still carries the Amalgamated card he paid $3.25 for in 1919. As to the percentage of the men who are opposed to the plan, I can not speak with any degree of certainty, for I have made no check in this matter, but I do know that a great majority of the men in the Youngstown district have made use of the plan.

The plan has been highly successful in bringing about a closer mlationship between men and management, and I will say for the reanagement that no discrimination has been made by them against men who have affiliated with outside organizations.

I would like to read to the committee, if it will not take too much time—I will make it as short as possible—the number of cases since this plan has been in effect: 285 cases have been presented by myself to the management, covering a wide variety of subjects. Two hundred and forty one have been settled in favor of the men; 29 were decided against the men; 1 case was withdrawn; 6 compromised; and 8 cases were pending on March 1, 1934.

The CHAIRMAN. Thank you. Will the representatives of the Weirton Steel Co. come forward as I call their names? J. Madden? C. W. Conn? Carl Means? George Ferguson? R. Congleton? C. Stillwell? Who is to be the spokesman of this group?

Mr. CONN. Mr. Madden and myself.

The CHAIRMAN. Your name is Conn?

Mr. CONN. Right.

The CHAIRMAN. You desire to speak first?

Mr. CONN. Right.

STATEMENT OF C. W. CONN

The CHAIRMAN. Your full name?

Mr. CONN. C. William Conn.

The CHAIRMAN. Where do you reside?

Mr. CONN. Steubenville, Ohio.

The CHAIRMAN. Where are you employed?

Mr. CONN. At the Weirton Steel Co., open-hearth department, Weirton, W.Va.

The CHAIRMAN. And your occupation?

Mr. CONN. I am a first helper in the open hearth.

The CHAIRMAN. How many employees in the plant where you work?

Mr. CONN. In the open-hearth department itself there are approximately 650 outside of the office employees, and those in a supervisory capacity. In the steel works itself there are something like 2,800.

The CHAIRMAN. Were you elected a representative of the employees?

Mr. CONN. I was.

The CHAIRMAN. In what election?

Mr. CONN. Last June I participated in the election and was beaten. Through the resignation of one of the representatives, due to the fact that he quit his job and went to another department to work, I became a representative. I was the next highest man and automatically went on there some time in August, about the 15th of August.

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The CHAIRMAN. Had elections been held prior to last June?

Mr. CONN. No. I might say that one time, about 5 years ago, an election for the relief association was held, and I was elected and served 1 year as a representative from the open-hearth department on that work. We have always had those elections for the last 8 or 9 years.

Senator DAVIS. What is your salary? You are a first helper, did you say?

Mr. CONN. Yes; I am paid straight tonnage, no hourly rate, except on such as what we call our gas turns, when the furnace goes down for minor repairs for a day, or a burnout, or something like that. Then they give us what is called a gas turn—approximately $6.50, or something like that, at the present time but the rest of it is straight tonnage, we are paid so much for that ton, and with this increase I will make approximately $14 a day, 5 days a week.

The CHAIRMAN. You may proceed with your testimony.

Mr. CONN. Starting in the mills in 1921, I have since worked in a half dozen steel mills over the country. I'm a first helper in the open-hearth department, operating or as we say "running a furnace" which makes an average of 10,000 tons of steel ingots a month. I have made more money and am continuing to make more money under better conditions at Weirton than I made or could make in any other mill in the country, doing the same class of work. Ever since I have been at Weirton we have always been free to go to the foreman or superintendent at any time with whatever complaint or grievances we might have.

Senator DAVIS. What were the names of the other works where you were employed?

Mr. CONN. I started out in the mill at Peoria, Ill., the Keystone Steel, where they have three 125-ton furnaces. Then I worked at Indiana Harbor. I worked there a while and then went to Gary.

Senator DAVIS. Youngstown Sheet at Indiana Harbor?

Mr. CONN. No; the Inland Steel.

Senator DAVIS. The other one, at Gary, was the United States Steel?

Mr. CONN. United States Steel, and the South Works of the Illinois Steel Co., also.

Then I went back home, as I call it, to Peoria. From there I went to Pittsburgh Steel Co. at Monessen, Pa.

Senator DAVIS. And you say that the wages you receive are more for your work at Weirton than you made at any of the other places?

Mr. CONN. Yes.

Senator DAVIS. That is as first helper?

Mr. CONN. Yes. I have been there 7 years. The most I had ever made in the other plants was $12.50 a day, and the most I ever made in 1 year was around $3,000.

I went to Weiton in January 1927, and we were making at that time approximately $15 a day, or $15.50, and through the enlargement of the furnace, and so forth, we stepped that up to $16, $17, and $18, and for one half month for which we were paid I received over $19 a day for 8 hours work, making, in that month, $580.

Senator DAVIS. Did you have a larger tonnage at Wirton than in any of the other plants?

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Mr. CONN. Right. For 3 consecutive years when I first went to Weirton I made over $5,000, 1 year making $5,600 and some odd.

Senator DAVIS. You may proceed.

Mr. CONN. Ever since I have been at Weirton we have always been free to go to the foreman or superintendent at any time with whatever complaint or grievance we might have. These men who have been through the mill know what it is, and are always ready to listen to a just complaint. Last June, after the passage of the National Recovery Act, we banded together, organizing mill committees, and held an election to elect representatives from each department. Since that time we have handled hundreds of cases dealing with most everything that affects men's lives in the mill or out of the mill. Such a broad field of accomplishments is absolutely impossible under the national union plan. They confine themselves entirely to wages, working conditions, and hours of employment. One gathers the impression that the worry of the organizers and officials of the Amalgamated is entirely one of the closed shop. Every strike or struggle you read about in the papers, they harp on the closed shop and forget the individual needs of the men.

We believe that the Wagner bill as proposed is diabolically opposed to the spirit and intent of section 7 (a) of the National Recovery Act, enacted by Congress last June. We are very grateful to our President, Mr. Roosevelt, and to our Congress for having passed this law which gives us the right to organize for the purpose of collective bargaining. We do not believe it was the President's intention nor the intention of the Congress to force us to join any organization against our will. If this Wagner bill is passed it nullifies this freedom of action granted us under section 7 (a) of the National Recovery Act. It would force us to affiliate ourselves with the American Federation of Labor, in whose tactics we do not believe. The purpose of a union should be to better wages, hours, and working conditions under which men labor. These things have all been accomplished by our local representative plan and I am going to recite to you a few of our accomplishments.

Starting last June up to January 1 our work was conducted along lines something like this: We would either go to the foreman or superintendent with grievances in person or write a letter regarding the complaint. These cases handled during the last 6 months of 1933 are recorded in the minutes of the various divisional committees. In looking over these minutes it is found that there were 152 committee meetings held and a total of 505 cases were handled. Of these 505 cases, 296 dealt with wages, 58.6 percent; 27 dealt with safety, 5.3 percent; 182 dealt with working conditions, which included sanitation, medical service, housing, recreation, and public relations, 36 percent. Of these 505 cases, 298 were settled in favor of the employees, 59 percent; 32 were compromised, 6.3 percent; 32 were withdrawn by employees, 6.3 percent; 98 were pending as of December 31, 1933, 19 percent. Most of these pending cases related to the West Virginia attachment law.

After 6 months of operating under our plan of employees' representation, we developed a system of records and follow-up on each case as it is brought up by a representative. This system was put into operation the first of this year and the records show that from January 1 to March 20, 258 cases have been handled. Of these, 127, or less than half, dealt with wages, piece work, or tonnage rates;

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36 dealt with employment and working conditions; 23 with safety; 18 with economy and waste prevention; 25 with health and sanitation; 7 with relief and workmen's compensation; 2 with housing and living conditions; 7 with education and publication; 6 with athletics and recreation; 7 with public relations.

In our plan, if the departmental committee fails to arrive at a settlement of any question, it can be referred to the general committee on appeals, which sits as a final court and whose decision is sent direct to the president of the company.

Senator DAVIS. Just a minute. Who is the president of that company?

Mr. CONN. Mr. John Williams.

Senator DAVIS. Did you ever have occasion to take a complaint to him?

Mr. CONN. Right. Prior to the first of the year we were up there on different cases probably three times, and since the first of the year we have had three cases coming from the appeals committee to Mr. Williams, and often we have gone to him—some of the stuff is covered in here—to get machinery to do work grading baseball fields, and stuff like that.

Seven cases to date have come before this committee, which is composed of employees only.

Four cases have been referred back to divisional committees for additional information and three to the president requesting favorable action.

Of the three cases sent to the president, one was a question of a railroad conductor's seniority rights. Our men want to work under the same rules as apply to trunk lines and the approval of this case made this possible.

The second case was from the tin-plate department asking for 10 percent extra to be paid to the men who break down long packs of sheets to be sheared into sheets of one cut. This case was approved and by so doing the company is now paying for this class of work, a thing not done in any other tin mill in the country, either under the Amalgamated Association scale or nonunion.

The third case was sent back to the appeals committee with additional information which caused the committee to reverse its opinion.

Senator DAVIS. How long is the pack of sheets?

Mr. MADDEN. We break them down in the tin mill regardless of the length or the width of them, break them down so they are sheared flat, and we demanded that the company pay us 10 percent extra for that labor.

Mr. CONN. The question was that the men were doing it during the rest period, and not being compensated for it, whereas, in the other mills, where they have a smaller staff, you get a rest period, but these men were working right straight on.

Mr. MADDEN. The situation is that when you get a break-down where the catcher cannot pull it himself, these men go over there and take care of it.

In the report covering cases handled from January 1 to March 20, it shows seven cases dealing with public relations. One of these items covered the fight being made by the representatives on the attachment racket in West Virginia. While this appears as a single item on this

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report, this covers hundreds of cases where representatives went with the men out to the justice of peace court and secured a release of wages from attachment.

Last July this battle was started by taking a collection among the men in the steel works department. We employed an attorney from Wheeling upon the recommendation of Congressman Bob Ramsey of our district. This fight has been successful in that wages are no longer being attached without justification, but the fight is not ended yet.

Formerly any merchant, regardless of the length of time the money was owed, would attach the men's wages and add the burden of the cost of the jusitce of the peace and the constable fees to the bill.

For example, I have seen a great number of bills amounting to $3 to $5 or $10 to which were added $6 or $8 court costs, so that a man paid two or three times what he actually owned.

This might be the end of a long-standing debt on which the men made regular payments, but the merchant would become impatient and attach without any justification.

This vicious practice is broken but we have now taken steps to ask the representative from our district to the West Virginia State Legislature to push legislation which would give a man exemption from attachment in cases of small earnings. The State of Ohio, just across the river, allows the creditor to attach only 20 percent of a married man's earnings above $60 a month and 20 percent of a single man's earnings above $30 a month.

We believe this would be fair and are asking to have legislation of this kind passed in West Virginia.

Under the heading of "Athletics and recreation", we have started ball teams and are going forward with plans to start a trap-shooting club.

When Mr. D. M. Weir died, a fund of $25,000 was left by him for an erection of a suitable memorial to his mother in the city of Weirton. This fund has lain in trust and probably would have continued to do so had the representatives not got behind the thing and working with the Kiwanis Club convinced the trustees of this fund that the money should be spent now and as a result a park and swimming pool are now under construction.

When the news broke just a few months ago that a new fabricating mill was to be erected on the present athletic field of the local high school, the representatives immediately started action to get a new recreation field for the high-school athletics.

The company is furnishing the equipment and a new field is now being graded and will be in shape for use by the baseball team this spring. Had no one pushed this action, it is quite possible that the new mill would have been erected this summer and the football team next fall would have been without a field to use.

When the steel code was written it provided for the country to be divided into 81 steel districts, and that men be paid the prevailing rate of the district for this class of work.

This term is very ambiguous but Mr. E. T. Weir has interpreted it for our company as being the highest rate paid for that class of work in the district. With this in mind we visited other mills and have obtained access to the rates and working conditions of the other mills of our district and have in some few cases been able to obtain wage

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increases for our men wherever we could show the management that in other plants a higher rate was being paid for the same class of work. In most all cases we found that our men were getting better pay than the men doing the same class of work in other plants. Our committees have checked over a wide range of rates and to give you some idea of the scope of this part of our work I am attaching some figures indicating the number of employees and number of rates in our various departments.

Altogether, throughout the Weirton Steel Co., from figures compiled, there are over 1,400 rates. In the open hearth department, from which I am a representative—most of my work is confined to the open hearth—we have 75 rates. Some are tonnage rates and some are hourly rates.

Senator DAVIS. Does Weirton have a plant at Steubenville?

Mr. CONN. Yes; a tin mill.

The CHAIRMAN. The figures may be introduced in the record without reading them.

(The figures presented by Mr. Conn are attached to the record as an exhibit as follows:)

WEIRTON STEEL CO.

Report of activities of employees-representation plan for 6 months, July 1, 1933, to Dec. 31, 1933, inclusive, all departments

	Total number of cases referred to representatives or committees	Number of meetings held	Number of cases relating to—			Number of cases settled—		Number of cases—		
			Wages	Safety	Working conditions	In favor of employees	Against employees	Compromised	Withdrawn	Pending
Steel works	230	38	157	9	64	120	11	18	20	61
Tin plate	71	33	52	0	19	39	7	6	6	13
Strip steel	63	22	34	6	23	35	9	7	4	8
Sheet steel	20	14	7	2	11	15	3	0	0	2
Steubenville	63	35	35	7	21	43	10	1	2	7
Clarksburg	58	10	11	3	44	46	7	0	0	5
Total	505	152	296	27	[1] 182	298	47	32	32	[2] 96

[1] These cases covered: Sanitation, medical service, relief and workmen's compensation, waste prevention, housing, and living conditions, education and publication, athletics and recreation, and public relations.
[2] Mostly cases related to the West Virginia attachment law.

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Summary covering number of employees and rate classification by departments

	Number of—			
	Employees	Hourly rates	Tonnage rates	Piece rates
Steel works:				
Mechanical	730	76		
Electrical	137	22	1	
Blooming mill	502	46	14	
28-inch mill	136	35	7	
Coke plant	367	44		
Blast furnace	149	28	3	1
Mason	276	19		
Construction	120	21		
Open hearth	657	53	25	
	3,074	344	50	1
Tin plate:				
Hot mill	1,248	13	68	
Black pickler—annealing, cold rolls, black plate	509	9	5	3
White pickler—assorting, shipping	663	23	4	55
Mechanical	228	43		
Electrical	86	12		
	2,734	100	77	58
Sheet mill:				
Baryard—hot mill, cold rolls	466	9	162	
Annealing—galvanizing, shipping	228	20	11	14
Electrical	30	2		
Mechanical	52	16		
	776	47	173	14
Clarksburg:				
Hot mill	632	9	69	
Black pickler—annealing, cold rolls	150	8	2	2
White pickler—shipping, assorting	235	17	3	12
Electrical	31	8		
Mechanical	47	16		
	1,095	58	74	14
Steubenville:				
Hot mill	560	8	68	
Black pickler—annealing, cold rolls	192	5	2	2
White pickler—assorting, shipping	308	21	10	14
Electrical	27	10		
Mechanical	147	24		
	1,234	68	80	16
Strip steel:				
Hot mill	551	51	14	1
Cold mill	533	35	2	
Mechanical	128	35		
Electrical	104	9		
	1,316	130	16	1
48-inch mill:				
Hot mill	553	37	13	
Cold mill	582	31	13	
Mechanical	186	31		
Electrical	142	14		
	1,463	113	26	
Grand total, all plants	11,692	860	496	104

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lish good relations, necessary to look after the human side of the problem; necessary to provide relief beyond the various things that we put now under the head of social service. They are all proper things to be worked out in cooperation between the management and the employees.

The only thing that you could substitute for these provisions is the provisions of the present law. That is wholly unnecessary. Now this proposes to set up this board with its extraordinary powers—judicial, executive, powers of mediation and conciliation. I say, gentlemen, that no board, for such purposes, constituted as this board is proposed to be, will ever properly function. You might have representatives of particular interests on a board merely for mediation or conciliation, but when you clothe the board with any such powers as these the individuals composing it should be selected to represent one interest and one alone, and that is the public interest. Not for one interest or another but solely for the public interest.

Now I am going to pass, without further comment—I am going to pass up section 205 because I am sure its remarkable provisions have already been pointed out to you, and the possibilities of abuse that could go with it. What I have to say about it is that it does not even approximate due process, and if you are going to create such a board with such extraordinary powers, the procedure ought to be sufficiently and carefully defined at least to approximate due process.

I do not believe that Senator Wagner, with his judicial experience, ever drafted section 205; at least I will not believe it unless he personally assures me that he did. This judicial review that is provided in this bill is nothing more than a means of enforcing the decrees of this board. As a review it is a farce, and if you were going to create a new board with such extraordinary power and go into this new field I suggest that at least there should be the broadest judicial review, both upon the facts and the law, with the power to determine not only the sufficiency of the evidence but the quality of the evidence.

I have but one more obligation to make, gentlemen, and that is that there is no politically constituted body that now or ever will be, until human nature changes, suited to exercise the extraordinary powers conferred by section 207, and it is so patent that at this hour I am not going to take time to elaborate that proposition.

Now I appreciate the courtesy that you have extended to me, Mr. Chairman. I want to submit to you for your serious consideration the question whether, at this juncture, any legislation so drafted and so extreme as this, while we are engaged in this great experiment, what effect is in the public interest.

The CHAIRMAN. We thank you, Governor.

We will adjourn until 10 o'clock tomorrow.

(Thereupon, at 4:45 p.m., an adjournment was taken until 10 a.m. of the following day, Saturday, Apr. 7, 1934.)

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Classification of cases covered by employees' representatives, Jan. 1 to Mar. 20, 1934

Subject	Tin mill	Steel works	Sheet mill	Strip steel	Steubenville	Clarksburg	Total
1. Employment and working conditions	6	3	2	11	7	7	36
2. Wages, piecework, tonnage rates	34	22	11	24	2	34	127
3. Safety and accident prevention		1	3	4	1	14	23
4. Economy and waste prevention	1	1	6	4		6	18
5. Health and works sanitation	6	5	3	8	1	2	25
6. Relief and workmen's compensation			1	6			7
7. Housing and living conditions		2					2
8. Education and publications		4		2		1	7
9. Athletics and recreation		5				1	6
10. Rules, ways, and means							
11. Public relations		5	1	1			7
12. Miscellaneous							
Total	47	48	27	60	11	65	258

Industrial relations department, report of activities of employees' representatives organization

FOR MONTH OF JANUARY 1934

Division or works	Number of meetings held			Number of cases handled by representatives			Number of cases related to—		
	Subcommittee	Divisional committee	Total	On form ER-1	Reported in minutes only	Total	Wages	Safety	Working conditions
Steel works	7	4	11	19	6	25	16	4	5
Tin plate	0	3	3	25	6	31	22	1	8
Sheet mill	0	5	5	13	7	20	10	4	6
Strip steel	9	4	13	24	11	35	17	4	14
Steubenville	0	6	6	4	1	5	1	1	3
Clarksburg	2	5	7	24	10	34	23	0	11
Totals	18	27	45	109	41	150	89	14	47

Division or works	Disposition of cases								
						Pending			
	For employees	Against employees	Withdrawn	Compromised	Appealed	From 1933	Current month	West Virginia attachment law	Total
Steel works	5	2	0	1	3	70	14	[2] 70	95
Tin plate	12	6	1	3	2	4	7	0	35
Sheet mill	9	4	2	2	0	1	3	[2] 1	21
Strip steel	11	12	1	3	1	3	7	0	[1] 38
Steubenville	1	0	0	1	0	7	3	0	12
Clarksburg	27	5	0	1	0		1	0	34
Totals	65	29	4	11	6	85	35	71	235

[1] 3 hospital cases pending since 1933.

[2] From 1933.

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Industrial relations department, report of activities of employees' representatives organization—Continued

FOR MONTH OF FEBRUARY 1934

Division or works	Number of meetings held			Number of cases handled by representatives			Number of cases related to—		
	Subcommittees	Divisional committees	Total	On form ER-1	Reported in minutes only	Total	Wages	Safety	Working conditions
Steel works	5	4	9	1	1	2	2	0	0
Tin-plate	0	2	2	10	2	12	10	0	2
Sheet mill	0	2	2	0	5	5	1	0	4
Strip steel	1	5	6	7	14	21	11	2	8
Steubenville	0	4	4	3	3	6	3	0	3
Clarksburg	3	1	4	22	0	22	7	7	8
Total	9	18	27	43	25	68	34	9	25

Division or works	Disposition of cases									
	For employees	Against employees	Withdrawn	Compromised	Appealed	Pending				Total
						From 1933	Since Jan. 1, 1934	Current month	West Virginia attachment law	
Steel works	0	0	0	0	0	1	[1] 8	2	[2] 100	111
Tin-plate	2	5	0	3	0	4	[3] 1	2	0	17
Sheet mill	4	0	0	0	0	0	2	1	[4] 1	8
Strip steel	6	8	0	0	0	[5] 3	2	7	0	26
Steubenville	0	0	1	0	0	6	6	5	0	18
Clarksburg	17	0	0	0	0	0	[6] 2	5	0	24
Total	29	13	1	3	0	14	[7] 21	22	101	204

[1] Cases nos. S-3 and S-18 (January), pipefitters' rates, pending with appeals committee.
[2] 70 since 1933.
[3] Case no. T-12 (January) up for appeals, withdrawn since Mar. 1, 1934.
[4] From 1933.
[5] Hospital cases.
[6] Case no. C-16 (January) up for appeals.
[7] 3 cases pending on appeals.

FOR MONTH OF MARCH, 1934

Division or works	Number of meetings held			Number of cases handled by representatives			Number of cases related to—		
	Subcommittees	Divisional committees	Total	On form ER-1	Reported in minutes only	Total	Wages	Safety	Working conditions
Steel works	3	5	8	15	2	17	13	0	4
Tin plate	0	2	2	6	2	8	7	0	1
Sheet mill	0	2	2	1	3	4	4	0	0
Strip steel	0	4	4	7	3	10	4	0	6
Steubenville	0	3	3	3	7	10	5	1	4
Clarksburg	4	1	5	7	5	12	4	0	8
Total	7	17	24	39	22	61	37	1	23

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Industrial relations department, report of activities of employees' representatives organization—Continued

FOR MONTH OF MARCH, 1934

Division or works	Disposition of cases									
						Pending				
	For employees	Against employees	Withdrawn	Compromised	Appealed	From 1933	Since Jan. 1, 1934	Current month	West Virginia attachment law	Total
Steel works	5	1	2	2	0	----	3	7	[1] [2] 100	120
Tin plate	0	6	0	1	0	0	0	1	----	8
Sheet mill	3	1	[3] 1	[3] 1	0	----	0	0	[4] 1	7
Strip steel	7	0	0	0	0	[5] 3	0	3	----	13
Steubenville	3	0	0	2	0	3	3	5	----	16
Clarksburg	3	2	1	2	0	0	[6] 4	4	----	16
Total	21	10	4	8	0	6	10	20	101	180

[1] Progress being made on these cases.
[2] Including cases from 1933.
[3] Were pending from previous month.
[4] From 1933.
[5] Hospital cases.
[6] Case no. C-16 pending on appeals.

Mr. CONN. We believe that from the foregoing you can readily see that even if the American Federation of Labor should send fair-minded investigators to Weirton, they would have to say that we are doing a job and doing it well.

On behalf of the representatives' committee of Weirton, I extend an invitation to you men to come any time and see for yourselves, sit in on our committee meetings, and judge for yourselves.

Many of our fellow workmen have worked under the same type of plan in various plants such as Bethlehem Steel Co., Colorado Fuel & Iron, and Youngstown Sheet & Tube Co. In all of these organizations the plan has been in existence for many years and doing a good job.

Senator DAVIS. Do you have dues in your organization?

Mr. CONN. We do not. We have entered into an agreement with the company so that they pay us 50 cents a head for every eligible voter to defray election expenses and the expenses of this organization.

That was placed in the hands of our secretary-treasurer, who is bonded for twice the amount of money, and who is responsible to the finance committee, on which a man was elected from each department in the mill.

Senator DAVIS. Is the secretary-treasurer a worker?

Mr. CONN. Absolutely; he happens to be a machinist in the machine shop of the steel works plant.

The CHAIRMAN. That 50 cents a head has accumulated as a fund?

Mr. MADDEN. We are cutting it down in pretty good shape now.

Mr. CONN. It was paid in one lump sum last fall and, as Mr. Madden says, we are cutting it down very rapidly.

Senator DAVIS. What do you pay it out for?

Mr. CONN. We defrayed the cost of the election last fall, and such things as this junket coming down here.

Of course, in order to be elected and get down here, you have to persuade these others to send you down.

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Senator DAVIS. How many employees did you say paid the 50 cents?

Mr. CONN. The company pays the 50 cents for them.

Senator DAVIS. For how many did the company pay?

Mr. CONN. Eleven thousand five hundred-and-some-odd. The fund amounted to some $5,500.

Senator DAVIS. And out of that you disbursed it by your own vote?

Mr. CONN. That is right.

At the present time we are working with the management on the question of old-age pensions, unemployment insurance, and profit sharing.

All of these subjects are of great importance to our men and we appreciate the difficulty that confronts our management in solving these problems. We feel that we are working along the right lines and that we will arrive at the right answers to these questions.

Results are what count in the final analysis and, judging our organization by the results accomplished, you must concede that we have accomplished much while the big voice, which claims it represents all labor in the United States, has been harping about the closed shop, recognition, discrimination, et cetera, and has been of little benefit to the workingman who must pay the bills.

We have come before you to protest against the enactment of a vicious piece of legislation.

We would like to call your attention at this time to the fact that under the national labor-union plan the individual is completely lost sight of, whereas under our representative plan both the mass of employees and the individual can have cases passed upon and argued before the management either as an individual or collectively.

We believe that this is a very important point:

Giving us the right to choose our own method of bargaining is as fundamental as the right to choose our own method of worship and we believe it is your duty to guarantee us that freedom just as much as it is your duty to uphold the Constitution regarding freedom of worship or freedom of political creed.

The only difference in our organization, as we see it, is the fact that we strive for our ends by peaceful settlement and cooperation, whereas the American Federation of Labor strives to accomplish their ends by the everlasting threat of strikes. We believe that a strike is the same in the industrial world as warfare between Nations is in the political and economic world, and is as unnecessary.

One of our leading newspapers is at the present time conducting a campaign against war by showing pictorial illustrations of scenes from the late war in their daily papers. Such a campaign could be waged in all the newspapers of the land by collecting together the pictures dealing with the strikes that have taken place in the industrial world in the past 30 or 40 years.

We believe this warfare creates nothing but discord and hatred in the community where the strikes occur, completely demoralizing the people in the business life of the community. If the Government through such a program as the N.R.A. effects the raising of wages, shortening of hours, and better working conditions, then there is absolutely no necessity for a national labor union to collect dues from the working people of America when these same people are paying for this service by paying taxes to the Government.

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Cooperation and peace is the need of the industrial world today just as peace and cooperation is needed by the nations of the earth.

We are reading today that even war between nations is brought about by racketeers who squeeze their profits out of the blood of their innocent victims.

We believe you have no desire to legislate us out of existence. Employees' representation is not "a war bride" with Weirton Steel. Some of these principles have been in the minds of our officials for a long time and as early as April 23, 1931, in a letter to Mr. Alexander, president of the National Industrial Conference Board, Mr. Weir protested against wage cuts; his letter sounds like a leaf from President Roosevelt's program.

Since the representative plan has been in force, Mr. Weir has guaranteed us that wages will never be cut until approved by the representatives. He hopes to sell this idea to the entire steel industry.

The world is built on faith and we have the faith and confidence in Mr. E. T. Weir and Mr. Williams and the officials of the Weirton Steel Co. that the same cooperation will continue as has been accorded us in the past.

We are convinced that this is the plan our men want and the one that will do the most good for the greatest number. If the money was taken out of the organizing game, Weirton would soon return to its former status of a busy industrial community where peace and harmony reign.

If such legislation is enacted as is proposed under the Wagner bill, it will mean endless warfare between employees and their employers, to which there will be no end. You can't legislate industrial-relations reform any more than you can legislate temperance by the enactment of a national prohibition act—you simply create another form of racketeering.

Many writers have taken this position: "The workers don't know what they want."

We in Weirton know exactly what we want. We want to be free to carry on under our present plan which provides for arbitration by a board of three to be chosen by the representatives picking a man, the company choosing a man, and those two agreeing on the third party.

Such arbitration only becomes necessary when the management declines to accept the decision of our general committee on appeals. We have confidence in our ability to deal with our company and we want to be free to do so without the interference of the outside agitators.

We believe that a national labor court with compliance boards in the various steel districts on which the representative plan workmen of America are given representation would be a very good thing, but we believe that to set up such a court as the present Labor Board, dominated by the American Federation of Labor and politicians, doesn't inspire confidence on the part of those who knew what treatment was accorded our men when they appeared before this board last December.

No national labor court can keep peace and harmony in the ranks of labor if such a court is to have arbitrary powers as provided in the Wagner bill. Such a court must be nonpartisan; otherwise it would sit as "judge and jury," which is about the position of the present

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National Labor Board and, as I see it, this is at the bottom of its present troubles.

I thank you.

The CHAIRMAN. Have you finished?

Mr. CONN. Yes; I have finished.

Mr. Chairman, I feel you must absolutely live in this community to know what has taken place there, but we absolutely know that this is what the men want.

You have a small minority that keeps raising its voice all the time, but I am absolutely convinced that this is what the men want.

I have heard the question asked yesterday and this morning whether they ever call a general meeting of all the employees, and how you could, to settle these cases.

I would like to cite a few cases:

In the first place, it is just as impractical to call together 13,000 employees or 11,500 eligible votes as it is to try to call together all the voters of the State of Pennsylvania, Massachusetts, or all the other States.

Our system works about the way the National Government or local government or anything else works. They go to the polls and register their own free will by secret ballot as to who they want to represent them.

In the open hearth I promoted a meeting at which about 500 men were present. That was last fall. We reviewed, the different representatives, what had taken place there, and other men got up and spoke. At that time we had invited a man from Youngstown who had been general chairman of the representative group there for the past 7 or 8 years to come to Youngstown and speak. He took sick at the time and was unable to come, but after the meeting the sentiment expressed there was that we were doing a good job.

Now, men have approached us at different times, asking that we have two or three meetings a year, a picnic in the summer, and a mass meeting in winter, so I think eventually some plan like that will be worked out.

But as to calling all the eligible voters together, it seems to me just impracticable as trying to call together all the voters from the States of Pennsylvania, Ohio, or West Virginia.

In the open-hearth department we have 650 voters outside of the supervisory men and office employees. We have about 75 different rates for these 650 men. There are about 10 percent, in the neighborhood of 60, who are actually classed as labor. That basic labor rate was 40 cents an hour, prior to April 1, and now it was 44 cents. Of these 60 men, we have succeeded in getting about 40 of them raised up to 42½ cents, and they will not get 46½ cents, 2½ above the 44-cent rate. This was done on the basis that these men do the same work every day. Two thirds of the 60 men come in that class.

I heard the question asked yesterday, how many men received this minimum rate of 40 cents. Less than 10 percent of them in our plant get that rate.

Then you step all the way up to those who are classed as foremen. First helpers receive $14, and there are 42 first helpers getting approximately the same money I am.

The CHAIRMAN. May I ask you a few questions?

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Mr. CONN. Sure.

The CHAIRMAN. What plant are you from?

Mr. CONN. Open-hearth department, Weirton Steel Co., Weirton, W. Va.

The CHAIRMAN. Do you know William J. Long, president of Weir Coal Lodge, No. 30, Amalgamated Association of Iron, Steel and Tin Workers?

Mr. CONN. I do not know the man personally. When I was on this insurance board, he was on there, and I should know the man.

The CHAIRMAN. Do you know Mel Moore?

Mr. CONN. I do not.

The CHAIRMAN. Charles E. Anderson? Jack Reese? Jake Entinger? William C. Milstead? T. I. Lewis?

Mr. CONN. I do not know them.

The CHAIRMAN. Mr. Long appeared before this committee and presented us with some tesitmony about conditions at Weirton. Was it at the plant where you worked that there was trouble?

Mr. CONN. Yes; absolutely.

The CHAIRMAN. Now, among other things, he testified here as follows:

During this election—

Referring to the election in June—

the foremen came to men on the job and insisted that they go and vote, stating that it was compulsory. A ready-ticket slate was presented to the men, with no opposition slate. The company counted the votes.

Did any such practice take place?

Mr. CONN. I saw no action of that kind on the part of any foremen, and I do not think it was done in our department. That is the only one I am familiar with. At this meeting I referred to last fall, at which about 500 open hearth men out of 650 attended, that was promoted by William J. Long and the other two representatives, calling together about a dozen men with men acting as a committee and arranging for the thing with the idea that——

The CHAIRMAN. Wait a moment. Is there an association of Amalgamated, a lodge of the Amalgamated Association of Iron, Steel, and Tin Workers in Weirton?

Mr. CONN. Yes; I think there are five lodges altogether.

The CHAIRMAN. And some of your groups belong to those lodges?

Mr. CONN. Yes.

The CHAIRMAN. And do these groups also belong to the organizaton that you are representing?

Mr. CONN. Within the last 3 weeks, 3 men whom I know are members of the Amalgamated have presented their complaints to me, so I would say that signified their participation in this plan, would you not?

The CHAIRMAN. I would want to know a few more facts before answering that.

Mr. CONN. But they came of their own free will. We put up suggestion boxes with signs over them saying that if at any time you have a suggestion that would be of benefit to the representation plan, you should drop it in the box or bring it to a representative in person. One man in particular dropped a letter in the box.

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The CHAIRMAN. He also stated (Mr. Long), that approximately 90 percent of the employees are now signed members of the Amalgamated Association. Do you know about that?

Mr. CONN. Of course, I have no idea how many they actually have, but during the strike——

The CHAIRMAN. You do not know how many they have?

Mr. CONN. No; I do not know.

The CHAIRMAN. How many employees took part in the election where you were elected?

Mr. CONN. Where I was elected, there was 636 eligible and some 595 voted. I received 403 votes.

The CHAIRMAN. Were others elected besides yourself?

Mr. CONN. Two others besides myself from the open hearth department.

The CHAIRMAN. The first claim the representatives of the Amalgamated Association made was that that was not a free election, that the employers or foremen representing the employers influenced the men, forced them to vote, otherwise so many would not have voted. What do you say to that suggestion?

Mr. CONN. I say that that is an absolute untruth, because the company, I know absolutely, bent over backward to keep their hands off the thing.

The CHAIRMAN. Did you belong to the Amalgamated Association?

Mr. CONN. I never have.

The CHAIRMAN. Do you know some of the men in the plant who do?

Mr. CONN. Oh, absolutely.

The CHAIRMAN. He says:

> Because the company ignored representatives that the employees freely at their own meetings—

Referring to representatives as chosen by the Amalgamated Association of Iron, Steel, Tin Workers—

> employees at Clarkesburg, Weirton, and Steubenville finally struck on September 26, 1933, and 95 percent of the employees came out. The only ones in the plant were men who we permitted to go in at the company's request. In fact, we had to coax our men to go in and carry on the maintenance the company requested.

Was there a strike?

Mr. CONN. Yes; there was a strike.

The CHAIRMAN. Did 95 percent of the men take part in it?

Mr. CONN. You understand how a strike is organized——

The CHAIRMAN. Never mind that. How many took part?

Mr. CONN. In order to answer that I have to tell you how it is done. Suppose a small group stands there with clubs or something in their pocket, and tells them to stay out. Would you say that everybody who stays out participated in it? If I drive up to that gate with my automobile, and here is a group with no police officers around, and 400 or 500 men, and they push my car out and I cannot get in, am I participating if I stay out, because I cannot get in?

The CHAIRMAN. Was that the condition?

Mr. CONN. That was the condition.

The CHAIRMAN. As a matter of fact, a good many employees stayed out?

Mr. CONN. A good many, that is right.

The CHAIRMAN. How many days?

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Mr. CONN. The mill was down approximately 2 weeks, and then they started up.

Senator DAVIS. When this condition occurred, the management shut down the mill?

Mr. CONN. Right.

Senator DAVIS. And then started it again?

Mr. CONN. Right.

The CHAIRMAN. Do you know when that was? He says the strike ended October 16. He says:

The strike ended October 16, through an agreement drawn up before the National Labor Board. This agreement stated that all employees now on strike should go back to work immediately without prejudice, discrimination or physical examination. An election shall be held the second week of December 1933. Methods and procedure for the election shall be prescribed by the National Labor Board.

Was the election held in December 1933?

Mr. CONN. It was.

The CHAIRMAN. Was that election managed by the National Labor Board, or was it the election conducted by the management for the purpose of electing representatives?

Mr. CONN. It was conducted by the representatives who were in office up to January 1.

The CHAIRMAN. How many participated in your election in December?

Mr. CONN. In my own department, I think it figures that 83 percent—595 out of 656 voting.

The CHAIRMAN. He says further:

Over 400 Weirton Steel employees who were active in the union have been laid off and discharged; some were told that this was because the company had to reduce forces, and others were frankly told that it was because of their union activities. Meanwhile, by a careful check-up, we have ascertained that the company has hired about twice that number of new men.

Do you know anything about that?

Mr. CONN. When the strike occurred we were at about, I would say, 80 percent operation. I have to judge by the open hearth. We were running 10 out of 12 furnaces. When we went back to work, of course, some of the roofs of the furnaces had fallen in during the 2 weeks that they got cold during the strike. When they started up, they started about 8 furnaces, and after running them for about a month, there was a slack came in the business, and we went down to 6 furnaces, and the natural thing is to reduce the force as has always been done, and it was the policy in the open hearth, I know, to lay off the youngest men.

Now, since that time, they have hired men and of the present time we have about 11 furnaces on, and these same men are brought back in there, or else they are in different departments. I see some men who have worked from last June—June 1933, when the spurt in business came up, and they were working in the open hearth—I see them in the blast furnaces and the sheet mill, and I know it is the policy of the company to hire men from the town.

The CHAIRMAN. Did Mrs. Pinchot address the employees during this period?

Mr. CONN. She addressed a union meeting, I think, twice, that I had knowledge of.

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The CHAIRMAN. Did you hear her?

Mr. CONN. I had occasion to hear her in Monessen, Pa. That is my wife's home. I was visiting there, and I heard her there.

The CHAIRMAN. Was there a strike on there?

Mr. CONN. No; there was not.

The CHAIRMAN. This affidavit states:

When Mrs. Pinchot, wife of the Governor of Pennsylvania, spoke to a union meeting, there was 30 bosses across the street, from the manager down.

Do you know anything about that?

Mr. CONN. No, I did not hear her, and do not know anything about it.

The CHAIRMAN. They claim that this strike was due to the fact that what they claimed to be a majority of the employees belonged to the Amalgamated Association, and that the company refused to bargain with the Amalgamated Association's representatives but chose to bargain with you and the other representatives elected in the general election. Was that the basis of the strike, as you understood it?

Mr. CONN. The basis of the strik—we were working and knew nothing of any strike coming at the mill. About 4 o'clock—the tin mill gate is up about a block from the steel works, and men coming in at 4 o'clock to relieve my turn, told us they were waiting at the tin mill gate to call a strike. So when I went out I walked up there, and I asked those fellows, "What are you doing there?" "We are going to bring the gang out." "What for?" I said.

They said: "We agreed among ourselves not to work Sunday night, and when we went out there on Monday night, we asked those fellows who worked Sunday night to be fired," and they would not fire them.

I said, "You are going out on strike for that?"

And they said, "Yes."

I said, "Are they coming out?"

He said, "Yes."

I said, "I think you are a bunch of damned fools."

The CHAIRMAN. You understand the strike was called because of an effort to prevent some men from working Sunday night? A general strike ensued because of a demand that there be no employees at work on Sunday night?

Mr. CONN. Yes. You understand they never presented this demand to the company?

The CHAIRMAN. Have you heard this agitation before about this trouble being due to the failure to recognize the Amalgamated?

Mr. CONN. Yes; I have heard that statement made.

The CHAIRMAN. Are the representatives of the Amalgamated lodges who claim to represent the employees there in Weirton?

Mr. CONN. Not in our department. I think in some of the others they do make that claim, but not in the steel works.

The CHAIRMAN. We do not want to go into this matter, because I understand the whole question is pending before the courts?

Mr. CONN. It is.

The CHAIRMAN. But I simply wanted to see, in view of the testimony from the other side—I simply wanted to get your views as to what you understood to be the cause of the trouble.

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Mr. CONN. Among those men you mentioned, I know Anderson very well. He is a carpenter, and is one of the men whose names you read off there. I know him very well, and he has been there for a long time, as long as I have been there.

The CHAIRMAN. Are you able to say to this committee with conviction that in your opinion a majority of the employees in the section where you work and that you represent desire the organization that you represent here among the employees?

Mr. CONN. Yes, sir; I make that statement and I know that it is true.

The CHAIRMAN. That is all.

Senator DAVIS. Just a minute. I want to get one point in my own mind a little more clearly. You are elected as a representative of this particular group in your department or in your division?

Mr. CONN. Right.

Senator DAVIS. You did not have any meeting prior to that with the men that work in your division?

Mr. CONN. Last fall we had this general meeting at which they chose a slate in this group of 500; they picked a slate to run.

Senator DAVIS. Who picked the slate to run?

The CHAIRMAN. That was the department meeting?

Mr. CONN. This was along in November sometime, and we had a mass meeting of 500 open-hearth employees.

Senator DAVIS. Where did you meet?

Mr. CONN. We met at this country club.

Senator DAVIS. Is there a hall there big enough for you to hold that meeting in?

Mr. CONN. Right.

Senator DAVIS. Then you met in there and you nominated your representatives or did you agree on a committee that formed this slate?

Mr. CONN. That is what actually was done. I got up and I explained that in my opinion, and in the opinion of these 12 men who helped to promote this meeting that representation should be distributed through the open hearth, 1 group of 3 to be elected among the first helpers, among the pit men, and the others, or something like that, and the right way to do would be to pick one man out of each group for a nominating committee. That committee met and picked a slate.

Senator DAVIS. You are elected for a term of a year?

Mr. CONN. Right.

Senator DAVIS. You will have another election soon?

Mr. CONN. Next December.

Senator DAVIS. Now, prior to that time, how are you going to get your nominations on the ballot?

Mr. CONN. They can go through the same thing again.

Senator DAVIS. Calling a meeting of everybody in the division?

Mr. CONN. You understand that is not in the bylaws of the organization. This was actually done, what I am telling you about.

Senator DAVIS. How would you make your nominations next time?

Mr. CONN. We might do the same way, but we have a sort of a primary on Monday of the week, and then on Friday we have the run-off.

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Senator DAVIS. How do you make your ballot first? Could somebody nominate anybody he wanted to, and then you ballot on them?

Mr. CONN. Yes.

Senator DAVIS. And then you select them at the primary and then vote on them at the general election?

Mr. CONN. Ues, sir.

The CHAIRMAN. As I understand it, in the primary, any of the employees can be candidates?

Mr. CONN. They can nominate anybody they want.

The CHAIRMAN. And the 6 highest are chosen for the candidates for election on the following Friday, and then from the 6 highest 3 are chosen on the following Friday?

Mr. CONN. That is it.

The CHAIRMAN. The only time you have to discuss the fitness and qualifications of the men to be representatives among yourselves is in the works?

Mr. CONN. That is right.

The CHAIRMAN. You do not go to a hall and discuss and have nominating speeches and so forth?

Mr. CONN. No.

The CHAIRMAN. Thank you.

I will state for the benefit of the press that Senator Wagner informed me this morning that General Johnson would appear before the committee on Monday. I do not know what his views are, and I do not know that Senator Wagner knows, but he will appear before the committee on Monday.

The committee will stand adjourned until 2:30 o'clock this afternoon.

(Whereupon a recess was taken from 12:35 p. m. until 2:30 p. m.)

AFTERNOON SESSION

The CHAIRMAN. The meeting will come to order. When we adjourned this morning we were hearing from Mr. Conn. Mr. Conn, are you present?

Mr. CONN. Yes, sir.

The CHAIRMAN. Did you finish your testimony?

Mr. CONN. Yes, sir; I did.

The CHAIRMAN. Very well. Now, accompanying you from the Weirton Steel Co. are Mr. J. Madden, who desires to be heard.

Mr. CONN. Yes, sir.

The CHAIRMAN. Mr. Madden, will you come forward?

STATEMENT OF JACOB F. MADDEN, REPRESENTATIVE OF EMPLOYEES, WEIRTON STEEL CO.

The CHAIRMAN. What is your full name, Mr. Madden?

Mr. MADDEN. Jacob F. Madden.

The CHAIRMAN. Where do you reside?

Mr. MADDEN. 3320 Elm Street, Hollidays Cove, W. Va.

The CHAIRMAN. Where are you employed?

Mr. MADDEN. Weirton Steel Co., roller in the tinplate department, where all the trouble originated.

The CHAIRMAN. That is where the strike took place last fall?

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Mr. MADDEN. Yes, sir.
The CHAIRMAN. What is your occupation?
Mr. MADDEN. I am a roller.
The CHAIRMAN. Now, are you appearing here as a representative of the employees of the plant where you work?
Mr. MADDEN. On the representation plan?
The CHAIRMAN. Yes; on the representation plan.
Mr. MADDEN. Yes, sir.
The CHAIRMAN. Were you elected under the representation plan of the employees for this plant last June?
Mr. MADDEN. Yes, sir.
The CHAIRMAN. And how many of the men in your department took part in that election?
Mr. MADDEN. You mean how many voters?
The CHAIRMAN. Yes.
Mr. MADDEN. Last June?
The CHAIRMAN. Yes; last June.
Mr. MADDEN. Well, off hand I could not tell you; I think it was around about 91 or 92 percent of the employees.
The CHAIRMAN. You are representative of a division of the employees?
Mr. MADDEN. One division, the hot-mill department.
The CHAIRMAN. How many employees in that department?
Mr. MADDEN. We have approximately 835 men, I think.
The CHAIRMAN. You were elected by those men?
Mr. MADDEN. Yes, sir.
The CHAIRMAN. How many votes did you receive?
Mr. MADDEN. Three hundred and twelve.
The CHAIRMAN. And how many votes were cast?
Mr. MADDEN. Seven hundred and thirty-five, I think.
The CHAIRMAN. How do you reason that out to be a majority?
Mr. MADDEN. Well, you must remember that we had 14 representatives.
The CHAIRMAN. You had 14 candidates?
Mr. MADDEN. Fourteen candidates; yes.
The CHAIRMAN. And three were to be chosen?
Mr. MADDEN. Three were to be chosen.
The CHAIRMAN. And the vote was scattered among the 14 representatives?
Mr. MADDEN. That is correct.
The CHAIRMAN. And you were one of the three chosen?
Mr. MADDEN. Yes, sir.
The CHAIRMAN. Now, then, when you were chosen representative you became associated with other representatives representing other divisions of employees in these plants?
Mr. MADDEN. That is correct.
The CHAIRMAN. How many representatives are there in the complete board of employees?
Mr. MADDEN. You mean the whole Weirton Steel Co.?
The CHAIRMAN. In the locality where you work?
Mr. MADDEN. Eleven.
The CHAIRMAN. Now, do you do all the collective bargaining with your employer?
Mr. MADDEN. I am chairman of that committee.

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The CHAIRMAN. Does your committee do the collective bargaining with the officers of the plant where you are all employed?

Mr. MADDEN. Yes, sir. We discriminate against nobody, union or nonunion.

The CHAIRMAN. This is the plant where it was claimed that there is a large amount of Amalgamated Association workers.

Mr. MADDEN. This is the plant; yes, sir.

The CHAIRMAN. Were you ever a member of that organization?

Mr. MADDEN. Absolutely; 100 percent. There is my card right there [handing a card to the chairman]. I always have been.

The CHAIRMAN. Are you still a member?

Mr. MADDEN. Yes, sir.

The CHAIRMAN. When did you join the organization?

Mr. MADDEN. I joined the organization the first time in 1901.

The CHAIRMAN. And you continued up to date to be a member of the organization?

Mr. MADDEN. Off and on; yes ,sir.

The CHAIRMAN. At the time of the voting in June, for the representative plan, you were still a member of this organization?

Mr. MADDEN. This organization, with that card?

The CHAIRMAN. Yes.

Mr. MADDEN. No; then we did not have anything like that.

The CHAIRMAN. Were the members of that organization in the plant at that time?

Mr. MADDEN. No, sir.

The CHAIRMAN. Wait a moment. In June last, when you had the voting for the representative plan?

Mr. MADDEN. Prior to our election, we had no Amalgamated Association whatever connected with the tin-plate department.

The CHAIRMAN. What had become of it?

Mr. MADDEN. It was never there.

The CHAIRMAN. You were there; you were a member of it?

Mr. MADDEN. Yes; I was a member, I told you since 1901, off and on.

The CHAIRMAN. Did the organization go out of existence or did you simply drop out as a member?

Mr. MADDEN. Moved out of the Yorkville plant. The last time I carried the card was at Yorkville, Ohio. I moved out of there. I moved out of there and got into Weirton, the company I started in business with when they started, and they did not have any organization there, and I quit paying dues.

The CHAIRMAN. There was no organization at Weirton?

Mr. MADDEN. No organization; no, sir.

The CHAIRMAN. There has been a claim made here that there was an organization there.

Mr. MADDEN. Well, gentlemen, that claim is untrue.

The CHAIRMAN. So when this balloting took place among the employees, so far as you know, there was no other organization?

Mr. MADDEN. I absolutely know there was no other organization.

The CHAIRMAN. If there was another organization, did the members of that organization take part in the balloting?

Mr. MADDEN. You mean this representation plan?

The CHAIRMAN. Yes.

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Mr. MADDEN. Every man in the hot mill participated in that election to elect me as a representative, and I will say 91 percent voted there.

The CHAIRMAN. Since June you have served in this capacity as representative of the workers and have been in touch with the management in reference to matters relating to employment and wages that could be bargained about?

Mr. MADDEN. Yes, sir.

The CHAIRMAN. You have a prepared statement you would like to make to the committee?

Mr. MADDEN. Yes, sir; I have a prepared statement. I would like to read it.

The CHAIRMAN. We will hear it.

Mr. MADDEN. Mr. Chairman and gentlemen, I have been an employee of the Weirton Steel Co. for the past 28 years and have found that the Weirton Steel Co. has been fair with all their employees. As a former member of the Amalgamated Association of Iron, Steel and Tin Plate Workers Union, and now active as a representative of my fellow workers under a plan of employees' representation, I think I am in a position to judge between the two methods of taking care of grievances between employees and management. In my position as an elected representative, I am working every day side by side with the men who elected me to settle their complaints. Every day men come to me about one thing or another and I can't sidestep my responsibilities to my fellow workers. Gentlemen, if I don't do my job satisfactorily the men can recall me and elect another representative in my place—this can be done any time and the company has no vote in the matter.

The CHAIRMAN. There is an annual election?

Mr. MADDEN. There is an annual election.

The CHAIRMAN. Provided by your bylaws?

Mr. MADDEN. Yes, sir.

The CHAIRMAN. Is there a provision for recall in the meantime?

Mr. MADDEN. Absolutely; yes, sir.

The CHAIRMAN. How is that machinery set in motion?

Mr. MADDEN. That machinery is set in motion like this: If I violate any of our laws, or any of our contracts or bylaws, any group of men can come before the committee and ask for the removal of me from office, which will require a two-thirds majority.

The CHAIRMAN. Two-thirds majority of your board?

Mr. MADDEN. No, no; the entire group in my department.

The CHAIRMAN. They would ask for an election?

Mr. MADDEN. Yes.

The CHAIRMAN. And your board would decide whether you would be given an election or not?

Mr. MADDEN. Yes.

The CHAIRMAN. You would be eliminated from that discussion?

Mr. MADDEN. No, sir; we have an appeals committee. I can appeal my case before that committee and state how I think I was discriminated against.

The CHAIRMAN. Very well.

Mr. MADDEN. As the result of this system, I and every other representative must "deliver or get out." I wish to bring to your attention a few facts that only the laboring man knows in regard to organ-

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ized labor. I am told that there are about 3,000,000 or 4,000,000 workmen at present enrolled under organized labor—what is the matter that the other 30,000,000 workmen object to joining the American Federation of Labor? There must be something wrong when 30,000,000 men are opposed to organized labor. Probably you gentlemen never had the opportunity to hear from the laboring man the exact truth about this question.

Organized labor to my opinion is one of the best things for the laboring man that ever existed, provided that there can be some way to take the racketeering out of it. But the way it stands today it is worthless. I can give you the whole history of the Amalgamated Association from 1901 up to the present date.

The Amalgamated Association has always been built up around hot mill men and has done nothing for the many other tinplate and steel workers. The Amalgamated has always taken a stand on wages for tin mill men, but at Weirton our rates have always been higher than the prevailing Amalgamated rates and since April 1, are approximately 16 percent higher than the Amalgamated rates. Mr. J. C. Williams, president of the Weirton Steel Co., has said many times that he would donate $25,000 to any named charity in Weirton, if it could be shown that the Weirton Steel Co. was not paying a higher rate than the prevailing Amalgamated rate. This statement by Mr. Williams has stood unchallenged.

The Amalgamated has never been interested in the general welfare of the workers and can never be in the position to get the many things before the management which are just as important to the working man as his wages. If working conditions are not right and men get sick or injured unnecessarily, wages won't do them much good. My job as a representative requires me to get into all of these conditions which will make the working men's lives a little "sweeter." With shorter hours of work, proper recreation becomes more and more important and our committees of representatives must get into all of these things.

The Amalgamated Association, gentlemen, is a racket.

The CHAIRMAN. What do you mean by that?

Mr. MADDEN. Well, I will tell you what I mean.

The CHAIRMAN. You have used the words "racketeers" and "racket."

Mr. MADDEN. I will tell you what I mean. As I stated, I am 100 percent in favor of organized labor provided there is some means of taking the racketeering out of it.

The CHAIRMAN. Just what is racketeering?

Mr. MADDEN. What do they do with all this money?

The CHAIRMAN. You think the money that is collected as dues is not properly accounted for?

Mr. MADDEN. Absolutely.

The CHAIRMAN. Of course, that is disputed, you know that?

Mr. MADDEN. Yes, sir. That is my argument. The American Federation of Labor is another racket. In fact, they are all racketeers, playing on the poor laboring man as a sucker for their living. They go further—they play the Congress and the Senate that they may further feather their nest for their own earthly lust.

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As I stated, there are about 2 million men enrolled under organized labor. At $1 per head per month, or $2,000,000 per month, it would amount to $24,000,000 a year.

Gentlemen, your Government does not take in $24,000,000 a year profit. What does organized labor do with this money? Can they show where they ever contributed $1 for relief purposes during this last depression? No; they have never given 1 cent to any charitable institution for relief work that I ever heard of.

Organized labor claims that they uphold wages. Gentlemen, that is an untruth as I will give you figures and facts that will prove to you that their statements are untrue. On July 1, 1924, Mr. M. J. Thighs, president of the Amalgamated Association of Iron, Steel, and Tin Plate Workers, signed a wage agreement with the Western Sheet and Tin Plate Manufacturing Association basing the tin workers scale on the selling price of 26–27–28 gauge to a basic price of $1.80 per 100 pounds. Tin plate today is selling around $5 a box of 100 pounds. Through this agreement instead of me receiving a wage rate based on the selling price of tin plate, my wages are based on the selling price of sheet iron, and there is no comparison between the two sheets or the two jobs.

Gentlemen, I have here a copy of the Amalgamated Association Journal just to show how they do business with the wage scale. In the year of 1909 or 1910 the American Sheet and Tin Plate Co. adopted a basic price of $3.50 per 100 pounds which paid a roller a wage scale of $1.25 per 1,000 pounds of 30 gage. Under the Amalgamated Association agreement this same scale can be reduced to 78 cents per 1,000 pounds.

They dropped that down, gentlemen, to 83 cents during the last depression. If I was paid according to my selling price of tinplate today, I would receive probably $1.78 per 1,000 pounds instead of 98 cents that I am getting now.

Gentlemen, this is enough to prove to any man that he is better off away from any plan of organized labor. When Mr. Thighe made that agreement, did he go to the thousands of tin workers that were paying dues and explain the whole thing to them? No, Mr. Thighe did not care what the tin worker got for his labor as long as he and his colleagues got their share of the wages.

When Mr. William Long, president of the local lodge in Weirton, W.Va., approached me about taking out a card, I put this same question up to Mr. Long and asked him to bring this to the attention of Mr. Thighe. This is the answer I received from Mr. Long:

> Jake, I asked Mr. Thighe about that scale. Mr. Thighe told me that the Amalgamated Association was on their last leg and had he not accepted that scale the Amalgamated Association would have been put out of business.

Then to think that the Federal Government would pass a law to force any employee of any steel industry to pay dues to an organization of that kind.

Gentlemen, I have here an attached statement compiled by the American Sheet & Tin Plate Co., to show you by comparison the average earnings of a roller in their plant and that of a roller in the closed shop, the ones controlled by the Amalgamated Association.

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Comparison hot mill scale changes

HOT MILL 29–30 GAGE

	3 part American Sheet and Tin Plate crew per G.T.	Percent of change	Percent ours over Amalgamated Association	Average earnings Shenangee roller, 3 part	3 part Amalgamated Association crew per G.T.
Aug. 16, 1929	$13.506		5.31	$14.11	$12.825
July 1, 1929			4.07	(6.1 to Oct. 31, 1929)	12.978
May 1, 1930			7.89		12.518
Sept. 1, 1930			11.01		12.166
Jan. 1, 1931			13.45		11.905
Mar. 1, 1931			16.44		11.599
May 1, 1931			14.93		11.752
July 1, 1934			19.61		11.292
Aug. 16, 1931	12.155	10	7.64	$12.66	
Sept. 1, 1934		Deduction	10.65	Dec. 1, 1931	10.985
May 1, 1932			13.82	May 13, 1932	10.679
May 16, 1932	10.896	12	.16	11.16	
July 1, 1932		Deduction	11.35	May 16, 1932	9.606
Aug. 16, 1932	9.626	10	.21	$9.46	
		Deduction		Oct. 1, 1932	
				June 15, 1933	
No further changes, present scale.	9.626		.21		9.606

The CHAIRMAN. I understand that competing plants are organized with the members of the Amalgamated Association. Am I correct?

Mr. MADDEN. How is that?

The CHAIRMAN. I understand that plants in competition with your plant are actually organized with the Amalgamated Association. Is that correct?

Mr. MADDEN. Mr. Chairman, I do not think that you thoroughly understand this. Let me read it over to you again.

The CHAIRMAN. I do not think it is necessary to read it again. Will you listen to me a moment?

Mr. MADDEN. Yes, sir; I would be glad to.

The CHAIRMAN. You have been comparing the wages paid in your plant with wages paid in other plants, haven't you?

Mr. MADDEN. Controlled by the Amalgamated Association.

The CHAIRMAN. So there are other plants that are controlled by the Amalgamated Association. The point you are making is that your plant, not controlled by the Amalgamated Association, pays better wages to the men and the men are better off than in the plants that are controlled by the Amalgamated Association?

Mr. MADDEN. Yes, sir; 100 percent of it.

The CHAIRMAN. The Amalgamated Association has been trying to get control of your plant and you had the strike and the other troubles that have been referred to here. Was that an outgrowth of their efforts to organize the Amalgamated Association in your plant?

Mr. MADDEN. Against the wishes of the men, yes. That is where the racketeering comes in.

After the N.R.A. Act was passed, the organizers from every kind of union in the country started out to bleed the poor man of his wages. They promised them everything under the sun, more money and less work. They began to organize the mills. Mr. William Long got

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the fever. He was elected by a small group of men at a meeting as president. Mr. Long claims that there were between 70 and 80 percent of the employees that had taken out pledge cards from July 1 to October 1, 1933.

The CHAIRMAN. Mr. Long is the man who appeared as a witness and is the man who claims that he succeeded in getting 75 or 80 percent of the employees to sign pledge cards to join the Amalgamated Association?

Mr. MADDEN. Correct. I will agree with him right there on that point. There is no dispute about that. I will grant him that. All right. Mr. Long claims that there were between 70 and 80 percent of the employees that had taken out pledge cards from July 1 to October 1, 1933. I will venture to say that 40 percent to 50 percent of these pledge cards were not taken out in good faith, as Mr. Long's own testimony before the Labor Board shows on page 8 of said records:

Mr. LONG. The total number of men involved that have actually paid $3 initiation fee in this organization is 950.

There is one of them. That leaves 949.

Mr. KEVSTEIN. How many plants does this include?
Mr. LONG. Three.

The CHAIRMAN. Mr. Kevstein is a member of the Labor Board?

Mr. MADDEN. Yes, sir. Kevstein did the questioning over there.

Gentlemen, do you think that any of these men, outside of the 950 men, ever intend to pay up their $3 initiation fee? They could not pay it in 6 months. Many of the employees of the Weirton steel mills were forced to take out pledge cards due to circumstances. In other words, they would stand like this. (The witness illustrates with his fingers, indicating a balancing scale.) If the Amalgamated Association wins, they are Amalgamated Association men, and if the company union wins, they are company-union men, see? That is the racket. Many others were induced by promises. The Weir-Cove local of the Amalgamated Association claims that they have 8,012 members; out of this 8,012 members, 950 actually paid $3.50 for their pledge cards. The other 7,062 men have paid amounts for their cards ranging from 10 cents up to $2 and have not paid the balance yet.

The employees' representation plan represents the greatest majority of the employees of the Weirton Steel Co. We only ask that the Government be fair with us in its dealings and that we may have a right to our own belief as to what kind of an organization we wish to choose. Any man who has had to pay out his good money to the Amalgamated, as I did for many years, can see how foolish it is when the N. R. A. has developed a way for the workingmen to set up a form of organization for collective bargaining which in my own case is getting quicker action in a much wider field of activity than can ever be possible through an outside agent of any labor union like the Amalgamated.

Gentlemen, I appeared before the Labor Board on December 7, 1933, as a member of the rules committee of the representation plan of the employees of the Weirton Steel Co. Gentlemen, I must say that anyone that appesrs before that board, that is not affiliated with the American Federation of Labor is 90 percent licked before he goes in there. Mr. Wagner and Mr. Green had the whole thing cut and dried

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for us, but when we went back to Weirton we took the remaining 10 percent back with us. I wonder what Mr. Wagner and Mr. Green have in mind. Is our Congress and our Senate going to sit back and let this great republic be dominated by unions? Are you gentlemen satisfied to have Mr. Wagner set Mr. Green up as another Hitler?

Gentlemen, the working class of people in this country does not want any more legislation to put more taxes on their backs. What we want is more dollars so that we can live like human beings. Although in the Weirton plants we have been fortunate enough to have work all through the depression and received as good a wage as was paid in the country, our wages were far from a living wage. As I stated before, we want a living wage. The tin-plate workers want a basic wage set at $3.50 per 100 pounds for tin plate and work on the sliding-scale basis. You can go to court; you can hold elections every week; you can pass laws to compel the manufacturers to sign an agreement with organized labor; you can compel the laboring class of people to join the unions; but you can never satisfy the masses of workmen until they are paid a good living wage for their labor. Our wages have been reduced 32 percent from August 16, 1931, to August 16, 1932. Over a period of 4 years from August 16, 1928, to August 16, 1932, the rollers' average wages were reduced from $14 on August 16, 1928, to $9.46 on August 16, 1932, or reduced about $4 a day.

The CHAIRMAN. That is a per diem wage?

Mr. MADDEN. From $14 to $9, yes. That is then a healthy cut, isn't it?

Gentlemen, we do have debts on our books to carry. How do you think we are going to pay off those debts, if a Government does not see that we will get more dollars instead of more burdens, such as union dues and union assessments?

All we can ask for is that you provide a means where we can iron out our disputes, should any arise between the employee and the employer in regard to collective bargaining. Every fair-minded workingman knows that through the N.R.A. President Roosevelt has made it possible for us to get something at no cost which, before the N.R.A., we had to buy with hard-earned dollars. The dollars paid by the workingman for union membership gives a lot of men soft jobs and the man paying the dues can't do anything about it. Through fear and force the workingman has been made to pay dues into one union or another. There is no coercion by the company at Weirton; the coercion is coming from a handful of Amalgamated men who are trying to get members by calling at the homes of workmen and scaring their women so the men will join the union to protect their homes and families. Coercion is coming from labor organizers who draw their soft pay from the pockets of the workingmen. I, for one, don't believe the President wants to see any laws passed which will take hard-earned dollars out of the pockets of the workingman unless there is a sure return for each one of these dollars. The workingman doesn't want to be forced into any union, not of his own choosing, and that's what I have against the Wagner bill.

There are thousands of men in this country opposed to the representation plan or company union as they call it. But why are they opposed to that plan? Well, allow me to answer that question for you. They are opposed to it because there is no money involved in

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the plan worth mentioning. There are no easy jobs for the soft-collar man. We do not need any offices, taxi bills, train fares, no clerks or stenographers, and there is no dues attached or assessments. There is no chance of any graft. The representatives in the Weirton Steel Co. plants are all hard-working men. We recognize our fellow workmen and we see that they get the right to bargain. Gentlemen, I have repeatedly made the statement that I am no company man, never was and never will be. My only ambition in life is to have peace and good will among men. I am bitterly opposed to any kind of racketeering, threats, or violence.

At Weirton we have had better wages and more working time, all through the depression, than in any other steel mill in the country. We workmen have been told by Mr. E. T. Weir and Mr. J. C. Williams that they will stand and fight for higher wages and it is a matter of record that these two men have been as good as their word. You will find that Mr. Weir and Mr. Williams have had more to do with the 10-percent increase in wages for steel workers than any other two men in the industry.

All we ask for is to be allowed to work out our own plans the way we are now doing and we will be able to settle all of our arguments in a peaceful way without the grief and suffering resulting from strikes, which is always the price paid by the workingman.

The employees of the Weirton Steel Co. stand back of you, gentlemen, and also back of the greatest man on earth, our President, Franklin D. Roosevelt, and the N.R.A.

I thank you.

The CHAIRMAN. Thank you, sir. Interlake Iron Corporation of Toledo, Ohio, represented by John Grimm. Together with John Grimm appear Harry Doyle, Irving Moore, Harry Holstead and Herman Luken. You are all representatives of the employees in the Interlake Iron Corporation of Toledo, Ohio?

Mr. GRIMM. We are.

The CHAIRMAN. I will ask Mr. Grimm to speak for you all. You all reside at Toledo, Ohio?

Mr. GRIMM. Yes, sir.

The CHAIRMAN. Is there one plant of this company at Toledo or more than one plant?

Mr. GRIMM. Only one in Toledo.

The CHAIRMAN. How many employees in that plant?

Mr. GRIMM. At the present time about 450.

The CHAIRMAN. What is the usual number that you have in good times?

Mr. GRIMM. Well, at the peak in 1929, there were something like about 800, I guess.

The CHAIRMAN. Now, Mr. Grimm, you will speak for the delegation?

Mr. GRIMM. Yes, sir.

The CHAIRMAN. The others may be seated.

STATEMENT OF JOHN GRIMM, REPRESENTATIVE OF EMPLOYEES IN THE INTERLAKE IRON CORPORATION, TOLEDO, OHIO

The CHAIRMAN. Mr. Grimm, what is your full name?

Mr. GRIMM. John Grimm.

The CHAIRMAN. Where do you reside?

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Mr. GRIMM. Ten hundred and eighteen Star Avenue, Toledo Ohio.

The CHAIRMAN. You are employed by the Interlake Iron Corporation in Toledo?

Mr. GRIMM. I am.

The CHAIRMAN. In what capacity?

Mr. GRIMM. I am a switch engine conductor.

The CHAIRMAN. Are you, and the others associated with you, representatives of the employees of that plant?

Mr. GRIMM. We are.

The CHAIRMAN. Were you elected a representative?

Mr. GRIMM. I was.

The CHAIRMAN. In what election?

Mr. GRIMM. Election of June 20, 1933.

The CHAIRMAN. And that is when the representative plan was adopted?

Mr. GRIMM. It was.

The CHAIRMAN. You desire to appear before the committee in opposition to this bill?

Mr. GRIMM. I do.

The CHAIRMAN. You may present your views.

Mr. GRIMM. Interlake Iron Corporation Workers Association, Toledo plant. This is a statement of John Grimm, general chairman.

When the National Recovery Act was being talked over, and when it first appeared in the papers, the management called a mass meeting of all employees. The purpose of this meeting was to discuss the rights of the employees under the law, if it became a law. We were told of the three forms of representation.

1. Outside, such as those belonging to the American Federation of Labor.

2. Inside, such as the form we have.

3. Individual.

The management did not recommend that we do anything in particular, and would not appoint any committee.

On June 5 a committee of 24 employees elected by the employees of the different departments of the plant was formed to determine which plan of representation was wanted. The verbal expression of the employees indicated their preference for some kind of inside representation. Those groups were made up of employees without supervisory powers.

The same group of 24 men met with the management to further discuss the matter of organization. The committee requested the manager to secure for them various types of employee representation plans. The management agreed to do this.

However, because the management desired an expression from all employees as to their preference, the committee decided to have a vote of the entire plant, on a yes-or-no basis as to whether or not an inside organization was wanted.

The CHAIRMAN. Did you have that vote?

Mr. GRIMM. I will come to that in just a minute.

The CHAIRMAN. Very well.

Mr. GRIMM. The committee selected seven men to conduct this election, and using ballots, absolutely unmarked as to identification of the voters, the result was in this election held June 6, 1933, 225 for inside organization. 2 returned unmarked, 227 issued and accounted for.

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The CHAIRMAN. What was the question on the ballot?

Mr. GRIMM. As to whether they wanted some sort of a plan for an inside organization.

The CHAIRMAN. How do you account for the large number of uncast ballots?

Mr. GRIMM. This is practically all the men that were employed at this time.

The CHAIRMAN. So that the number that voted represented practically all the employees, as of that date?

Mr. GRIMM. I believe to the best of my knowledge every man was given a ballot.

After various employees representation plans had been studied, the Interlake management presented a plan to all plants, which seemed to be broader and more satisfactory.

On June 15, 1933, the same type of election was held, under the strict supervision of the employees' committee, with unmarked ballots deposited in sealed boxes. The result of this election was: 217 for the Interlake plan, 4 against the Interlake plan, 9 unmarked; 230 issued and accounted for.

The CHAIRMAN. Now, I understand that you first had a ballot on the question of whether you would have an inside organization or not, and the employees voted to have an inside organization, and the committee of the employees than negotiated with the employers and decided to select a representation plan?

Mr. GRIMM. Yes, sir.

The CHAIRMAN. That plan that best suited them, that they would follow?

Mr. GRIMM. Yes, sir.

The CHAIRMAN. And that question whether they would accept that plan or not was submitted to the employees and they voted to accept it by the vote you just stated?

Mr. GRIMM. Yes, by the sealed ballot.

The CHAIRMAN. Was there an opportunity given to the men to see the plan in the meantime?

Mr. GRIMM. Yes, sir, the plan was given to them. Everybody had a chance to read and understand it.

The original committee then met and elected a temporary chairman and a temporary committee on rules to group the employees and carry out the first election as provided for under the plan adopted.

On June 20, 1933, the nomination or primary election was held, and on June 23, 1933, the election of representatives was held. Both under the strict supervision of the employees. It had been decided by the organization committee that seven men would properly represent the entire plant, and this number was elected.

The CHAIRMAN. At that election, you were elected?

Mr. GRIMM. I was elected as a representative.

The CHAIRMAN. At that election?

Mr. GRIMM. Yes, sir.

The CHAIRMAN. How many candidates were there contesting with you?

Mr. GRIMM. How many of them in nomination?

The CHAIRMAN. How many were nominated at the primary and who were contesting with you?

Mr. GRIMM. There were 21.

The CHAIRMAN. How many were elected?

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Mr. GRIMM. There were seven elected.

The CHAIRMAN. And so you were in competition with 20 others?

Mr. GRIMM. Yes, sir.

The CHAIRMAN. For the election?

Mr. GRIMM. Yes, sir.

The CHAIRMAN. Yes; very well.

Mr. GRIMM. In all four elections held the ballots were unmarked for identification of any kind, and the supervision or management agents did not talk to or advise the employees, and was held under the strict supervision of the employees.

As a result of the election of representatives, the seven properly elected employees met and elected a general chairman, secretary, and a committee on rules.

Several changes have been instituted by the employees. An association under the plan adopted was formed, and the management asked to sign an agreement to operate under it. Application blanks, cards, etc., were secured, and membership in the association of new employees was solicited.

From the time of the institution of this plan of employee representation until March 31, 1934, 163 cases have been handled by the association, requiring an adjustment of one kind or another. One hundred and forty-eight of those cases have been declared in favor of the employees; 4 declared against them, 3 withdrawn, and 8 now pending.

The cost to the company averages $140 per month, and this will probably drop as the outstanding causes for adjustment are cleaned up.

The CHAIRMAN. Does the company pay the cost?

Mr. GRIMM. The company, under this agreement, pays all the necessary expense.

The CHAIRMAN. And on what basis is the cost assessed against the company?

Mr. GRIMM. Well, that question I cannot answer.

The CHAIRMAN. So much per man—so much per employee?

Mr. GRIMM. I assume it is so much per employee per month. I cannot answer that definitely.

The CHAIRMAN. Your committee has the handling of this money?

Mr. GRIMM. No, sir; this is the expense that the company agreed to bear according to this contract. They bear all the expenses, all the necessary expenses.

The CHAIRMAN. Who pays for the ballots that are used in the election?

Mr. GRIMM. All that the company pays for.

The CHAIRMAN. Do the bills go to them direct rather than to your committee?

Mr. GRIMM. They go to the company. That is, we make out a bill, we buy our own stuff and send the bill to the company.

The CHAIRMAN. And it has cost the company to date how much, do you think?

Mr. GRIMM. $140 per month. That is for the one plant in Toledo, Ohio.

The foregoing is a true statement of the manner in which our plan was formed and the results. There has been absolutely no attempt on the part of the management to coerce or in any way interfere with our association. I firmly believe that this is the best and most

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workable form of employees representation. I represent 450 employees, and this is their unanimous belief, and we feel that everything possible should be done to protect this type of organization.

I am, therefore, here to voice a protest against legislation like the labor disputes act, which would certainly destroy our type of organization.

We have never had labor trouble at Toledo, even in the steel strike of 1919. And we are obeying the law under the N.R.A. If the Wagner bill becomes law it will cause a fight between the American Federation of Labor and the men who want our type of organization, for the satisfied men who are well represented under the sort of plan we use, will never stand for the tyranny that the American Federation of Labor will try to force on them. I cannot see how this bill can help national recovery, and if it is not helpful it must be harmful. And it will certainly be harmful to the iron and steel industry on which we are depending for work and for our living.

Senator DAVIS. Would you state for the record that products the Interstate Iron Corporation make?

Mr. GRIMM. They make pig iron, coke, and byproducts from coke.

Senator DAVIS. Is it a subsidiary of any other concern? Is it a part of any of the other steel corporations?

Mr. GRIMM. Not of the steel corporations I do not believe.

Senator DAVIS. Who are the principal owners of it?

Mr. GRIMM. It is a branch of the Interlake Iron Corporation.

Senator DAVIS. Where are the general headquarters; in Toledo?

Mr. GRIMM. In Chicago.

The CHAIRMAN. Is Mr. Miller present?

Mr. MILLER. Yes, Mr. Chairman.

The CHAIRMAN. Do you desire to make the concluding argument, Mr. Miller, on behalf of the steel industry and its employees?

Mr. MILLER. If I am permitted to.

The CHAIRMAN. There is only one more group here, that is the group representing the United States Steel Corporation, before I will call on you. I will call the names who are here today. I understand Mr. Erickson will speak for this group. Together with Mr. Erickson, there appear here today Mr. David L. Williams, chairman, employees' representatives, Laughlin Works, American Sheet & Tin Plate Co.; Raymond O'Donnell, secretary, employees' representatives, Laughlin Works, American Sheet & Tin Plate Co.; F. L. Toy, Homestead Works, Carnegie Steel Co.; John P. Shields, Homestead Works, Carnegie Steel Co.; R. L. Leffler, Duquesne Works, Carnegie Steel Co.; Robert Scott, Vandergrift Works, American Sheet & Tin Plate Co.; William B. Hadden, chairman employees' representatives, Vandergrift Works, American Sheet & Tin Plate Co.; J. B. Patrick, Oliver Iron Mining Co.; G. E. Kirmode, Oliver Iron Mining Co.; W. S. McNabb, Illinois Steel Co.; William Hopson, Illinois Steel Co.; H. Mallinson, Illinois Steel Co.; Tom Foggett, Illinois Steel Co.; J. L. Vance, Tennessee Coal & Iron & R.R. Co.; J. C. Harper, Tennessee Coal, Iron & R.R. Co.; Patrick Boyle, chairman, employees' representatives, Lorain Steel Co.; William Strehler, secretary, employees' representatives, Lorain Steel Co.

Charles Erickson, are you to be the spokesman?

Mr. ERICKSON. I speak for Duquesne.

The CHAIRMAN. Who is Mr. Gillespie?

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Mr. GILLESPIE. I am from the Tennessee Coal, Iron & Railroad Co.
The CHAIRMAN. Would it be sufficient to hear you two?
Mr. ERICKSON. Yes.
Mr. GILLESPIE. Yes.
The CHAIRMAN. If any of the rest of you have any statement to make, they can be inserted in the record without taking up the time of the committee, and they will be read by the full membership of the committee.
Some of you are managers of the branch plants of the United States Steel Corporation, I understand?
Mr. LEFFLER. Yes, sir.
The CHAIRMAN. Are the managers organized as well as the employees?
Mr. LEFFLER. No, sir.
The CHAIRMAN. You come in here in your individual capacity as the manager of some plant to protest?
Mr. LEFFLER. No; at the invitation of our chairman.
The CHAIRMAN. Who is your chairman?
Mr. LEFFLER. Mr. Erickson.
The CHAIRMAN. Mr. Erickson invited some of the managers to me?
Mr. LEFFLER. Manager's representatives. We are the go-between between the employees' representatives and the management.
The CHAIRMAN. What is your employment?
Mr. LEFFLER. I am superintendent of the blooming mills.
The CHAIRMAN. You do not belong to the employees' association?
Mr. LEFFLER. No, sir; I do not. I am not eligible.
The CHAIRMAN. But you came at the request of the chairman of the delegation?
Mr. LEFFLER. Yes, sir.
The CHAIRMAN. You all may be seated, except Mr. Erickson.

STATEMENT OF CHARLES ERICKSON, REPRESENTATIVE OF EMPLOYEES OF THE UNITED STATES STEEL CORPORATION

The CHAIRMAN. Your full name is Charles Erickson?
Mr. ERICKSON. Yes, sir.
The CHAIRMAN. Where do you reside?
Mr. ERICKSON. Duquesne, Pa.
The CHAIRMAN. You are employed in what plant?
Mr. ERICKSON. Carnegie Steel Co. at Duquesne.
The CHAIRMAN. What is your employment?
Mr. ERICKSON. First helper in the open-hearth department.
The CHAIRMAN. What is your position in the employees' organization?
Mr. ERICKSON. Chairman of the whole board.
The CHAIRMAN. Chairman of the whole group?
Mr. ERICKSON. Yes, sir.
The CHAIRMAN. Is that the group that are employed in your plant or employed in all the plants that I have enumerated?
Mr. ERICKSON. Just those employed in the Duquesne Works.
The CHAIRMAN. How many employees in that plant?
Mr. ERICKSON. I would say in the neighborhood of 4,000.

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The CHAIRMAN. And you were elected a representative of the employees in some subdivision of those works?

Mr. ERICKSON. Yes, sir.

The CHAIRMAN. What division?

Mr. ERICKSON. The open-hearth department.

The CHAIRMAN. When were you elected representative?

Mr. ERICKSON. In June.

The CHAIRMAN. When were you made general chairman?

Mr. ERICKSON. Immediately following.

The CHAIRMAN. How are these representatives of the other employees, the employees in the other plants that are subsidiary organizations of the United States Steel Co. in union with you and the representatives in your plant?

Mr. ERICKSON. No; we have our own individual organization in each plant.

The CHAIRMAN. So that some of these men you never met until they came here?

Mr. ERICKSON. No, sir.

The CHAIRMAN. They are carrying on the same relative activities in their respective plants that you are carrying on in the plant in the plant in the Duquesne Works?

Mr. ERICKSON. Yes, sir.

The CHAIRMAN. You may proceed with any statement you wish to make to the committee.

Mr. ERICKSON. Mr. Chairman and Mr. Davis, my name is Charles Erickson, employed as first helper in the open-hearth department of the Duquesne Works of the Carnegie Steel Co., Duquesne, Pa. I have been in the employ of the Carnegie Steel Co. for 31 years. In June 1933 I was elected an employee representative and shortly thereafter was elected chairman of the representatives.

Employee representatives were elected by secret ballot without interference, restraint, or being influenced by the company. All eligible workmen were entitled to vote.

The plan of employee representation has been very successful at Duquesne and has been responsible for better and closer cooperation between the employees and the company. Working conditions have improved, a number of wage adjustments arranged, and safety, sanitation, and welfare problems satisfactorily agreed upon.

These improvements in working conditions and satisfactory settlements of many problems are brought about through direct contact with the management, and with the least possible trouble to all concerned. To the majority of the employees and their employer, the fast-working, constructive, well-balanced machinery of employee representation is much more attractive than outside representation. It brings the management and employees into direct contact, with the result that each has a better understanding of the other's problems. It is ready at an instant's notice to clear up minor troubles. When sincerely planned it provides employees with true collective bargaining. Employee representation at Duquesne has been free from racketeering and petty politics, a condition too often found in outside representation.

We at Duquesne feel that we can carry on satisfactorily, and to our advantage, with the present plan of employee representation. We pay no dues, and, this in itself, is quite an important item under

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present low rates of operations. We are not bound by union "red tape" and rules. We are not compelled to stop work in the event some nearby plant develops internal troubles over which we have no control or direct interest.

Our men are promoted on merit. We believe that the outside union protects the industrial slacker and has a tendency to prevent the industrious and ambitious workman from procuring his just reward.

Our disagreements and misunderstandings have been settled quickly and fairly, by men who are actually on the job and familiar with local operating conditions. We have no walking delegates to interfere in problems about which they know little, if anything at all.

I do not believe that the friendly spirit of cooperation now existing between the company and its employees can be duplicated, or even approached, by any plan of complete unionism, as proposed by the Wagner bill. I cannot see wherein the employee will be benefited by being dictated to by a lot of union officials whose sole object seems to be collect dues and stir up trouble.

I firmly believe that harmony and well-being demand that the employer and employee be permitted to frankly discuss and arbitrate the form of works organization that they should set up. Each group should have, and exercise, the right to properly influence the other by reasonable argument, but not by threat or coercion. Fairness and true Americanism demand that both the employer and the men should have equal right to influence employees. This right is denied the employer but granted to the union under the Wagner bill.

Concluding, I am opposed to the Wagner bill because it subjects me to dictation as to what organization I must belong to. It necessarily means increased outlay of money on my part, and on the part of all other employees, to support and maintain an organization which is given us whether we like it or not. We have no freedom of choice as to the men chosen to represent us before the management. The men normally at the heads of local labor organizations are not, and cannot be, as familiar with our working conditions as are the representatives now chosen by us. It necessarily follows that in negotiations with the management, under the Wagner bill, delays, misunderstandings, and ultimately strikes will result. We will get quicker action and more favorable results when our own representatives deal directly with the management, and both sides get together on a common ground with which they are familiar through daily contact and unity of interest.

The men in our mills want work. They do not want their opportunity to work disturbed by any labor union interferences or strike.

Finally it is my opinion that the type of men now directing the two outside labor unions active in Duquesne are absolutely unfitted by education, experience, or capability to properly present employee problems before either the management or any other body.

Senator DAVIS. What do you mean by "outside union"?

Mr. ERICKSON. We have one there, the Amalgamated, and another one, that is, I think, called The Industrial Union of some kind, and in the terms of the workingmen, it is radical.

Senator DAVIS. Those that believe in the Russian theory of Government?

Mr. ERICKSON. Those with communistic ideas.

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The CHAIRMAN. Would you mind telling us what your wages are?

Mr. ERICKSON. I would say they run between $8 and $9. It varies.

The CHAIRMAN. Per day?

Mr. ERICKSON. Yes.

Senator DAVIS. How many tons do you produce in a day?

Mr. ERICKSON. Well, we are working on 100-ton furnaces which would tap probably once every 11 hours or 12 hours.

Senator DAVIS. How many furnaces have you charge of?

Mr. ERICKSON. One.

STATEMENT OF JOHN P. SHIELDS, EMPLOYEE, HOMESTEAD PLANT, CARNEGIE STEEL CO.

Mr. SHIELDS. Mr. Chairman and gentlemen of the committee: It is a great honor to appear here today and it is my sincerest wish that something I say here will be of aid to you in the solution of the problems you are considering.

I am John P. Shields, at the present time, and for the last 11 years, employed at the Homestead plant of the Carnegie Steel Co. As I am a timetaker, my position has kept me in close touch with the sentiment of the men in practically all departments over a period of years. I believe and I hope I am right when I say I know just what the employees in that particular plant think and desire.

Any discontent that exists at the present time at Homestead Steel Works may be attributed to the lack of operation rather than to any other condition. A steel worker is not a transient employee at Homestead. He is ordinarily a local man, buying his home, raising, and educating his family in the vicinity of the steel works, fully intending to remain in that district and work in that particular plant until he is retired on a pension, justly deserved by his years of faithful service.

Any place men work there are grievances of a minor nature and issues of great importance. Grievances are easily straightened out, but the issues require thought and study on the part of all concerned, and for this reason our President, knowing that employers practically dominated settlements on issues involving employer and employee, insisted that the employees be represented by representatives of their own choosing for the purpose of collective bargaining.

In Homestead Steel Works we have collective bargaining under the employees' representative plan. Men were nominated and elected by secret ballot, without interference from any source; in fact, close association with the management meant the defeat of many good candidates. This choice of representatives was honest and highly regular.

Our grievances have been remedied through the use of this plan and we have developed men capable of presenting and defending our views on issues and policies. We have in some issues won our points, in others we lost, and in some cases compromised, but in all instances and at all times we have bargained collectively, peacefully, and with no reprisal.

This is the manner in which we have functioned. We will develop men of ability to continue this work. Naturally we prefer men

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familiar with the situation, whose very familiarity will insure us representation and save us from misrepresentation.

At no time do we desire to develop power into control with the resultant evils. We insist on the right to settle our own problems and issues, at all times believing in and practicing collective bargaining. We believe in free choice as to form and, having made that choice, request the opportunity to prove the wisdom of that choice. We are oppsoed to interference that would lead from "collective bargaining" to "collective demanding" and persecution. We prefer industrial peace rather than industrial war. I will appreciate any question that will clarify any statement made by me.

The CHAIRMAN. Mr. Gillespie.

STATEMENT OF BEN B. GILLESPIE, EMPLOYEE, TENNESSEE COAL, IRON & RAILROAD CO.

The CHAIRMAN. What is your full name?

Mr. GILLESPIE. Ben B. Gillespie.

The CHAIRMAN. Where do you reside?

Mr. GILLESPIE. 2515 Avenue I, Ensley, Ala.

The CHAIRMAN. By whom are you employed?

Mr. GILLESPIE. The Tennessee Coal, Iron & Railroad Co.

The CHAIRMAN. How many employees are there in this company?

Mr. GILLESPIE. Approximately 15,000.

The CHAIRMAN. Have you an organization known as the "Employees' Representation Plan?"

Mr. GILLESPIE. We have.

The CHAIRMAN. How long has it been in existence?

Mr. GILLESPIE. Since June 1933.

The CHAIRMAN. What is your particular position with this company?

Mr. GILLESPIE. Roller in the blooming mill.

The CHAIRMAN. Are you one of the representatives of the employees?

Mr. GILLESPIE. I am.

The CHAIRMAN. And were elected in the election ot last June?

Mr. GILLESPIE. I was.

The CHAIRMAN. How many representatives have you in the General Council of Employees?

Mr. GILLESPIE. In the Ensley works where I am working we have 11. All told over the district, we have 124.

The CHAIRMAN. Do you sit jointly or sit separately to discuss problems?

Mr. GILLESPIE. We have a few meetings jointly with the manufacturing division, the manufacturing plant.

The CHAIRMAN. You may proceed.

Senator DAVIS. How many workers are there employed in the Ensley plant?

Mr. GILLESPIE. I believe the last figures we have on that, or that I have, is 2,164.

The CHAIRMAN. You may proceed.

Mr. GILLESPIE. My name is Ben B. Gillespie. I am an employee of the Tennessee Coal, Iron & Railroad Co., located at Birmingham, Ala. My occupation is that of roller on the blooming mill of the

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above-mentioned works. I have been in the service of the Tennessee Coal, Iron & Railroad Co. approximately 26 years.

My first occupation was that of a common laborer, on which job I remained about 1 month, when I was transferred to that of drill press operator in the finishing end of the rail mill, where I remained about 3 years. I was then transferred to the blooming mill as a wrencher, in which position I remained for about 2 years, when I was made blooming mill shear operator, in which position I remained for approximately 7 years, when I was promoted to the position of blooming mill manipulator in which position I remained for 10 years, when I was promoted to that of roller which position I still hold.

So much for my service record.

As to my status as an employee representative, I have this to say. In June 1933, the Tennessee Coal, Iron & Railroad Co. submitted to their employees a plan of employee representation and in an election conducted by the employees on June 23, 1933, I was elected a representative of the employees in the mills department of the Ensley works. This election was managed and controlled by the rank and file employees themselves, no one in a supervisory capacity having had anything whatsoever to do with it. In other words, the election was absolutely free from any influence, coercion, or intimidation on the part of the management. Following this election the several committees provided for under the plan were formed and began immediately to function, and I can truthfully say that excellent progress has and is being made.

On April 2, 1934, I was selected by my fellow representatives to go to Washington, and appear before the Senate Committee on Education and Labor to protest the passage of this bill on the following grounds:

First. The bill contemplates the outlawing of a plan of representation that has proven both profitable and satisfactory to my fellow employees.

Second. It is eminently unfair in that it penalizes the employer for so-called "unfair labor practices," but provides no penalty for unfair labor practices on the part of labor or labor organizations.

The CHAIRMAN. Are any colored people employed by your company?

Mr. GILLESPIE. Yes, sir.

The CHAIRMAN. How many?

Mr. GILLESPIE. In the department that I am employed in, there is almost 50 percent.

The CHAIRMAN. Do they enjoy the privilege of voting for representatives?

Mr. GILLESPIE. Yes, sir.

The CHAIRMAN. Are there any colored employees elected representatives?

Mr. GILLESPIE. Yes, sir.

The CHAIRMAN. There are some colored men serving on the board with you as representatives?

Mr. GILLESPIE. Not in the department I am in, but in other parts of the mill there are. Throughout the depression, our company has distributed relief to the employees in the form of food; clothing; medical, hospital, and dental service; water; lights; fuel; and house

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rent. The outlay for the above-mentioned relief, we have been reliably informed, amounts to nearly 10 million dollars.

Third. In addition to the above, our company provided the land free of charge.

Gentlemen, what I want to show there is that our district had been hit harder than any other district in the United States, but our company has been right on the job.

Senator DAVIS. Do you have the cooperative store in Ensley now?

Mr. GILLESPIE. The company commissary?

Senator DAVIS. Yes.

Mr. GILLESPIE. Yes, sir.

Senator DAVIS. How does that operate?

Mr. GILLESPIE. Well, during this depression they operated wonderfully. They fed us, that is what they did. Thousands of us lived out of it.

Senator DAVIS. Was it given to you in the form of relief or just extended credit?

Mr. GILLESPIE. Extended credit. And also they knew full well that there was a lot they never would collect. There was hundreds and thousands of dollars that they will never be able to collect.

Senator DAVIS. Is one who trades at the commissary given preference in his work over those who patronize the cooperative store?

Mr. GILLESPIE. I do not think so, not to my knowledge.

Third. In addition to the above, our company provided the land free of charge for truck gardening to all employees who desired it. In many cases free seed was furnished and in all cases the company either plowed the ground or furnished stock and equipment for that purpose, also without charge.

The above voluntary acts on the part of the company have played their part in bringing about this friendly relationship of which we speak, and for which we are both grateful and proud, and we would very much regret to have anything occur that would disturb or in any way change them.

I thank you.

The CHAIRMAN. The sentiments you have expressed are also the sentiments of the other employees?

Mr. GILLESPIE. Yes.

The CHAIRMAN. The representatives at your plant?

Mr. GILLESPIE. I certainly believe they are; yes.

Senator DAVIS. How much does the roller make now?

Mr. GILLESPIE. Well now, of course, we are operating on about, I would say a 60 percent capacity, and only two shifts, where we used to operate three 8-hour shifts. We are only operating, in my department, two 8-hour shifts. I have been averaging in the last 2 or 3 months approximately $10 per day.

Senator DAVIS. How many tons do you produce in a day?

Mr. GILLESPIE. We have been averaging about close to 700 tons in the blooming mill.

Senator DAVIS. Per month?

Mr. GILLESPIE. Per day. You see, the mill I am in is where we handle the ingot, the steel in ingot form, in the blooming mill.

Senator DAVIS. That is all.

The CHAIRMAN. Mr. Miller.

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STATEMENT OF HON. NATHAN L. MILLER, GENERAL COUNSEL, UNITED STATES STEEL CORPORATION, NEW YORK CITY

The CHAIRMAN. You are Nathan L. Miller?

Mr. MILLER. Yes, sir.

The CHAIRMAN. General counsel for the United States Steel Corporation?

Mr. MILLER. Yes, sir.

The CHAIRMAN. A resident of New York City?

Mr. MILLER. Yes, sir.

The CHAIRMAN. We will be pleased to have your views concerning this legislation.

Senator DAVIS. Governor, do you represent both sides in this matter, that is, the worker and the corporation?

Mr. MILLER. I cannot say, Senator, that I really appear here as attorney representing anybody. I am the general counsel of the United States Steel Corporation. I was requested to come here by a committee of the Iron and Steel Institute. I am not the attorney of that committee or of the Institute. I shall express my own views, not undertaking to bind anyone.

It occurs to me, as I sit here, that it is somewhat of an anticlimax after what you have heard, for me to conclude this discussion, because, as compared to the men to whom you have listened, I think probably I would rank with the authors of this bill, who have apparently generalized from an extremely limited experience and an extremely limited knowledge of the industrial conditions that prevail in this country.

Now, I am not here in any spirit of antagonism to organized labor. I have the greatest respect for the distinguished labor leaders with whom I have come in contact. I am not here to criticize the work of the National Labor Board under the chairmanship of the distinguished author of this bill, whom I have known for a long time. I am sorry he is not here, but he knows my regard both for him personally and for his distinguished public service.

And I am not here, gentlemen, to discuss the question of your power, or the power of Congress, but I should not like to have anybody infer, from my silence on that subject, that I have any belief that this measure, if passed, would be a valid enactment.

I wish to make a preliminary observation. May I inquire, Mr. Chairman, how long you will sit?

The CHAIRMAN. We will leave that to your own discretion and judgment, having in mind that we have many other duties to perform.

Mr. MILLER. I will try to be very brief.

The CHAIRMAN. We know you will be considerate of us, but we want to give you full time to present your views to us.

Mr. MILLER. I thank you.

My first proposition, gentlemen, is that this measure, or anything comparable to it, is neither expedient nor in the public interest at the present time. The N.R.A. has been in practical operation scarcely more than 6 months. Some codes have been in effect a little longer, many for a shorter period. The next Congress will have to determine what legislation, either of a permanent or a temporary character to enact, as a result, not only of the experience we have had up to date, but of the accumulated experience which we shall then have had from

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this period until the Congress shall be called upon to determine what to do.

The most earnest advocate certainly will not claim that we are beyond the experimental stage. The President has but recently, in a very illuminating manner, interpreted and clarified section 7–A. In the statement which he recently made, he said that the new course had been charted for industrial relations—I am not quoting literally—upon the foundation of cooperation, for the improvement of human relations in industry. That, gentlemen, is the sound basis upon which to secure industrial peace. It is the only basis upon which to secure industrial peace. As I read the proposed measure, which I have in my hand, that is based on an exactly contrary principle to that enunciated by the President.

Senator DAVIS. Mr. Miller, I think Senator Wagner and one or two of those who have been administering the national labor, the affairs of the National Labor Board, have said that this bill is necessary, from their own experience, to administer the Recovery Act.

The CHAIRMAN. Section 7 (a) of the Recovery Act.

Senator DAVIS. Yes; section 7 (a) of the Recovery Act.

Mr. MILLER. And I suggest, Senator, that the men who have been spending their lives in daily contact with this problem have had a great deal more experience and understand a great deal more about it than the gentlemen who have been administering section 7 (a) can possibly have gained in the last 6 months. I suggest that we ought to go along this road that the President has charted, through voluntary action, at least until it is determined that the present law is not efficacious, at least until we have accumulated sufficient experience adequately to judge what permanent legislation to superimpose upon the experience that we have had.

Senator DAVIS. Mr. Miller, you are very wise and an eminent attorney. What do you think will happen to the Recovery Act itself when the time has expired for the licensing clause of the act?

Mr. MILLER. Well, of course, the licensing clause, I assume, was never intended to be anything except a measure to be held in terrorism. It has never been exercised. I doubt that anybody has ever seriously contemplated exercising it, and I do not think it will make a particle of difference whether the Congress should extend it when it expires, as it surely will, or not.

Senator DAVIS. Do you think the banner of the Blue Eagle hanging at the mast of a factory will have just as much force as the licensing section itself?

Mr. MILLER. I do not think, sir, that the licensing provision has had the slightest influence in causing employers to come in under the N.R.A. That is what it was intended for, I think, but the employers of this country as a whole have gone into it, not bait that was held out in the law. I might say, for the privilege of entering into fair trade arrangements, although that was a privilege, because it did relax the antitrust laws, in a very limited extent, however. I undertake to say that the great mass of them went into it whole-heartedly as a matter of patriotism, to cooperate with the efforts which the President was making, and I do not think the licensing feature has ever had a particle of influence, or will have a particle of influence, whether it is retained or whether it is allowed to die a natural death.

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Now, whether you have got any doubt at all about your powers, nobody can doubt that this measure proposes a very, very, great extension of Federal power into the field of industrial relations, which involves problems of the very greatest difficulty, complexity, and delicacy. You cannot make such an extension of power without its repercussions.

I think no one can doubt that this measure has within it, the seeds of the serious industrial conflicts. It offers encouragement and incitement to industrial conflict. But wholly apart from that, from the mere unsettling, disturbing and disquieting effect that so vast an extension of Federal power would have, I say to you gentlemen, that it is my deliberate opinion that already its mere proposal has had a decided check upon the upturn of business, and that the enactment of this measure would undoubtedly set a very decided brake upon the forces that are now unquestionably making for recovery.

Now, I am frank to say that what I have just said might not be a valid objection to this measure, if it could be demonstrated that this or some similar measure was necessary, either to secure or to safeguard the just rights of the workers, which include, as I frankly conceive, the right of collective bargaining.

Therefore, I wish to notice but briefly some of the claims that are put forward in support of this measure, which I am certain are based on an inadequate experience and knowledge of this problem.

Now, it is asserted, as I understand it, that representatives, or that employees are at a disadvantage in dealing with management because management can discharge them. Now, that is undoubtedly true in the case of the individual employee, speaking for himself, except in those smaller enterprises where there is a close personal relation between the employee and the heads of the company, but in a large organization of the numbers that the last speaker referred to, the individual worker dealing for himself is at a disadvantage, because he can be fired, and there is always somebody ready to take his job, and that is the sound reason for collective bargaining.

That is why I admit the soundness of the principle of collective bargaining, but that reason, gentlemen, entirely disappears the moment the worker or the employee is speaking for numbers, as the representative of his fellows. I venture to say, although I believe statements to the contrary have been made, that no management, no responsible management, in this day would dare to undertake to exercise coercion or intimidation over representatives so acting, or would dare to discharge them, because they press the claims of their fellows. You have seen here today types of these men. Do you think they can be intimidated?

Now, it is also plain, as I understand it, that employers refuse to recognize this principle of collective bargaining. That is contrary to the statement made by the President. That is contrary to the great hope that he held out. That is contrary, gentlemen, to general experience within the knowledge of everybody. The employers as a whole have recognized that principle and there have been a few recalcitrants about whom I have no knowledge, or if they have been exceptions, it certainly is possible to deal with those exceptions without undertaking to regiment industry as a whole.

Now, what is really meant, I apprehend, by those who assert that there is refusal to recognize collective bargaining, is that a number

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of employers do refuse to make contracts without outside labor organizations governing their relations with their employees. I say that is what is meant, because this bill seeks to compel that very thing by defining "representative" as including labor organizations and by empowering this Board that is to be created with the extraordinary power of determining in such manner as it may deem appropriate who are entitled to speak as the representatives of the men.

Now, gentlemen, there has been, Senator Davis knows it well, enormous progress in the last 25 years in the improvement of industrial relations and in the evolution of this problem, but I tell you that the men who were dealing with it daily would probably differ as to what is the best plan or system. The best one has not yet been evolved.

It may come about, in the course of time, that the so-called "national and international labor organizations" may earn and secure the right to speak for all labor, but, gentlemen, before that time arrives, certain things will have to happen. In the first place, by some appropriate means responsibility will have to assured. And yet the Congress, only last year, in the injunction law that was passed, expressly provided that neither the officials of labor organizations, nor the organizations themselves should be responsible for the acts of officials, officers, or agents, unless it could be plainly proved that they had participated in or had ratified certain acts.

And another thing will have to be demonstrated before these organizations now representing, according to the outside claim not more than 10 percent of the workers, can be entrusted with this power. They will have to demonstrate the capacity, they will have to demonstrate the right disposition to be trusted with such a power, and I will not take your time to discuss the matters of record which demonstrate that at this hour they are far from demonstrating either responsibility, capacity, or the right disposition to be clothed with any such power. That is what really what is meant when it is said that employers refused to submit their relations with their employees to outside organizations. This bill would compel it.

Now, it is also said that the purpose of this bill is to free the American workman. How anybody, after listening to these men who have appeared before you today can seriously make such a suggestion is beyond my power of comprehension. Why, the men who say that the American worker today is not free are harking back to a past age. The very legal terminology, as your distinguished chairman knows, that we lawyers use of master and servant is actually now obsolete. Servants? Slaves? Serfs? Where do you find them? In the imagination of people who are serving to gain particular ends. They do not exist in fact.

But if that be the purpose of this measure, I say to you that its plain provisions defeat that purpose. Its provisions are aimed wholly against the employer. Now, if there are cases of intimidation or coercion or discrimination—and I do not say that there are not, my experience does not permit me to say that there are not, the Labor Board may have found such cases—the law is now adequate to deal with them. It provides not only the prohibition, but it provides a remedy, and I suggest until that remedy has been tested—and I have yet to hear of a single case in which he has been attempted to be tested—until it has been, it is not necessary to pass additional

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legislation to prevent what I say to you, if there wasn't any legislation, would have within itself the means of its own correction, for any employer today who undertakes to exercise coercion or intimidation upon the type of men that have appeared before you would soon find himself in a most difficult situation.

The CHAIRMAN. You have in mind the enforcement provisions of the N.R.A.?

Mr. MILLER. The general provisions which are applicable to all of the sections for violating it, it is quite adequate.

The CHAIRMAN. The contention is made here by Senator Wagner and other proponents of this legislation that while section 7–A guarantees to the employees the right to engage in collective bargaining with their employers, there is no provision in that section, or in the N.R.A. which compels an employer to enter into negotiations with his employees who are organized for the purpose of collective bargaining.

Mr. MILLER. Well, that is contrary to the interpretation which the President has but recently put upon the statute. It is contrary to the interpretation which I put upon it. It is contrary to the interpretation which all employers that I have had any contact with put upon it. I say to you gentlemen—and I have a good deal of opportunity to know—that the employers generally are prepared to accept and to conform with the President's interpretation recently made of section 7–A.

The CHAIRMAN. You suggest, in any event, that the matter be tried, if any such cases have arisen as they claim have arisen?

Mr. MILLER. Yes.

The CHAIRMAN. And that the enforcement provisions of the N.R.A. be resorted to.

Mr. MILLER. That is my suggestion. Now, I say that this restraint, coercion, intimidation from employers on the whole is a myth. On the whole it cannot work. I do not say that men have not been discharged for belonging to labor unions. It may be that some employers were short-sighted enought to do that. That is plainly prohibited by the statute. There cannot be any doubt about that. That is within the very words of section 7–A, discrimination on account of membership in an organization The law certainly is adequate to deal with that. But, gentlemen, there is not a mythical menace and source of coercion and intimidation, but it is on the other side. You know it and everybody knows it. You have had illustrations here today of the kind of coercion and intimidation that is exercised. The man who described to you what happened when he wanted to go to work at the Weirton Steel Mill.

Now I read that it has been argued here that it is not necessary to make this provision apply to the workers, because the courts of equity, even since the injunction law that was passed last winter, have full power to prevent such unlawful acts. Well, it doubtless is true that where you had a case such as was described by the witness, where numbers were participating, where acts of violence were threatened, you would undoubtedly have the evidence upon which to apply to the court for an injunction. But the kind of intimidation and coercion that I am speaking about is the insidious kind that one witness described, where they go to the homes, where a man passing along the street at night has something hit him on the head and he does

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not know from what quarter the blow comes. It is the kind of intimidation that everyone knows is practiced and that there is no possible relief against by applying to any court for injunction. What this bill does is to class legitimate acts of employers, as I am going to say in a moment, as unlawful and unfair practices, without one word in restraining the other kind of acts.

Now I say to you, gentlemen, that when these representatives meet around the table with the employee today, the fear is not on the side of the representative, the fear, if any, in the negotiations, is on the side of the employer, or the management. The fear of creating a condition of dissatisfaction, of giving just cause for complaint, the fear of being accused of not dealing fairly and justly with his men.

The fact is, gentlemen, that the American working man is a very reasonable being. All he wants is a square deal. When you satisfy him that he is getting a square deal he will be content. If he thinks he is not he will not be content and he will undertake to secure redress. The concern of the management today is to leave no thought in the minds of employees that they are not securing a square deal, and more.

Now I might just for a moment specifically direct your attention to the provisions of this bill which I think are the heart of it. I have referred to the provision that includes labor organizations among representatives. I now refer to subdivisions 3 and 4 of section 5. There isn't such a thing as a dominating company union. One could not exist for any length of time. Do you think you could kid these men that are here today? Do you think that you could make these workers content if their representatives were tools of the management? Don't you think they would find it out? Any company that undertakes to dominate is bound to meet with defeat, and worse than that.

But this is what is evidently meant by dominated company unions, the things that are prohibited. I say that there isn't a single thing prohibited in subdivisions 3 and 4 except possibly the matter of influence on elections. There should not be any of that. Isn't it perfectly right and proper and necessary to establish proper relations? Isn't the employer interested in the plan under which and the method by which the members with whom he is going to deal are to be chosen?

I insist that he has the right to initiate such plans, and he has the right, by fair discussion with his employees, to point out the advantages to them if such a plan were adopted. To that extent he has a perfect right to participate in and influence the adoption of the plan, the rules, the constitution, and the bylaws.

Of course, when a plan is formulated and submitted to the workers, he should have no hand then, by any kind of influence, in determining, in influencing the men's vote, and when a plan has been adopted the management should have no hand or influence either in the election of representatives.

But, gentlemen, would you prevent what the last witness stated had been done by the Tennessee Coal & Iron Co. during this depression? That would be barred by this law. I say that the employer has the fullest right, the management—and mind you, when you talk of management in these corporations, the managements are hired men just like the workers, they are on the same plane, one is not any better than the other, and the workers know it.

I say you should not divorce bargaining from these other activities which go along hand in hand with it and which are necessary to estab-

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lish good relations, necessary to look after the human side of the problem; necessary to provide relief beyond the various things that we put now under the head of social service. They are all proper things to be worked out in cooperation between the management and the employees.

The only thing that you could substitute for these provisions is the provisions of the present law. That is wholly unnecessary. Now this proposes to set up this board with its extraordinary powers—judicial, executive, powers of mediation and conciliation. I say, gentlemen, that no board, for such purposes, constituted as this board is proposed to be, will ever properly function. You might have representatives of particular interests on a board merely for mediation or conciliation, but when you clothe the board with any such powers as these the individuals composing it should be selected to represent one interest and one alone, and that is the public interest. Not for one interest or another but solely for the public interest.

Now I am going to pass, without further comment—I am going to pass up section 205 because I am sure its remarkable provisions have already been pointed out to you, and the possibilities of abuse that could go with it. What I have to say about it is that it does not even approximate due process, and if you are going to create such a board with such extraordinary powers, the procedure ought to be sufficiently and carefully defined at least to approximate due process.

I do not believe that Senator Wagner, with his judicial experience, ever drafted section 205; at least I will not believe it unless he personally assures me that he did. This judicial review that is provided in this bill is nothing more than a means of enforcing the decrees of this board. As a review it is a farce, and if you were going to create a new board with such extraordinary power and go into this new field I suggest that at least there should be the broadest judicial review, both upon the facts and the law, with the power to determine not only the sufficiency of the evidence but the quality of the evidence.

I have but one more obligation to make, gentlemen, and that is that there is no politically constituted body that now or ever will be, until human nature changes, suited to exercise the extraordinary powers conferred by section 207, and it is so patent that at this hour I am not going to take time to elaborate that proposition.

Now I appreciate the courtesy that you have extended to me, Mr. Chairman. I want to submit to you for your serious consideration the question whether, at this juncture, any legislation so drafted and so extreme as this, while we are engaged in this great experiment, what effect is in the public interest.

The CHAIRMAN. We thank you, Governor.

We will adjourn until 10 o'clock tomorrow.

(Thereupon, at 4:45 p.m., an adjournment was taken until 10 a.m. of the following day, Saturday, Apr. 7, 1934.)

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TO CREATE A NATIONAL LABOR BOARD

SATURDAY, APRIL 7, 1934

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The committee met, pursuant to adjournment, at 10 a.m., in room 318, Senate Office Building, Washington, D.C., Senator David I. Walsh (chairman) presiding.

Present: Senators Walsh (chairman), Thomas, Metcalf, and Walcott.

The CHAIRMAN. The committee will come to order, please. Is Mr. Williams here?

Mr. WILLIAMS. Yes, sir.

The CHAIRMAN. Come forward, please.

STATEMENT OF WHITING WILLIAMS

The CHAIRMAN. Your full name?

Mr. WILLIAMS. Whiting Williams.

The CHAIRMAN. Your residence?

Mr. WILLIAMS. 2257 Tudor Drive, Cleveland, Ohio.

The CHAIRMAN. You are listed here as a labor economist.

Mr. WILLIAMS. Yes; labor specialist; I am hardly an economist.

The CHAIRMAN. Have you any other occupation or business?

Mr. WILLIAMS. Simply a writer and investigator on labor subjects.

The CHAIRMAN. Are you appearing now in your own behalf?

Mr. WILLIAMS. Yes.

The CHAIRMAN. The committee will be pleased to hear your views.

Mr. WILLIAMS. I should like first to tell of my experience, very succinctly, in getting into touch with the labor problem in America, as compared with the labor problem in Europe, and give certain observations that have come from that experience with respect to the condition of the worker in American as compared with the worker in Europe, and then give a few very general convictions with respect to the Wagner bill.

I have been following the work of studying the labor problem in this country and in Europe for the last 15 years, as the result of finding myself in charge of industrial relations in a steel plant without having had the opportunity to know just what was on the worker's mind, with the result that I went out in 1919 and worked as a laborer in steel plants, coal mines, shipyards, and railway roundhouses, and since then have worked in coal mines and steel plants in this country, in Germany, in France, and in Great Britain, and have also lived and studied amongst the workingmen of Italy, Russia, and Central America.

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In addition, I have been out among the workers during the depression summers of 1930, 1931, and 1932, in order to find out what the unemployed man in America has been having on his mind, with the result that I have come to certain general impressions and observations with respect to the situation of the workingman in this country as compared with the workingman in Europe. Having in mind that such general observations, of course, are quite open to exception, I have been writing in various magazines for the last 15 years, giving such observations as I thought might interest the committee today.

First, for instance, I have found that working conditions of the American worker are very much better than the working conditions of the workingman of France, Germany, Great Britain, Italy, or Russia.

Secondly, I have come to the belief that at least during the days of prosperity the American worker enjoyed a gasoline level of living such as was not even the dream of the workingman of those other countries; that he has possessed automobiles and telephones and things of that sort to an extent quite beyond the ordinary understanding even in this country.

I have also felt more convinced yesterday than ever before of the observation that I have been putting into print during the last 15 years, namely, that the American worker represents, as I believe, a greater combination of sobriety, education, intelligence, honesty, and fair-mindedness than the corresponding worker of any other country in the industrial world, and I am quite certain also that he has enjoyed, particularly, more opportunity to go from a fair job to a good job and from a good job to a better job than has been the case with any other worker.

The proof of that, I think, has been given here as I have listened to the testimony of executives who have generally testified to the fact that they had once been wage earners themselves, and I think one result of that has been that the percentage of workers in the national unions has been much smaller in this country than in Great Britain, for instance.

That is the result of a very hard-boiled, cold-blooded, canny decision on the part of the worker as to just how he can best advance his own interests, whether by his own individual efforts as an individual to get ahead, or whether he becomes convinced that much better results can be obtained in that particular situation by means of his joining his individual efforts to the efforts of his class in an effort to raise the whole of his class and therby gain his own betterment.

I think it is, therefore, very significant that, whereas, in Great Britain about 85 percent of the workers have felt that their best effort would have to be made as members of their class, something like only 10 percent have felt it necessary to make a class effort as compared to an individual effort in this country.

That has meant, therefore, in my opinion, as a result of these observations that I have been making, that we cannot properly say that in this country we have a working class.

That has had a great result upon the union development, in view of the fact that John Mitchell, at one time president of the American Federation of Labor, said that you cannot have a strong union movement unless you have a working class with a working-class consciousness, because if they have the chance to get out of their class, up the

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line, into the field of executive and administrative work, then you cannot have a strong development along that line.

I should like to put before the committee that impression that I get as the result of spending 3 summers among the unemployed workers in great industrial centers of this country, because I consider that the workingmen of America have given during the depression a demonstration of their courage and their initiative and their conservation that is an outstanding social, economic, and political phenomena; in addition to the courage that they have shown in taking care of themselves, in addition to the confidence that they have shown in America and in the American institutions, they have also shown a perfectly amazing and magnificent coolness to the enunciations of the whole system as made by the red-hot soap boxer preaching revolution.

In many, many cities, while I slept among the workers in the parks and in the flophouses, and so on, I came to feel, as I attended these various meetings on the street corner, that the American worker has demonstrated the enjoyment of the opportunity, the enjoyment of a gasoline level of living, by means of the way that he has indicated his confidence in the whole scheme of things in America.

Altogether, therefore, Mr. Chairman, I have the feeling that the American worker and the American employer have enjoyed a better relationship with each other than have the employers and the workers in any other part of the world of industry, and that that teamwork thus made possible as between the employer and the employee has played a very important part in making it possible for the workers in this country to enjoy a much higher wage level than any other industrial country and, at the same time, help the employer toward keeping the unit labor costs as low as possible.

That cooperation between the workers and their employers, therefore, has, in my opinion, played a very important part in helping the American employer to enjoy a much larger share in the markets of the world trade than would have been possible if you had had the high wage scale without the spirit of teamwork which has gone along as the result of this sense of working the thing out together.

For instance, I have talked with German manufacturers who have told of how they had to deal with their employees always through the third party set up by the Government. The employers in Krupps, having trouble with their employees in the Krupp works at Essen, have had to make a complaint to the employers' representative in Essen, and who in turn talked with an employers' representative in Berlin, who in turn talked with the employees' representative in Berlin, who in turn talked with the employees' representative in Essen, who gave him the answer with respect to this complaint as made by the employers in Essen, and reported that answer back to the employees' representative in Berlin, then to the employers' representative in Berlin, and back to Krupps, with the result that unemployment was being constantly increased in Germany simply because the employer there in Germany was unable to take advantage of the teamwork with his employees helpful to obtaining a high wage rate for the German worker, and at the same time so low a labor cost as to make it possible for him to compete with the other nations of the world in the world market.

I was, therefore, asked one time in my capacity as a labor specialist why it was that when a German employer installed in his German

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factory the machinery which he had bought from America, proceeded to run that machinery at exactly the same number of revolutions per minute as it was running in America, that nevertheless the results in terms of low labor costs helpful to his successful competition in the world market would not be obtained, and the answer, of course, was very simple, namely, that——

The CHAIRMAN. I shall have to limit you to 5 minutes more.

Mr. WILLIAMS. Thank you. So that I should say, therefore, that I regard the cause, a very important cause, in this remarkable set-up, to be this, namely, that there has been a very remarkable spirit of free play in the whole field of the unions, the shop committees, and the face-to-face contact between the employer and employee, and that the retention of that free play, the free opportunity of the worker to join the union if he wishes, to join the shop committee if he pleases, or, if he desires, to deal face to face with the employer, has had a very, very important part in making this whole scheme possible.

Therefore, I should like to give just two or three convictions with respect to the Wagner bill.

In the first place, it seems to me that it is very greatly to be regretted that the spirit indicated by the law is a spirit which assumes that enmity between employer and employee must always, in the nature of things, be maintained and be assumed, and, secondly, that it would seem to me to destroy this free play of competition between labor unions and the shop unions by giving a monopoly to the labor unions.

I wish to say, Mr. Senator, that if the employers would come here and propose a bill which would give their shop committees the same kind of monopoly which it seems to me this law proposes to give to the unions, I would be here in exactly the same spot opposing any such plan as that, because the free play of competition between those different forms gives the spirit of free play that it seems to me is very, very desirable in all ways.

So, I believe that by destroying this matter of free competition between the employer and employee in face-to-face contact, the shop committees, and the unions, is a detail of the utmost importance for continuing the well-being of the American worker, and I believe that the giving of a monopoly to any one of these three different means of dealings between employer and employee would bring about a class consciousness which would lead to class conflict, which might then, as it has already done in Germany, bring on the necessity of a dictator who would claim, as Hitler has claimed in Germany, that he is there by reason of the necessity of saving the country from the communistic threat caused by class conflict brought about by class consciousness due to the handling of the whole thing as the result of legislation.

Therefore, I want to voice my conviction that the legalized warfare proposed by the law, this mandated enmity, as it were, this legislated use and requirement of the use of a third party would, in my opinion, set back by at least 20 years the clock of American industry and industrial well-being and progress by putting capital and also labor into the strait-jacket of complete union monopoly and inescapable class enmity and warfare.

I shall be very glad to answer any questions.

The CHAIRMAN. Thank you sir.

Mr. WILLIAMS. Thank you.

The CHAIRMAN. Mr. Eastman

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STATEMENT OF WHITNEY H. EASTMAN

The CHAIRMAN. Your full name?

Mr. EASTMAN. Whitney H. Eastman.

The CHAIRMAN. You reside where?

Mr. EASTMAN. 4716 North Wilcshire Road, Milwaukee, Wis.

The CHAIRMAN. What is your occupation or business?

Mr. EASTMAN. I am in the linseed-oil manufacturing business, President of the William O. Goodrich Co., and representing here the Milwaukee Association of Commerce.

The CHAIRMAN. How large an association is that?

Mr. EASTMAN. We have about 1,800 members, a thousand of which are corporate members, employing at the present time about 98,000 people.

The CHAIRMAN. I suppose it is similar to the chambers of commerce in other large cities?

Mr. EASTMAN. Yes, sir.

The CHAIRMAN. Mr. Eastman, we will be pleased to receive your views.

Mr. EASTMAN. My appearance before your committee is made in behalf of 1,000 corporate business members of the Milwaukee Association of Commerce and to emphatically oppose the provisions of S. 2926, the Wagner labor disputes bill.

The Milwaukee Association of Commerce has always maintained strict neutrality as to legislation and all other matters pertaining to organized labor. We believe, however, that the provisions of the proposed labor disputes bill are so wholly one-sided and so thoroughly detrimental to business that we would be derelict in our duty in serving the community were we to refrain from vigorously opposing its passage in any form.

We have always maintained that the right to open- or closed-shop procedure as applied to labor is strictly a matter for determination between the employer and employee alone at interest. We emphatically object to any procedure which in effect would promote or make mandatory the unionization of all commerce and industry in America.

While we appreciate the sincerity of purpose on the part of the authors of this measure, the Wagner labor-disputes bill, in our opinion, is based on the theory that all employers are per se unfair in their labor relations and that the interests of employers and employees are antagonistic rather than amicable and mutual.

We deny this to be the fact, and as proof point to the harmonious industrial relations and living conditions which have prevailed for many years in the Milwaukee diversified industrial area which, until recently, has operated on so general an open-shop basis and yet prior to N. R. A. was practically free from labor strife.

Shortly after Congress enacted and the President signed the National Industrial Recovery Act to encourage business recovery and to foster fair competition, Gen. Hugh S. Johnson, Administrator called on chambers of commerce to extend assistance in the task of organizing business to meet the provisions of the act and to educate consumers to the necessity of supporting those businesses which cooperated in the program by signing the President's reemployment agreement.

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In concert with other commercial organizations throughout the country, the Milwaukee Association of Commerce immediately made available on a day-and-night basis its entire facilities for the handling of this gigantic task. Approximately 1,000 heads of business gladly laid aside their personal business affairs, under my personal direction, at a time when they could ill afford to do so, to aid in this patriotic program. Furniture, equipment, supplies, and the services of salaried employees were cheerfully loaned by business to further and expedite this cause.

Procedure identical to this took place in every city and hamlet in the country. This we believe definitely manifests the right-mindedness of today's business management, and the codes of fair competition already adopted by industry prove its cooperative attitude beyond all doubt.

Speaking in behalf of Milwaukee business men on October 3 last, I publicly stated:

> While I have always been an advocate of rugged individualism I am completely intoxicated with the new Roosevelt philosophy which has as its keynote the coordination of interests and welfare of the masses; I am happy to know that there are millions of others who have joined the same school of thought and I prefer to cast my lot with this overwhelming majority rather than be classed with the small recalcitrant minority who are largely responsible for precipitating the mess we are in.

It would be strange indeed if business executives generally thought differently. In fact, far-seeing and thoughtful employers long sought, through trade associations, to do what the Recovery Act seeks to accomplish but were prevented from so doing by the antitrust laws. Even the relatively few "chiselers", concerned alone with profits and without regard for the welfare of employees, learned last summer and even as recently as C.W.A. pay rolls were extant, that steady employment for everybody at the highest practicable wages industry can afford to pay is good business because the products of industry are purchased by the wages of its workers.

If laws are to endure and accomplish their purposes, they must be based on the theory of equal justice to all and, of like importance, they must be administered in just that spirit. This is fundamental. To deviate from this principle is in opposition to the very aims of our form of government. No law should favor one class more than another, and by the same reasoning no law should favor one class at the expense of the other.

We assert that the proposed Wagner labor-disputes bill is not in harmony with this basic principle and that it is accordingly dangerous to the public welfare and wholly un-American.

Illustrative of the total unsoundness and unfairness of the proposed measure is the fact that nowhere in its provisions are labor unions subjected to the same onerous conditions as are employers. Its burdens are entirely upon the employer, who would be entirely lacking in advance information as to what acts would constitute violations of its various sections. In every instance the conduct which the bill would prohibit is in such vague and general terms that the question of whether the employer has or has not complied is left entirely to the discretion of the proposed labor board, the findings of which would be conclusive.

What a complete failure the desired partnership relation between business, government, and labor would become under such provi-

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sions. What a fallacy collective bargaining would be under such treatment. Where would one find justice, fairness, and common cause in a condition such as the labor-disputes bill would impose and which in my judgment would endanger the economic safety of all business for the sake of regulating a small minority of recalcitrant employers? We contend that the National Recovery Act now has the teeth with which to enforce compliance on these recalcitrants. Its administrator has stated that they are ample to control the situation. You will recall that he stated at the N.R.A. conference in March that, "You ain't seen nothing yet!" and for one I take the General at his word.

The Milwaukee Association of Commerce is convinced that the labor-disputes bill would materially impede, if not totally destroy, the business recovery which has already taken place and which, it is generally agreed, will continue except as the mere threat of this and companion legislation may slow it up. We submit that it would not only seriously hamper the program of the administration but promote increased disturbance and conflict in industrial-labor relationships, and jeopardize orderly growth and development of industrial production which is so essential for the expansion of employment and purchasing power.

We assert further that drastic provisions such as are here proposed would undermine the very security of our economic and social independence, in that they would so restrict business management as to cause private capital to refrain from investing in business to the end that universal socialism would become imperative; that passage of the labor-disputes bill would widen rather than narrow the gap between labor and employers, would result in many unknowing violations of the law, destroy innumerable small businesses, and deny to industry and its employees justifiable earnings on which all tax-supported units depend for their financial maintenance.

Thoughtful American business men subscribe to the principles of the recovery program. They have accepted in a most commendable spirit section 7 (a) of the National Recovery Act. To the extent that this section provides an orderly, impartial, and cooperative method of achieving its objectives, it is entitled to respect and willful observance. That section also affords labor all the guaranty necessary that its rights and privileges shall not be impaired at the instance of the employer. It should be the only regulatory measure and its fulfillment of purpose can and is being assured by the National Recovery Administration.

It is our firm conviction, furthermore, that the passage of the Wagner measure would do irreparable damage to the status of American workmen as free and independent employees; that, in fact, employees are, or should be, as greatly concerned about this drastic proposal as are employers.

In November 1933, less than 10 percent of industrial employees were members of organized labor unions and thus represented by persons outside their places of employment; 90 percent negotiated with their employers individually or through organizations of employees in their places of employment. These latter were represented in their negotiations with employers by fellow workers thoroughly familiar with actual conditions within their places of employment.

Since the advent of the National Recovery Act organized labor has greatly increased its membership. It is apparent that this growth has

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not been accomplished altogether by means in keeping with the spirit of partnership between business, government, and labor, but in many instances through interference, intimidation, coercion, and in many cases physical violence exerted in an effort to force employees into unionism.

Clearly, nothing in the language of the National Recovery Act contemplated this situation. The act specifically states that labor shall have "representation of its own choosing." This was again emphasized by the President in the recent automobile situation While we hold no brief for any type of employee representation, we contend that employees should not be forced unwillingly to join unions and accept representation by those who lack knowledge of internal plant conditions and whose contact with individual plant groups is necessarily very limited. Representatives of outside unions have neither the knowledge of nor the interest in the affairs of a company comparable to representatives whom employees might, if given the opportunity, choose from among their own ranks to deal for them on matters involving their own welfare.

When employees, of their own free will and without outside pressure, elect to become members of organized labor and be represented by its delegates, industry accepts that situation as required by section 7 (a) of the Recovery Act. But before affording organized labor opportunity to represent the interests of industry's employees, Government should insist, as an obligation due its employer partner, that organized labor be made subject to the same restrictions and limitations as are other parties in this partnership.

Acknowledging that organized labor has among its representatives a great majority who are conscientious in their efforts to improve working conditions, we contend that it also has some leaders who seek selfish benefits from the tremendous wealth which expanded union membership will provide through the collection of dues from members by means of the plan now under discussion. It is conceivable that there will thus be developed a labor movement of such power as to make for arrogance and ruthlessness beyond any comparison which might be made with the bygone industrialist who ruled with an iron hand.

Nothing in the Recovery Act contemplated that workers would be compelled to pay monthly dues to labor unions as a tribute for the right to their jobs. The money which they would be called upon to contribute is sorely needed by the families of workers. It amounts in effect to an additional tax.

It is said that many, if not a majority, of the unions do not make a periodical accounting to their members as to their financial transactions. Corporate businesses are required by law to perform certain obligations as applied to finance for the protection of their stockholders. Unions are business enterprises for the service and gain of their members who are, in fact, stockholders. If unions, therefore, are to be permitted to perform a public service by representing employees, the Federal Government should require them to file with public agencies detailed reports of their fiscal transactions, comparable to those filed by industry for the information of stockholders and the investing public.

There is still another phase of American life which would suffer materially were this legislation to be passed. I speak of the more

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than 30,000,000 farmers who under the labor-disputes bill would, in my opinion, be dealt with most unjustly.

Farmers have had to contend with a condition of depression for many years longer than people in other walks of life. Their condition is still serious. No one, I think, will presume to deny that passage of the Wagner bill will greatly increase the prices of industrial products. The farmer will thus be called upon to pay higher prices for the things he buys without a single off-setting advantage under this bill.

The great multitude of persons not engaged in pursuits directly affected by employer-employee relations, who make their residences in our cities and villages, would be endangered by this measure which would make possible strikes in food, fuel, and other industries affecting public health, private hospitals, and other agencies on whose service the public is vitally dependent.

Inequalities are bound to develop in class legislation of the character proposed. The Federal Government can ill afford to set employee against employer as is bound to occur under this bill. But it is unthinkable that it should be statute treat the American farmer in so unfavorable a manner.

Nor is capital treated justly in this legislation. And I am not thinking now of people and corporations of great wealth but of the millions of men, women and children whose life savings and total means of support are bound up in the future of American industry, directly as stockholders or indirectly through life insurance and other forms of investment. I submit that no legislation is just that does not serve equally all citizens, whether employer, employee, farmer, stockholder, or belonging to that large group of workers that in any event stands to derive no advantage from the passage of this legislation.

The "new deal" calls for a new order of conduct. Its success has already brought about a complete change in our human relations. Recovery from our economic ills, however, is not a one-sided affair affecting industry alone. Labor is an integral part of the economic scheme and should be expected to perform its full share in the national cooperation which is needed to continue the recovery program.

Working conditions and pay can be improved only as the ability of commerce and industry to make such adjustment improves. Only through intelligent, constructive teamwork can the fullest measure of benefits for employer and employee be achieved.

This arrangement must be brought about by the Federal Government, not by imposing injustice on industry to the advantage of labor, but by legislation, if in fact further legislation must be enacted, to place management and labor on an equal footing by limiting both to persuasion only in dealing with workers on the question of company unions versus labor unions.

Milwaukee business, as represented by the Milwaukee Association of Commerce, for which I speak, earnestly hopes that the drastic, one-sided, unfair and un-American legislation which the labor disputes bill provides will be defeated by the Congress.

Finally, I submit that the title of this bill, "to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes", and so forth, is wholly misleading. The effect of the bill is to deprive one side of any bargaining power whatever, subject it to accusation and trial without the right to confer with its

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accusers and to generate and foster contention and bitter warfare between the representative parties to the bargaining.

The CHAIRMAN. Thank you Mr. Dyer.

STATEMENT OF DR. GUS W. DYER

The CHAIRMAN. Your full name?

Dr. DYER. Gus W. Dyer.

The CHAIRMAN. Your residence?

Dr. DYER. Nashville, Tenn.

The CHAIRMAN. You are a professor of economics at Vanderbilt University?

Dr. DYER. Yes, sir.

The CHAIRMAN. And editor in chief of the Southern Agriculturalist?

Dr. DYER. Yes, sir.

The CHAIRMAN. You appear in your own individual capacity before this committee?

Dr. DYER. Yes, sir.

The CHAIRMAN. We will be pleased to here you, Dr. Dyer.

Dr. DYER. I will say this much, I do not know as I know exactly what you mean by my individual capacity.

The CHAIRMAN. Are you delegated by any——

Dr. DYER. No; not delegated. I was asked, not delegated.

The CHAIRMAN. By whom?

Dr. DYER. Mr. Robert Lund, of St. Louis, an old schoolmate of mine, asked me if I would come here.

The CHAIRMAN. But you are expressing your own views?

Dr. DYER. Yes, sir. I am not accustomed to reading aloud, but in order to get down to the shortest time possible, I will attempt to read this statement.

I will criticize this bill in its original form. I do this in the first place because the proposed changes do not in the least change the fundamental nature of the bill, and in the second place, if the bill should become a law, it will be easy to withdraw the concessions and amend the law as those in charge desire.

This bill repudiates several fundamental provisions of the Constitution of the United States. It repudiates freedom of contract, freedom of press, freedom of speech, and freedom of religion, and also repudiates the rules of evidence and court procedure that are considered essential to the administration of justice in civilized courts.

The bill makes it unlawful for an employer to "attempt, by interference, influence, restraint, favor, coercion or lockout, or by any other means," to impair the right of employees to organize and join labor organizations for any purpose of mutual aid. If an employer knew that a criminal racketeer leader was organizing his employees in a racketeer movement under this bill the employer would be guilty of a crime if he said a word or made a gesture in disapproval.

This bill denies an employer the right of freedom of speech and freedom of press as well as the right of freedom of contract in dealing with his employees on matters of vital interest to both the employer and the employee.

The bill denies the employer the right to be a neighbor to his employees, to treat them as friends. The bill makes it a crime for an employer to invite his employee home to dinner with him or give

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him a cigarette or a drink of Coca-Cola if the employer happens to be unsympathetic with labor unions. If the Jew given assistance by the Good Samaritan had been an employee of the Good Samaritan and was thinking of joining a Merico labor union against the wishes of his employer and this bill had been the law, the Good Samaritan would have been declared guilty of a criminal act, and would have been punished as an enemy of social order.

Russia prohibits the teaching of Christianity in her schools. This proposed law outrushes Russia and prohibits the practice of Christian brotherhood. The bill is certainly unique in that this is the first time in the whole course of human history that it has been proposed in any legislative body to make the practice of Christian brotherhood a crime. In this bill the United States Senate has made a new contribution to political science.

If an employer should be a minister of the Gospel, and many ministers are employers, and should proclaim from the pulpit to his employees that employers and employees should be bound together in Christian brotherhood, and should resist all attempts from the outside to bring animosity between them, such expression of religious freedom would be a criminal act, and the minister would be subject to punishment under this proposed law. This law limits the religious freedom of employers when discussing the mutual obligations of employer and employees to expressions of approval of labor unions. It puts loyalty to labor unions above loyalty to God.

In many industries the sons of employers are on the pay rolls as employees. Under this bill it would be a criminal offense for a father to advise his sons with reference to their affiliation in labor organizations.

The employer is the only man in all the world who is considered in this bill as dangerous to his employees' welfare. He is the only man whom it is necessary to restrain by law from advising his employees. His enemies, and the enemies of his employees, racketeers, seditionists, communists, anarchists, criminal agitators, thugs, exploiters, and grafters are unrestrained, and the employer is prohibited by this bill from attempting to restrain them from coming to his plant and abusing the employer, slandering him, lying on him, and destroying his reputation and standing with his employees. If he opens his mouth in protest, he is guilty of a criminal act and is subject to punishment under this bill. A labor agent acting in the interest of a competitor would have an unrestrained right to come to the plant of the employer, organize his employees and bring about a state of discord that would destroy his business, and the employer would have no right to even attempt to prevent the outrage.

Under this proposed law it would be hazardous for an employer to even talk to his employees. If a woman should express her disapproval of her cook's joining a labor union by a mere shake of the head, she could be taken a thousand miles away at her own expense and punished for interfering with her employees' rights. If a farmer should tell his hired hand that he didn't care to deal with an outside agency in contracting for his services, the farmer could be taken off to another part of the country and made to pay his own expenses and punished for uttering such an expression in the hearing of his hired man.

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Under this bill the board is given the power and authority to employ an unlimited number of agents and detectives to watch over and run down and punish any employer who may consciously or unconsciously violate the law of unfair labor practice. This includes every man or women who employs a servant, and every farmer who keeps a cook or hired man. Any employer of one person or more may be taken up at any time and forced to travel hundreds of miles at his or her expense, and tried by a court that repudiates the rules of evidence and the order of procedure that are in practice, and are considered fundamental in every court of justice in this land, and tried on the oflense charged or any other offense that may be charged at any time in the trial, and convicted and punished on mere suspicion or rumor.

The establishment of such an inquisition would create a condition of dread, terrorism and frightfulness in the minds of especially small employers that it is probable that many would flee the country and establish their residence under a flag that stands for the protection of elementary human rights.

One of the most amazing features of this bill is the provision that every person or organization outside the Government who employs one or more persons is an employer and comes under the restrictions imposed, except labor organizations. It is significant that labor organizations are classified here with the Government. Labor organizations may employ an unlimited number of workers to engage in all sorts of business activities. But they are not employers and those who work for them are not employees. They are the only people in the country that can be trusted to deal fairly with those who work for them. They are regarded, it would seem, as so unselfish and saintly that they are incapable of doing wrong. Hence they are taken out of the class of employers and may be designated as the superaltruistic leaders of the great Wagnerian communistic symphony.

The assumption of this bill that the interests of the employer and the employee are essentially antagonistic is totally without foundation either in reason or in experience. This delusion is due to a gross misinterpretation of the facts and laws of industry under freedom of contract and free competition.

Employers in buying commodities and services at the market price are simply doing what practically everybody else does. There is no essential difference between commodities and services as far as the human element is concerned. A commodity, a bale of cotton, is essentially stored-up labor and when a farmer sells his cotton he is as really selling his labor as the man who sells his services by the day or week. When we are buying eggs or potatoes or cabbage, we are as truly dealing with human beings as we are when we are employing labor. The distinction that is made between labor and commodities with reference to the ethics of their valuation is a distinction without a difference.

Like the employer, practically every farmer, and lawyer and doctor and school teacher and social reformer and preacher, and even every politician buy as cheaply as they can on the market and get the best price they can obtain for what they have to sell.

If the interests of employers and employees are essentially antagonistic because employers pay only the market price for what they buy,

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then the interests of all buyers and sellers are antagonistic, and everybody who goes on the market to buy or sell is grabbing at the throat of the man he is trading with. No man of any sense at all would believe anything so stupid and so asinine.

If this stupid theory is sound then the Government, to be consistent and just, just bring up the bargaining power of every man and woman and child who go on the market to buy, to equal the bargaining power of the corporation that sells. Today a million men and women and little children will go to the stores of a hundred-million-dollar corporation. If the bargaining power theory is sound, every one of the million buyers should have the right to go by the courthouse and get a regiment of soldiers to accompany him or her to the grocery store and stand guard over the agent of this corporation to prevent him from using his superior bargaining power to rob his customers of their money and their rights.

In fact, everybody knows that even the child and the illiterate Negro who make purchases at these stores will get the full market value in goods for every penny that is spent, without the assistance of any union to equalize the bargaining power.

The values of services and commodities are not fixed on open competitive market by the buyers or sellers. They are fixed by natural laws beyond the control of either buyers or sellers. The interests of buyers and sellers on open competitive markets are not antagontistic but mutual. Both parties gain by the transaction.

It is only when the buyers or sellers want to get more than the market value for what they want to buy or sell that antagonism of interests arise. It is only when a group wants to reap when they have not sown, and live in the sweat of the brows of others that a natural, essential conflict of interests emerges.

The fact that wages for many years have been notably high in the great motor-industry center of the world, Detroit, under the American theory of freedom of contract is positive proof that the theory that wages are fixed by the relative bargaining power of employer and employee is economic quackery of a low order.

This proposed law would destroy efficiency in production. Efficiency in production under modern conditions is impossible without great directive ability. Every great achievement in production may be traced directly to unusual skill in direction.

Successful direction in business is one-man direction. Mass direction has never achieved anything in business. Boards of directors never direct if they have any business sense.

Business direction is a highly specialized activity. It is as highly specialized as the skill of a great surgeon or a great general. Specialized directive ability is extremely scarce, hence it sells high.

This bill takes the power and authority of direction away from the highly skilled specialists and turns over these to the mass of employees. The chief and almost only important factor in direction is the power and authority to select workers without dictation and without restraint, to put each worker in the place where his work will count for most, to change workers and change their tasks as changing conditions demand and to go out in the open market and select men and women solely on the ground of their efficiency who are best qualified to fill the positions that are open.

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Under the proposed law the final authority over the exercise of all these functions of direction is taken away from the highly skilled specialists in this field and conferred on the mass of employees who are totally ignorant of the most elementary principles of business direction.

If the French Government in the midst of the World War had ordered General Foch to take orders from the mass of soldiers in the trenches in directing his army against the Germans, this would have been similar to what is here proposed for the field of production.

Such a transfer of the authority of direction in business as is here proposed would eliminate specialized directive skill from business. To require a great director to take orders from the mass of employees with reference to the most vital things in direction would make successful direction impossible. Efficient, self-respecting business men of ability, perhaps, would not undertake to direct business under such conditions.

The marvelously efficient system of production in this country, and our enormous wealth that is the product of this efficiency are fundamentally the result of the great directive skill of American leaders in industry. There is no substitute for this highly specialized skill. Destroy it and it will be only a matter of a short time before this country will take its place among the poor nations of the world.

The substitution of mass direction in business for highly specialized direction will, of course, cause a general withdrawal of private capital from business. Men of business sense will not hazard investments under such direction. With a forced withdrawal of both capital and leadership from American industries the Government will be called upon and commanded by the mass of employees, in control, to supply the needed capital. But the Government has no capital. The only source of capital for the Government is in the profits made by private individuals. With the possibilities of profits curtailed or destroyed the source of capital supplied by the Government would disappear.

With practically all employees organized into one great union, which is the fundamental purpose of this bill, the Government would pass under the control of this union. An organization composed of 30 million members with almost unlimited funds and clothed with the power that this bill confers would be irresistable in the field of politics. With this great union in control of the industries and in control of the Government machinery and hence in control of capital, we would have established in this country that radical type of socialism known as "syndicalism." Socialism stands for the theory of putting the industries under the control of the people as a whole. The Russian revolution started out with the theory of putting the industries under the control of the employees and the soldiers. This bill in laying the foundation for syndicalism would eliminate the soldiers and put industry under the control of the employees. This bill not only lays a broad and ample foundation for this radical type of socialism, but, it is believed, puts in action the necessary forces to bring it about.

But whatever the outcome of this proposed legislation, we are not going to have any system of syndicalism in this country. The achievements by the Anglo-Saxon of the inalienable rights of life, liberty, and the pursuit of happiness, the rights of freedom of speech, the freedom of press, freedom of religion, and freedom of contract came after more than a thousand years of struggle and bloodshed.

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Americans of Anglo-Saxon origin have never regarded the possession and full exercise of these rights as temporary expedients to be abolished or traded off for beef and beer and bonuses, with changing conditions. They have always regarded these rights as priceless, permanent posession, never to be abolished nor abridged. Runnymede in the thirteenth century and Yorktown in the eighteenth century are demonstrations of what they really think of these rights. They put these rights above kings, presidents, courts, legislative bodies—even above the present Congress. When they are convinced that there is a movement on foot to take from them any of these rights, the revolution will cease to be peaceful. It is only giving expression to the conclusions of Anglo-Saxon history to say that whoever or whatever gets in the way of the full expression of these rights will get out of the way.

The CHAIRMAN. Thank you, sir. Mr. Callbreath.

Mr. CALLBREATH. Mr. Mackenzie is to take my place.

The CHAIRMAN. Mr. Mackenzie.

STATEMENT OF A. G. MACKENZIE

The CHAIRMAN. What is your full name?

Mr. MACKENZIE. A. G. Mackenzie.

The CHAIRMAN. Your residence?

Mr. MACKENZIE. Salt Lake City, Utah.

The CHAIRMAN. Your business?

Mr. MACKENZIE. Mining business.

The CHAIRMAN. What mines are you connected with?

Mr. MACKENZIE. I appear here today, Mr. Chairman, in behalf of the American Mining Congress, of which I am a member.

The CHAIRMAN. Are you an individual mine owner also?

Mr. MACKENZIE. I am interested in mines; yes, sir.

The CHAIRMAN. How many members in the American Mining Congress?

Mr. MACKENZIE. I cannot answer you exactly. There are many hundreds. We have membership in all the States of the Union.

The CHAIRMAN. Has the congress taken action on this bill?

Mr. MACKENZIE. It has.

The CHAIRMAN. And you are here to express the sentiments of the members of the congress?

Mr. MACKENZIE. I am.

The CHAIRMAN. You may proceed.

Mr. MACKENZIE. The board of directors of the American Mining Congress have directed me to present to you this statement on behalf of the mining industry which it is organized to represent throughout the United States. It is the firm and considered conviction of our industry that legislation and the threat of legislation of the type of the labor disputes act and other governmental activities of the same general tenor are seriously disrupting the productive organizations of this country and that the passage of such legislation or the continuance of agitations therefor will disrupt and ultimately destroy the process of industrial recovery upon which we have made a substantial start.

Our view is based not so much on any detail of the proposed legislation as upon the public sentiment and psychology which are the result of such legislation and agitations for it.

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The managements of the companies represented in the American Mining Congress have striven for years to build on a sound foundation a deserved feeling of respect and confidence with their men. These efforts have been based upon the recognition of the fact that such a relation is essential as a foundation for efficient production and that such efficient production is essential to support both labor and capital and the continued improvement of the general standards of living.

I will leave with you this chart, gentlemen, illustrating the statement I have just made. I notice it is copyrighted and I do not know the limitations on the use of it, but I hand this copy to you.

The CHAIRMAN. It may go in the record.

(The chart presented by Mr. Mackenzie is attached to the transcript.)

Mr. MACKENZIE. The promotion of such relationships on a sound and fair basis has come to be a principle of management accepted by all self-respecting organizations.

In furtherance of this principle a large majority of the units of our industry have, throughout the current depression, spread available work, given large amounts of unemployment-relief work, and through advances and through relief largely carried the responsibility for the support of their regular employees throughout the depression.

These efforts mark an attainment and have resulted in a relationship never before approached in any depression in this country or, so far as we are informed, in other countries.

The foundation of the proposed labor disputes act and similar proposals is an attack upon this relationship and these efforts. Our employees are already being approached by organizers and agitators claiming that the Government has condemned these existing relationships. Most of our men, knowing and appreciating the relationships which have existed and the treatment which has been accorded them, are confused. If the agitation is continued with Governmental support the results will be most serious.

The directors have further asked me to present to you the social side of these proposals. Industry in this country has been built and has made its remarkable progress both financially and in general improvement of living standards on the basis of freedom of individual progress on merit. It is their considered judgment that the regimentation of labor against management will destroy this social and economic advantage which is the foundation of the success of our American institutions.

It is well known that the success of any outside labor movement imposed on any mine or operation is dependent upon the destruction of any feeling of mutuality of interest and confidence between labor and management. Yet we say to you again it is our combined and considered judgment, which we believe is recognized by all experienced employers, that such recognition of mutuality of interest and such mutual confidence is the very foundation of the phenomenal development of this country and of any and every sound relationship between employer and employee.

All industry is having its resources daily tested to meet the ever-mounting demands of taxation and other forms of public exactions in addition to the continuous drains from the business depression. It can only continue to meet these demands if its productive efficiency, the cooperative morale of its personnel, is maintained. This

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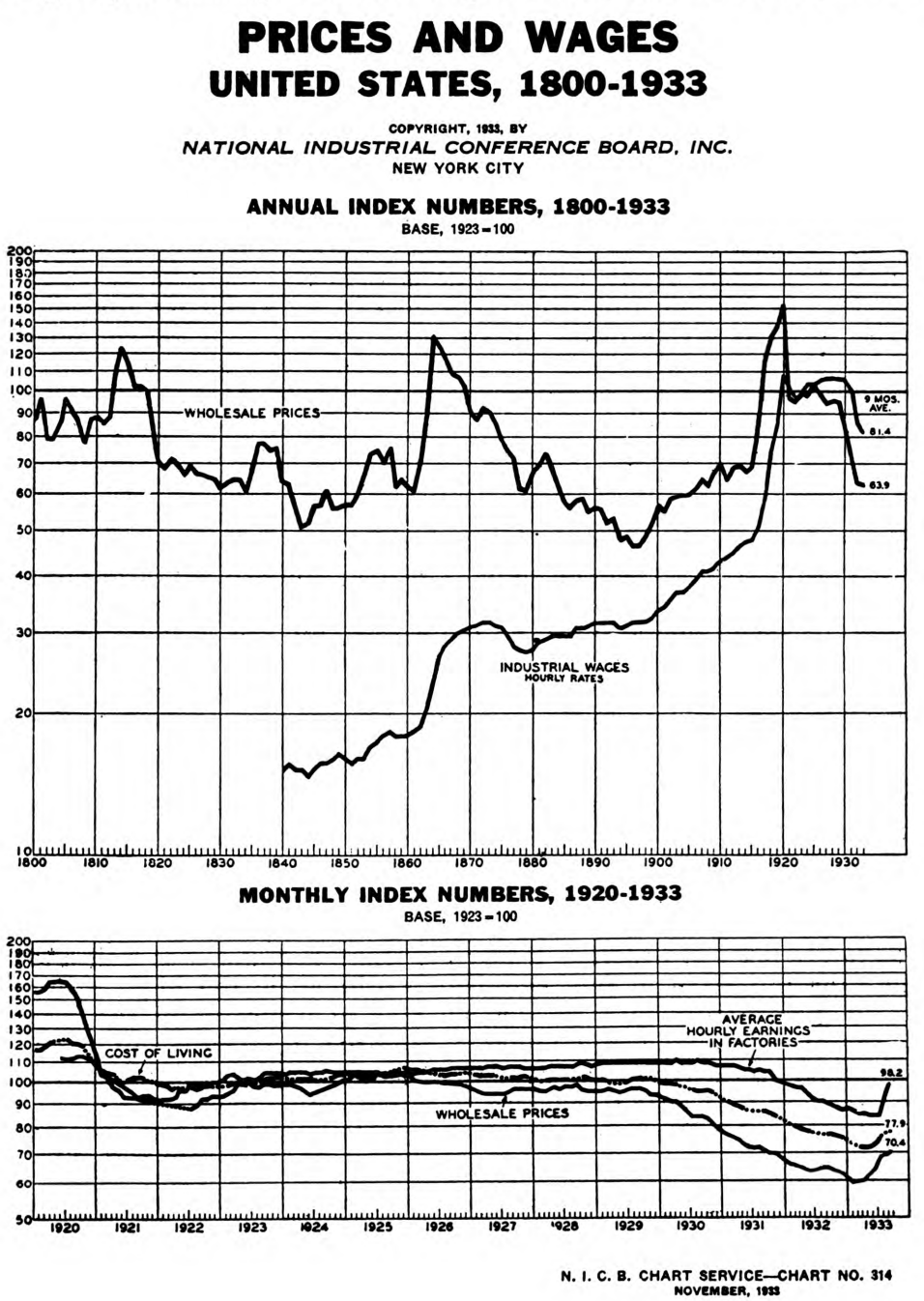
legislation will inevitably destroy that efficiency, that morale. If it does, the whole structure falls.

When the National Industrial Recovery Act was passed by this Congress, the mining industries sought to cooperate fully, to place no



barrier in the path of this legislation, and proceeded to carry out the desires of the National Recovery Administration by increase in wages and by the employment of additional men wherever possible. The mining industries did not then or since protest or act in any other than good faith in carrying out the provisions of the well-known sec-

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tion 7 (a). In most instances, employees have not merely been permitted, but have been encouraged to organize and bargain collectively through representatives of their own choosing. Such organizations are now carrying on in the full spirit of section 7 (a) of the National Industrial Recovery Act and with a most excellent relationship between the management and employees. This is a desirable situation and secures fair and humane treatment of workmen as well as the efficiency in production which has enabled this country to compete in the markets of the world against the peasant and coolie labor of other countries.

In the Labor Disputes Act under title II, section 201, provision is made for a "national labor board." Under section 202 (a) provision is made for the establishment of regional or local boards. These boards are granted very wide powers and function in effect as courts. In section 5 of title I are mentioned under six divisions a series of what are termed "unfair labor practices", for the alleged violation of any of which the management of a property may be brought before a labor board and in the ultimate subjected to punishment.

But neither here, nor elsewhere in the bill, is there any protection proposed for the employer, his property or his business; nor is there anywhere in the bill any attempt to define or punish "unfair" practices toward the employer. Note that section 303 specifically legalizes without restriction the right to strike, and section 5, paragraph (1) specifically outlaws the lockout. In other words, employees may legally suspend operation of an enterprise, but the owner may not.

The words "advancement, demotion, hire, tenure of employment", in division 6 is clearly intended to establish the rule of seniority in the placement of workmen in the operation of a mining or other enterprise. It has always been the practice to recognize merit in an employee, where he gives freely of his ideas and loyalty for the advancement of the enterprise in which he is engaged, and it is a most harmful practice to freeze promotion and to put men in a situation where they advance solely through a rule of seniority. Any workman or anyone who has ever employed two or more persons will readily appreciate this. Seniority as a basis for the selection of the workmen in America has never been in practice in any general sense and it is well known that the initiative of the American workmen is the highest in the world, in contrast with the known lack of initiative of the foreign workman trudging along under a seniority rule with but little to encourage initiative of the display of effort either mental or physical in excess of that barely required to retain employment.

There is a further pointed provision in division 6 of section 5, which reads:

> That nothing in this act shall preclude an employer and a labor organization from agreeing that a person seeking employment shall be required as a condition of employment to join such labor organization.

This provision coupled with the arbitary assumption of the term "unfair labor practice" and the definition, again arbitrary, of what constitutes such a practice will result in the complete subjection of all industrial and agricultural employees to the domination of the existing and well-known national labor unions. To those familiar with labor union practices, the methods used to bring workmen into the local unions are well understood and this bill as written clearly dooms all

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American workingmen to union domination and to the dues-paying, assessments, special assessments, and other coercive practices so ably applied by these bodies.

Senator METCALF. What are the average dues that they pay in the unions?

Mr. MACKENZIE. Senator, they vary, of course, with the locality and with the activity. I should say they will run from a minimum of $1 to as high as $5 or more—that is, per month. In some cases where there is a labor disturbance or a prospect of one, I have heard of instances where it has run as high as $10 or $15 a month.

Senator METCALF. What part of that would be given to the headquarters of the union?

Mr. MACKENZIE. That is something I think you should ask the labor organizations. I do not have access to that information.

Senator WALCOTT. The dues to the American Federation of Labor are $1.50 a month, are they not?

Mr. MACKENZIE. I understand so.

Senator METCALF. I thank you.

Mr. MACKENZIE. While the bill does not say so, there can be no doubt its import is that the American workingman will no longer be free to choose whether he will or will not become a member of a labor organization, and no matter where he may go in the United States he will meet with the same conditions, with the hand of the national organization reaching out to control his activities and his exercise of what under present conditions are his rights of free citizenship.

To those familiar with the conditions of employment of the workmen of the United States (possibly outside of the sweatshops in the congested centers) it is difficult to grasp the thought which implies the need indicated under title II, section 201, of national, regional, and local labor boards functioning in effect as courts. The United States has its courts of justice and they are available now, as they have always been, to any individual or group seeking redress. In matters of industrial relations we have up to the present time composed differences of opinion which arose between workmen and management through arbitration. The National Recovery Administration and the establishment of the indistrial codes are new. In fact, they are just getting under way. Many of the codes have not as yet been approved and their code authorities have not as yet been appointed, organized, or developed. Before rushing in to the unfathomed depths of the functioning of a series of national labor courts it is vital, in the exercise of a proper measure of caution, to assimilate in, at least, some further degree the workings of the code authorities under the National Recovery Administration.

It is repeated that we still have the existing courts of the United States through the functioning of which we have survived as a nation. Our experience in industry with recourse to arbitration of differences arising among employees and management has not been such as to cause either of these principals to declare arbitration a failure, and we believe that with the retention of fair and open minds, in the matter of such industrial-relation differences as may arise, arbitration still embodies the most satisfactory solution for those immediately concerned and for the welfare of the country.

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Previous to the enactment of the National Industrial Recovery Act, there were workmen's unions in some of the mining industries and in some instances in some of the operations of sections of mining industries. These unions always had a cause or basis for their existence and survived or ceased in accordance with the desire of the employees for membership in such organizations. In some instances these unions became very burdensome to employees through their cost in dues and assessments taken from the individual employees or their cost as a source of trouble between employees and managements. Some of them functioned unfortunately so as to impair efficiency or to increase production costs to the point where the mining operations involved became an economic impossibility, so that production ceased and entire communities, thus losing their source of existence, were abandoned.

A most unfortunate result which the members of the American Mining Congress foresee in the Labor Disputes Act will be the estrangement, the creation of a gap between the management of properties and the employees. Most certainly in every proper way an employer should maintain the closest possible relationship with his employees, and yet we have in this bill clauses forbidding the employer any participation in the initiation, supervision, operation, policies, or elections of any or all of his employees and further forbidding the employer even to consult with his employees with respect to their form of organization or the constitution or bylaws in connection therewith.

The record of the operation of the mining industries of this country is replete with instances of the estrangements resulting from the attempted conduct of the affairs of employees by trade-union officers located at places remote from the operations of the particular industry involved. Where the employees at a mine, mill, or smelter are subject to the authority of a subdistrict union officer, and then a district union officer, and then a regional officer, and then a remote national officer, it is not difficult to visualize the delay and the misunderstanding that ensue in the handling of matters affecting the employees' welfare.

Frequently, these officers lack ability and have other deficiencies, and their time and thought is frequently devoted chiefly to efforts to perpetuate their own tenure in office. The larger the trade union, the larger, as a rule, is the revenue required and taken in dues and assessments and the greater is the number of offices set up for the administration of the union's affairs. The political scramble for preferment in these offices has in the past very frequently outweighed full consideration and regard for the actual year-in-and-year-out welfare of the workers out in the field, at the smelters, mills, and mines. It requires very little thought to picture the group influence of large national unions in politics. Such an influence, if carried to its probable ultimate end, would be deeply regretted by this country. We have only to look at the experience of other countries where such political influence, when carried to its conclusion, has resulted in the elimination of all labor unions or in making them definitely and directly responsible to the general government for all their acts.

In closing I urge upon you again, on behalf of the mining industry operating in almost every State in the union, that you strenuously resist all efforts to regiment labor against industry and that you bend

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every effort to encourage and foster the great development which industry in this country has already attained in cordial recognition of the mutuality of interest of every employee and employer.

The CHAIRMAN. Thank you.

Senator METCALF. Could I ask you one more question? You were saying the dues would amount to something like $1.50 a month, or $2, or something?

Mr. MACKENZIE. The lowest I ever heard of, Senator, was $1 a month, and in extreme cases, as I say, they run to much greater amounts, depending on the local circumstances.

Senator METCALF. Would the employees be better off if that same money should be carefully put in for an old-age pension?

Mr. MACKENZIE. You are asking for a conclusion or judgment, Senator.

Senator METCALF. I inferred that from something you said.

Mr. MACKENZIE. Personally, I think so.

Senator METCALF. That just came to my mind from something you said.

Mr. MACKENZIE. I may say in my own territory we have cooperative welfare funds which have nothing whatever to do with labor questions and are intended to protect the employees in sickness, disability, and so on. These are in addition to the statutory workmen's-compensation provisions, but we have no such arrangements with reference to labor.

The CHAIRMAN. I think the testimony before the committee is that the money that the members of the American Federation of Labor contribute monthly is in large part held in local or sectional or regional offices as a fund to be used in time of strikes and to meet other emergencies that may arise in support of those who are on strike, and that but a small percentage of it—I think there is some testimony that 1 cent per capita per month goes to the central office or the chief office of the American Federation of Labor.

Mr. MACKENZIE. I did not hear that testimony, Senator, but, as I say, I would prefer to have someone more familiar with the operation of the unions answer that.

The CHAIRMAN. Senator Davis has discussed it with several witnesses who were of the impression that this large sum of money went to the central office of the American Federation of Labor and never was accounted for and any reports made of it. There has been testimony to that effect and Senator Davis, in catechising several of the witnesses, stated that it was his opinion that the method was that which I have mentioned.

Mr. MACKENZIE. I have heard that, Senator, but I cannot testify to it of my own knowledge.

The CHAIRMAN. Mr. Elliott?

STATEMENT OF WILLIAM S. ELLIOTT

The CHAIRMAN. Your full name, Mr. Elliott?

Mr. ELLIOTT. William S. Elliott.

The CHAIRMAN. And you reside where?

Mr. ELLIOTT. Chicago, Ill.

The CHAIRMAN. And you are appearing before us in what capacity?

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Mr. ELLIOTT. I am vice president and general counsel of the International Harvester Co., and I appear on behalf of that company, primarily to bring to the attention of this committee the fact and history of a successful collective-bargaining plan which that company has had for 15 years.

The CHAIRMAN. I believe some of the employees of that company are here for the purpose of testifying about that plan?

Mr. ELLIOTT. They are here, and two of them, I think, will probably follow me.

I do not intend to go into the details of the plan. I will simply state that it has produced satisfactory relations, harmonious relations, without strikes, for 15 years, and you would rather hear from the employees themselves as to their own views of it.

The pertinence of bringing this matter to your attention seems to be this: This plan was started long before there was an N.R.A. and any of the present controversies, voluntarily, and has proven successful. If it has proven successful, how can this committee know but what many of the plans of like form recently put into force may also have a 15-year record of industrial peace, which is what we want?

It may be that section 7 (a) of the N.R.A. has produced a means for collective bargaining and industrial peace already which the American Federation of Labor has failed to recognize because the money has not come in through their coffers, but the fact is that today 45 percent of the factory laborers of the country, it is estimated, are bargaining in a collective manner with their employers through the representatives in their plants, elected freely and by secret ballot. If the N.R.A., section 7 (a), has stimulated that action, it may be a victory which should be recognized.

This bill is framed on the theory that that is a defeat of N.R.A. and something which should be legislated out of existence, but before it is so legislated out of existence we wanted you to know one of the outstanding successful plans of the country, started long ago, where there can be no question of domination.

I do not intend to speak about title II of the act relating to the Labor Board further than to say that we are heartily in favor of some machinery for properly supervising collective bargaining and seeing that the men have their rights and there is no discrimination or domination.

We have no opinion as to whether that should be in the form of a separate labor board as proposed by this bill or in the form of boards set up by the N.R.A., as has been suggested, or in the form of a bureau under the Secretary of Labor, as has been suggested. That to us is an administrative matter, and we are not here to make any protest or express any opinion on that.

It is only with reference to section 1, which seems to discriminate between forms of collective bargaining and to limit the rights of the laborers through the guise of limiting the rights of employers, that we wish to speak.

Let me state first, briefly, the substance of our plan. It is fundamentally collective bargaining. The employees of the works by secret nomination, followed by a run-off election, also secret, elect representatives, one or two, from each department in the factory, to create a committee to take up with the management the questions of wages, hours, working conditions, individual grievances, recreation, vaca-

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tions, and any other matter of interest to them, and the company meets them half way by saying—

> You will not have to look around when you want to bargain collectively to find who to talk to.

They also appoint and designate a certain group to meet this group of employee representatives in the first instance and go into the thing and explain the company's side and consider what can be done and what should be done.

Right at that point I want to say that I heard an address by the American Federation of Labor over the radio the other night in which they criticized the shop council plans on the ground that they provided for this group of employers' representatives sitting with the laborers, and they tried to give the impression that these men outvoted the laborers, and that the employers were butting into their right of collective bargaining.

Now, that is entirely erroneous. To bargain means two groups get together, it means that neither can overrule the other. The appointment of those men by the company is an act on its part to facilitate the collective bargaining, and it is not true, as the American Federation of Labor speaker said that if the employer representatives could get a vote or two out of the labor side that they then could outvote the others. They each represent their group as a body and they try to agree, and if they cannot agree the thing goes on up to arbitration, and so forth.

The company is proud that 15 years before this Government, through the National Recovery Act, announced and favored the principle of collective bargaining, it voluntarily initiated this plan, and I am proud to admit it, even though by admitting it we are admitting what would be a high crime and misdemeanor under this bill now before your committee for consideration—this council which has worked so harmoniously would be abrogated—it is an act of unfair labor practice, expressly mentioned, for an employer to initiate a union or to initiate a shop-council plan.

Now, I am fully aware of the fact that the author of the bill, Senator Wagner, has stated before this committee that it was not his intention to interfere with the right of employees to bargain collectively through shop councils, and that he stated the bill was only aimed at shop councils which were dominated by employers, but that only removes the dispute to another word—what is "domination?"

The American Federation of Labor man might say 100 percent of the shop councils were dominated by the company. An impartial court might say 10 percent were dominated by the company. But, the drafter of this bill took no chances on what the impartial labor board set up to pass on the question of domination might say, because he said in detail that any action by the company in initiating and presenting a plan to the employees was an act of domination, that the payment of hourly rates to employees while sitting in meetings was an unfair practice, and I call your attention to the fact that on page 81 of this record Senator Wagner was asked by Senator Borah, "What is your test of domination?" And he replied, "Financing the union; initiating the union."

So that, while the author of the bill disclaims an intention to interfere with any union other than dominated unions, and states that

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the language of the bill should be amended if it goes further, nevertheless we must talk to the bill before your committee. We cannot know what you have in mind for amendment, and it is only too evident that this bill was drawn by people who intended to make practically all company unions illegal and to abrogate those now in existence. I won't argue against those sections.

Senator WALCOTT. Do you mind an interruption at this point?

Mr. ELLIOTT. Not at all, sir.

Senator WALCOTT. I want to make clear as to whether your company, the International Harvester Co., financed this company union and continues to finance it.

Mr. ELLIOTT. There is no expense involved in the company union other than the problem of whether the representatives of the employees who were asked by them to take their time in sitting with the management in considering questions of interest to employees are to do at their own expense or are to get their hourly wages.

Our plan provided that the company would pay them their hourly wages, if the employees' representatives so elected.

In that connection, I might mention that that form of financing, which seems somewhat trivial, is not unknown to labor unions. I have before me a memorandum, which I believe to be accurate. The United Rubber Workers Federal Union No. 18323, Akron, Ohio, affiliated with the American Federation of Labor, recently presented a proposed labor agreement to an Akron rubber company, containing the following terms:

> All conferences between local officials and local committees to be held during regular working hours without loss of time to the committee.

If the local officials of an American Federation of Labor union can properly represent their employees in conferences with the management on matters of mutual interest without having their judgment biased by being paid their hourly rates, not losing time, I see no reason why the same is not true of the works council.

I think there is a cure for that. Any time the employees get the idea that a representative of theirs is unduly influenced against them, they have a quick action for putting them out, because they have recall provisions in the regulations.

If the employees are to have the right of collective bargaining in the form they want, they must have the right to consider alternatives and that involves the right to have those alternatives before them. To say that the management cannot present to them a plan to consider the merits of it as an alternative to what the American Federation of Labor organizer is presenting them is not a restriction of the rights of the employer so much as it is a restriction of the rights of the employees.

I refer to the testimony of Professor Slichter, the first day of the hearing here as showing the futility and unfairness of those provisions, and I will say no more on that except this: All unions are experimental, I mean the joining of a union by an employee is experimental. When they join the new chapter of the American Federation of Labor it is an experiment. Sometime later they may be disappointed and they may want to get out.

It seems to me, in justice and fairness that employees—45 percent of the country—who have elected to try this plan, should be permitted to go ahead, and if there is any domination, believe me, those men are

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going to know it. I think the works councils, where the companies attempt to dominate them, are going to run into trouble, trouble, trouble, and the unions will grow there. And when the company in good faith keeps its hands off of elections and the men are free from restraint that is the only kind which can succeed. The other kind will die a natural death and give way to other forms of unions, and it requires no law here to accelerate that death for the purpose of helping another form of unionization.

The N.R.A. section 7–A, says that the rights of employees to collective bargaining shall be free from interference, coercion, and restraint by employers. I do not believe you can improve on that language. I do not see why any title I is necessary in this act at all to add to or improve on that language. If we have an impartial court pass on what is interference, coercion, or restraint, it seems to me we can count on that court giving those words a broad enough meaning to protect employees in the rights which the law has guaranteed to them.

I have read a part of the testimony in this record and I have heard a part—I think I know practically all of it—and at this close of the hearing, if I can be of any assistance to the committee in its deliberations, it seems to me it would be rather in narrowing the issues and pointing out what seems to me to be the fundamental ones in this whole mass of testimony, which I hope you will never have to read again.

Now, this thing is outstanding: This bill is a bill to produce industrial peace. Why? Because there is a 100-percent agreement that industrial peace is necessary to expedite recovery and industrial strife delays it.

So far there is 100-percent agreement.

The proponents of the bill, who seem to me mainly to be affiliated with the American Federation of Labor, or other national organizations, assure you that this bill will reduce industrial strife and therefore expedite recovery. On the other hand, the vast amount of testimony put in against the bill by people who know business all over the country, by employers and by employees seems to me overwhelmingly to indicate that this bill will create strife in 10 places where there was 1 before, and it will delay recovery.

Now, I think, gentlemen, if I were sitting as a Senator and going to decide on this bill, I would vote on whether I thought this bill would bring recovery quickly, because recovery and employment is what this country needs. If I believed that we could have no recovery until the 90 percent of nonunion men were converted to the gospel of the 10 percent who are now unionized, I would say, "Let us start on our way. The quicker we get there, the better." It might shorten the process from 100 years to 50—perhaps we would have recovery in 50 years instead of 100. But if you take a different economic view, that it is not necessary to unionize the country on one method in order to have recovery, then the conclusion would be the opposite, because there is nothing to this bill as now drawn except to tie the hands behind the backs of those the American Federation of Labor and the other unions want to convert more easily. Suppose a Baptist were to come before you gentlemen and say, "There are 10 percent Baptists in the country; we are the only true faith, the only route to salvation; and in order that we may convert the other 90 percent the more

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quickly, we ask you to tie their hands behind their backs, and it will be easier for us to do it."

That is exactly the purpose of this bill, to tie behind the backs the hands of 90 percent of men who are ununionized, to prevent their having consideration of others forms of organization, in order that one form of unionism can be spread more rapidly.

Now, it comes down to your belief in the economic theory. We can understand the zealots. There have been religious zealots who attempted to spread their faith in the Middle Ages by force, and there are zealots for one form of labor organization who simply cannot see any other, who honestly believe that there is no recovery unless everybody adopts their faith, and so they are telling you what they believe when they say that "the quicker everybody adopts our faith, the sooner we will get over the strife and have recovery," and therefore they ask you to expedite it.

But, if, gentlemen, you take the other economic view which is presented by the opponents to this bill, you will say, "Why are we considering whether we will have recovery in a hundred years or whether we will shorten it up to 50 years? Why is it necessary to get recovery to convert the 90 percent to the views of the 10 percent?" Why not adopt the road of tolerance? The road which was pointed out by the President in his masterly settlement of the impending automotive strike at Detroit. If we follow that logic perhaps we will have recovery in 1 or 2 or 3 years. That is the road to industrial peace, and that, I submit, gentlemen, should control your decision on this bill.

Senator WALCOTT. Have you got that message so that you could quote in order to illustrate your point there?

The CHAIRMAN. I think it is in the record, Senator.

Senator WALCOTT. Have you it right there?

Mr. ELLIOTT. I will put it in the record.

The CHAIRMAN. It may go in the record at this point.

(The same is as follows):

One of the criticisms of the American Federation of Labor is that employee representatives are compensated by the company for working time spent in works council activities.

Referring to the agreement submitted by the United Rubber Workers Federal Labor Union No. 18323, Akron, Ohio, affiliated with the American Federation of Labor, to an Akron rubber company, it is interesting to note the following provision:

"All conferences between local officials and local committee to be held during regular working hours without loss of time to committeemen."

The following provision is found in a settlement recently made under the sponsorship of the petroleum labor policy board in a case involving the Phillips Petroleum Co. and the Phillips Pipe Line Co.:

All conferences between local officials and the local representatives of employees will, when possible, be held during regular working hours without loss of time to committeemen or other employ representation.

Mr. ELLIOTT. As I told you, our company union's councils have no dues and the company contributes nothing except to make no deduction for the time of the men while sitting in this council.

The question came up whether they would like to have your committee know what they thought of the plan, because, after all, that is the important thing. You do not want to get it secondhand from the company. It was presented to the works councils of the shops in Chicago, whether they would like to send representatives here, and

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as they had no funds I want to say the company said if they wanted to send a man down, we would pay their expenses. Now, there are some men here. I understand they do not all want to talk, but two of them will.

I also would like to make clear to you that our company has 14 factories in the United States, and these people who will speak, do not pretend to do any more than represent their own factories. We did not think that you would want witnesses from so many factories.

I also want to state that there is a very active drive on in our plants by the A. F. of L. and the communists unions to convert our men to their faith. They have made very little progress in any plant with the possible exception of the tractor plants in Chicago, and no representative of any of those groups has as yet asked the company to meet them in collective bargaining, but I am here to say for the company that any time any substantial group chooses any other representative other than their works-council representatives the company expects to bargain with them in line with the principles laid down by the President in the automotive settlement.

I would also like to state that there was one council, the tractor plant, where the employee representatives were fair enough to say that while they felt the great majority of the plant was for the works council and would like to come down here and speak for it, they felt they should not, because in that plant these other movements have gone quite a ways.

Now, there will probably be a telegram put in the record here which is illustrative of the campaign being carried on by the A. F. of L. in Chicago. This was read to me over the telephone as being put on the radio last night. The Chicago Federation of Labor has a radio station, and last night there was a 10-minute talk by someone, I have forgotten his name, devoted to the fact that employees were coming down here. I want to put this in the record in case Senator Wagner should fail to get it in. This is substantially the telegram to Senator Wagner:

> About 2,500 employees of tractor works and 1,300 of the west Pullman works, both of the International Harvester Co., have requested me to wire you in their behalf that the International Harvester Co. selected two representatives in each division without the consent of the employees to send to Washington to boost the company union and defeat your bill. These representatives represent the company and not the men. Their tractor division representatives refuse to go. The employees are 100 percent for your bill and against company unions.

Two thousand five hundred employees is 100 percent of the number at the tractor works. It is exaggerated statements of that kind which make it so essential, before there is any dealing with these new organizations, to ask for their authorization. Our men would be very much surprised if that number was over 200 but so far as domination goes, I have already stated to you that the elected representatives of the works council at that plant, when we said to them, "If you want to come down here, you can", they were fair enough to say that they felt they should not come.

Senator WALCOTT. Who was instigating the formation of that other group?

Mr. ELLIOTT. The name of the radio speaker was Dr. Curtis Howe Springer. He spoke last night at 8 o'clock over station WCFL, Chicago Federation of Labor, at Chicago. There are union propaganda talks put on there nightly, and this one was wholly inaccurate

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and designed to prejudice the judgment of your committee against these men who come down here.

I want to say that the works selected these men without any suggestion on our part, and this one works refused, and they are speaking only for their own works.

We believe, so far as the 14 works are concerned, that they are representing the enthusiasm of the employees for this 15-year successful collective bargaining plan, but I would not, for a minute, have you think that there are not some converts being made by this very vigorous and, to some extent, inaccurate campaign which is being made to convert them to other forms of organization.

I would like to close by the statement that any time they are converted, why, we are ready to deal with them. That is one of the features of the works-council plan. The men can withdraw, they can vote to withdraw. Everything is done by secret ballot.

The CHAIRMAN. Thank you, Mr. Elliott. The employees of the International Harvester Co. will come forward. Their names are Henry Sembach, Frank Oliver, Bernard Lundstrom, and Daniel J. Sullivan. Mr. Sembach and Mr. Oliver, I understand, are here as the representatives of the employees at the McCormick works?

Mr. OLIVER. Yes, sir.

The CHAIRMAN. And Mr. Bernard Lundstrom and Daniel J. Sullivan are here as the employees of the Wisconsin Steel Works.

Mr. SULLIVAN. Yes, sir.

The CHAIRMAN. Which one of you will speak for the employees of the McCormick works?

Mr. OLIVER. I will.

The CHAIRMAN. And who will speak for the Wisconsin Steel Works?

Mr. SULLIVAN. I will, Senator.

The CHAIRMAN. Your name?

Mr. SULLIVAN. Daniel J. Sullivan.

The CHAIRMAN. We will proceed with Mr. Oliver.

STATEMENT OF FRANK OLIVER, EMPLOYEE, McCORMICK WORKS, INTERNATIONAL HARVESTER CO.

The CHAIRMAN. May we have your full name?

Mr. OLIVER. F. R. Oliver.

The CHAIRMAN. Where do you reside?

Mr. OLIVER. 3018 West Thirty-ninth Street, Chicago, Ill.

The CHAIRMAN. Where are you employed?

Mr. OLIVER. At the McCormick works.

The CHAIRMAN. In what capacity?

Mr. OLIVER. I am layout inspector.

The CHAIRMAN. How many employees are there at the McCormick works?

Mr. OLIVER. Four thousand and odd men.

The CHAIRMAN. Are you a duly elected representative of an organization in the McCormick works?

Mr. OLIVER. Yes, sir.

The CHAIRMAN. What is the name of that organization?

Mr. OLIVER. It is called the "Industrial Works Council."

The CHAIRMAN. When were you elected representative?

Mr. OLIVER. One and a half years ago.

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The CHAIRMAN. What time was that, what month?
Mr. OLIVER. That was in the summer.
The CHAIRMAN. And were you ever elected previous to that time?
Mr. OLIVER. No, sir.
The CHAIRMAN. Was that the first election that you had among the employees?
Mr. OLIVER. No, sir.
The CHAIRMAN. How often have elections been held?
Mr. OLIVER. Every half year, every 6 months.
The CHAIRMAN. Why was there no election held the year previous?
Mr. OLIVER. There was one held before, but I was not elected.
The CHAIRMAN. You were elected first a year and a half ago?
Mr. OLIVER. Yes, sir.
The CHAIRMAN. And you were reelected twice since then?
Mr. OLIVER. No, sir. A councilman goes in for 1 year; councilmen are elected for 1 year, but there are one half of the councilmen holdovers. There is one election held in December and one in July.
The CHAIRMAN. And you were elected when?
Mr. OLIVER. A year and half ago.
The CHAIRMAN. Are you still a member of the council?
Mr. OLIVER. I am still a member of the council.
The CHAIRMAN. For how long is the term?
Mr. OLIVER. For 1 year.
The CHAIRMAN. How is it you were elected a year and a half ago?
Mr. OLIVER. It was set back because the works was not working full capacity, and they agreed to set the elections back for another half year. I came up for election again in July, this year.
The CHAIRMAN. How long has this works council been in existence in the McCormick works?
Mr. OLIVER. It has been in existence in the McCormick works for 15 years.
The CHAIRMAN. And how long have you been an employee of the McCormick works?
Mr. OLIVER. I have been an employee of the McCormick works 8 years.
The CHAIRMAN. During the 8 years you have been employed there, have you had these annual elections?
Mr. OLIVER. Yes, sir.
The CHAIRMAN. But you have not been a member of the council until a year and a half ago?
Mr. OLIVER. No.
The CHAIRMAN. How many councilors are there?
Mr. OLIVER. There are 18 councilmen.
The CHAIRMAN. They represent different departments?
Mr. OLIVER. Different departments and divisions.
The CHAIRMAN. At the McCormack works?
Mr. OLIVER. Where the department is small we group two of them together and make a division of it.
The CHAIRMAN. How often do you meet as councilors?
Mr. OLIVER. Well, the representatives meet. They have a regular meeting once a month, but in my capacity as secretary, I see these councilmen at least once a week, every councilman.
The CHAIRMAN. Are you given any emolument for your work as councilman other than the pay that you would receive as a regular

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employee of the company during the time you are attending these sessions with the councillors?

Mr. OLIVER. No, sir; I am not.

The CHAIRMAN. Who sent you here?

Mr. OLIVER. I was asked by the employees to come here. They have been reading about the Wagner bill, and they asked me if we could do something about it. I went to the superintendent and asked him if we could have a Government man to come and see how the shop was working with this council, because they really think it is good. That could not be done. So the next thing I knew I was called in and they said they would let us go to Washington and they would pay our expenses. We could not afford to come here and pay our own expenses.

The CHAIRMAN. Was it the unanimous sentiment of the members of your council that you and your colleagues who are here with you should represent them?

Mr. OLIVER. Yes, sir; we were elected to do this.

The CHAIRMAN. By whom?

Mr. OLIVER. By the councilmen.

The CHAIRMAN. How many of them?

Mr. OLIVER. Eighteen councilmen.

The CHAIRMAN. Eighteen councilmen chose you two?

Mr. OLIVER. Yes, sir.

The CHAIRMAN. And you now desire to make a statement to the committee?

Mr. OLIVER. Yes, sir.

The CHAIRMAN. Has this statement been submitted to the other councillors?

Mr. OLIVER. No, sir; they left it to me.

The CHAIRMAN. You prepared it yourself?

Mr. OLIVER. Yes, sir.

The CHAIRMAN. We will hear you.

Mr. OLIVER. Mr. Chairman and Senators: I am F. R. Oliver, layout inspector at McCormick Works of the International Harvester Co., Chicago, Ill., and with Henry Sembach—drop-forge man of the same works—have been sent here to protest against the Wagner "Labor Disputes" Act.

I have worked for the last 8 years under the works council plan of the McCormick works, and Mr. Sembach has been on this council for 15 years. I was elected as employee representative one and a half years ago, and am now secretary.

The men in the shop have read about the Wagner bill, and knowing that we have something better than any union could offer, wish to protest. I asked Mr. Harrison, the superintendent, if we could have a Government man come and look us over and see how things were run, but this could not be done.

We have 18 representatives for four thousand-odd men, each representative is elected for 1 year, subject to recall if he does not do as his men wish. Election is by secret ballot, nomination 4 days in advance of election.

The CHAIRMAN. Is the nomination by secret ballot?

Mr. OLIVER. Yes, sir.

The CHAIRMAN. So you have a day for nominations at which time any employee can offer himself a nominee for the position of councilman?

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Mr. OLIVER. Yes, sir. On the average from the different departments, you may get about 18 men who have been nominated.

The CHAIRMAN. Who were looking for nomination?

Mr. OLIVER. Who were looking for nomination.

The CHAIRMAN. Then how many are nominated?

Mr. OLIVER. The two highest are taken.

The CHAIRMAN. Then, at the election, the choice of one between these two is made?

Mr. OLIVER. Yes, sir.

The CHAIRMAN. Very well.

Mr. OLIVER. There are from 2 to 3 hundred men in each division. The 18 representatives elected the chairman and myself to come before this committee after the firm had agreed to pay our expenses, as we could not afford to pay our own way.

The council has worked for and got for the men vacations, pensions, made-work program, employees' benefit associations, safe shops for working, a loan plan and last, but not least, we have got a pay raise to 97 percent of 1929 hourly rates, when the code only calls for 85 percent.

I think a union is better than nothing, but the council we have is far superior. I am in very close touch with the men, as is every representative in the works. I see most of the representatives at least once a week outside of the meetings. Representatives meet once a month by themselves, and 6 days later the council meets with the management, who have only 10 on the council.

By this close contact with the management we can get any difference settled quickly and easily, and the workmen affected must be satisfied. Grievances of the men are taken up at the moment I am informed of them. Most of them never come above the assistant foreman. I have never had any trouble that was not settled in short order and everybody is satisfied. And I think this is the main reason why the men wish this industrial council to stay in force in our plant.

The CHAIRMAN. Thank you, sir. The employee from the Wisconsin Steel Works will come forward, please.

STATEMENT OF DANIEL J. SULLIVAN, EMPLOYEE WISCONSIN STEEL WORKS, INTERNATIONAL HARVESTER CO.

The CHAIRMAN. Will you state your full name?

Mr. SULLIVAN. My name is Daniel J. Sullivan, Chicago.

The CHAIRMAN. You are employed by the Wisconsin Steel Works?

Mr. SULLIVAN. Yes, sir, Senator.

The CHAIRMAN. What is your employment?

Mr. SULLIVAN. I am an employees' representative of the Wisconsin Steel Works.

The CHAIRMAN. How many employees are there in the Wisconsin Steel Works?

Mr. SULLIVAN. Normally there are 3,000. At the present time there are about 2,500.

The CHAIRMAN. When were you elected representative?

Mr. SULLIVAN. The last time I was elected, Senator, was in July 1933. It was the eleventh consecutive time I was elected. We hold semiannual elections.

The CHAIRMAN. You have been serving as a representative of the employees in this plant for 10 years?

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Mr. SULLIVAN. For 11 years, Senator, and 7 of these years I was chairman of the group—of the employee-representative group.

Now, I have listened in here a couple of days, Senator, and I think I can save you a little trouble—I know the line of questions that have been asked here—if it will be pleasing to you to permit me to tell my story. I have no prepared statement. Nobody has told me what to say or how I should say it. As a forethought, I want to say that I would not be here to say anything that I honestly thought would be detrimental to those poor devils that trusted me all those years, not for all the money the International Harvester Co. has.

My story is this, and this is the reason why I am here: Two weeks ago we held our monthly meeting, the employee-elected group held a meeting. They hold a meeting every month. At this particular meeting we discussed several subjects. One of them was the "Labor Dispute Act," commonly known as the Wagner bill.

After discussing it, of course, we all agreed on one thing, and I was proud of that. We all think that Senator Wagner himself is one of the greatest humanitarians this country has ever produced, and the united opinion was that Senator Wagner would not, for anything in the world, have anything injected in the bill carrying his name that would interfere with the plan of collective bargaining and employee representation such as we had, if he know our plan.

Then it was decided that we ought to have a couple of representatives come here to tell our story to you gentlemen of this committee, and I and Mr. Lundstrom, by secret ballot, were elected to come to Washington. Then we approached the assistant plant superintendent, who was acting superintendent at the time, the general superintendent being away, and asked him if the company would assist us with transportation, because we did want to preserve this employee representation plan that we have and they readily agreed. That is why I am here.

Now, this plan has been in existence for 15 years. I was there when it was initiated, but I was not elected for 2 or 3 years afterwards. At the outset, or just as soon as it was initiated, we bargained for, and I think at the time we wore down the resistance of the management, and got an 8-hour day, which was, I think, at least 5 or 6 years ahead of the other steel industries that granted the 8-hour day. We got that through the works council.

Later on we bargained for and got a vacation for hourly men, which has not been done, as far as I know, by any other of the steel industries. We had quite a time getting it, but we got it. We kept persistently after it.

During the depression we organized, through our council, a relief plan—a loan plan providing for unemployment relief to the needy—and I will say this, there was not a single one of our men or his family that suffered from lack of food, clothing, or shelter during this period of depression.

Then we also have an insurance plan, the employees' benefit association. Those are the major things that we have gotten through our works council. But other than that, hardly a day passes that some employee does not come to me, and whether his grievance is real or imaginary, whether he has no other foundation for it than just a mere misunderstanding, I take it up with the department superintendent and have the misunderstanding cleared up, if possible, and

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if it is a real grievance we make an effort to have it remedied; we take it before the council. I might say that our joint council meets every month, but 10 days before the joint council meets the employee representatives meet and discuss their problems.

Now, just as a sample of what we took up at the last meeting, in addition to discussing the Labor Disputes Act, we took up the matter of unemployment insurance; we took up the matter of a revolving fund for the employees so that they could go and borrow money instead of going out to loan sharks; we took up a modification of the pension plan. The one which we have now is a very good one, but we are trying to get it liberalized a little bit for the lower levels.

We also took up a modification or a liberalization of the vacation plan. That is just a sample of what we did at our last meeting

I have here a copy of the constitution and bylaws of our plan. I have also two copies of the verbatim minutes. We have verbatim minutes of our joint council meetings. Every utterance of these men. the elected representatives or the appointed representatives, is religiously printed in those minutes, so that the men throughout the plant can read them. I have got two samples of them here, if they are wanted.

I have also copies of notices that we post when we have an election, where it specifically prohibits anybody having the power to hire or discharge or who is in any manner in the managerial position, from interfering in the slightest way with the election. We nominate by secret ballot, and we elect by secret ballot. We hold elections semiannually. Half the members are elected. We always have half remaining.

Now, in addition to that, this plan is very flexible. If I would in the least way create suspicion in the minds of any of my constituents that I represent, they can recall me. A petition signed by one third of them can call for an election.

It is also flexible in this way—and I have not been able to see, and none of us here have, where it is not alone in the letter but in the spirit of the National Recovery Act of our splendid President. We have lived up to the letter and the spirit, and if there is a shade or a scintilla of doubt about it, we have a very easy manner of amending the constitution of our council.

Really, Senators, I wish that I could talk like some of the gentlemen that preceded me here, so that I could impress you with one thing: I was for 12 years an active member in a local union. That was the railroad union. That was affiliated with the American Federation of Labor. I haven't a word to say against that organization or their splendid president, William Green. I think he is a great humanitarian, a great man, doing all he can for his fellow men, but I do think it is in my judgment, and I am willing to invite William Green, or anybody that represents him, or any agent of the Government that doubts anything about our plan—invite them to the Wisconsin Steel Works and I am willing to bet they will say the same as they have long, long ago.

There was an official of the Bricklayer's Union there. We had union men sitting in our council of elected representatives carrying American Federation of Labor cards. This representative was out there—I forget his name now—and I told him our plan. I explained it to him; I told him what we were doing for the men. He said to me: "Sullivan,

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you are doing far more for them that I could do as the union." That is the absolute truth. I am willing at any time to have that member of the American Federation of Labor verify it. I am only talking for the Wisconsin Steel.

I haven't got anything one way or the other to say about the fly-by-night work councils that have been initiated lately. I do not know anything about them. Ours is established; it has been tried, and everything else.

I am willing at any time that they should come and see me, and I will tell them everything connected with our organization.

I will say now that I do not believe that Senator Wagner will take this away from us. The men I represent, my constituents, appreciate this plan. It would take me an hour to enumerate all the benefits that have accrued to the employees through this industrial council that we have.

The CHAIRMAN. Is there any movement among your employees to substitute a trade-union organization for this plan?

Mr. SULLIVAN. Absolutely none, Senator, and I think I would know if there was. They trust me and they would tell me.

The CHAIRMAN. You think there is unanimity of sentiment in favor of retaining the present organization?

Mr. SULLIVAN. I know there is, Senator, at the Winconsin Steel. I am not speaking for any other branch of the International Harvester.

The CHAIRMAN. Thank you, Mr. Sullivan. Mrs. Pinchot.

STATEMENT OF MRS. CORNELIA BRYCE PINCHOT

The CHAIRMAN. May we have your full name, Mrs. Pinchot?

Mrs. PINCHOT. Cornelia Bryce Pinchot.

The CHAIRMAN. Where do you reside?

Mrs. PINCHOT. Milford, Pa.

The CHAIRMAN. You are appearing in your individual capacity?

Mrs. PINCHOT. Yes, sir.

The CHAIRMAN. You may proceed.

Mrs. PINCHOT. Gentlemen, I appreciate your courtesy in giving me a chance to appear before you this morning. I have come to speak for the Wagner bill, the Wagner bill as it was written, I mean, without qualifications or amendments. I do not represent any group, I am not concerned in any way, either from the side of the workers or the side of business. I am here purely because I have seen something of the conditions that are existing today, and I believe that such legislation is necessary to protect the workers, to protect the honest employers, and to protect business, and more than that I believe the return of a sane prosperity depends to a large extent upon the passage of this legislation.

I do not want to take your time in expressing opinions about the bill, but I would like to tell you something about the conditions that exist in the second-greatest industrial State in the Union, and then to ask you gentlemen to judge for yourselves whether such legislation is necessary or not.

When I came to Washington several weeks ago to speak at General Johnson's forum, there was a man standing on the platform, and he was telling the story of the conditions that existed among the workers in the soil-pipe industry. I could not hear all of it,

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but he spoke of long hours, of sweatshop wages and oppressive conditions. As it happened, several days before, I had been looking over some price indexes, and one of the items was this very soil pipe concerning which this man was complaining, in an industry where he said they were paying starvation wages. According to the records in 1929, the index price of soil pipe was 89.5, and at the end of 1933 it was 152.6.

Now, gentlemen, as I see it, that is the crux of the matter—soaring prices on the one hand and sweatshop wages and oppressive conditions of labor on the other; business stimulated at the expense of the consumer and the worker; a stupid and short-sighted policy that is bound to be destructive in the long run to all concerned.

Now, first, I want to make it very clear that I believe in the N.R.A. and I think that you Senators are to be congratulated upon having given the country such a sound and constructive piece of legislation. I believe the N.R.A. is a direct attack upon the depression, that it goes straight to faundamentals in its recognition that the return of prosperity depends upon putting more money in the hands of the mass of American people. I think it was a magnificent conception, bold, imaginative, and realistic.

Unfortunately, in Pennsylvania, as I have seen it, the N.R.A. is more honored in the breach than in the observance. It is in most places more of a theory than a fact. We need the Wagner bill to make it a fact and not a theory.

The N.R.A. was supposed to do away with sweatshops, yet sweatshops have returned to Pennsylvania. They are flourishing today on the same old stands.

The CHAIRMAN. Are these sweatshops using the Blue Eagle?

Mrs. PINCHOT. I was just going to say that; yes. The only difference is that some factories, some sweatshops, are now adorned with a Blue Eagle in the window.

The CHAIRMAN. In other words, they are exhibiting signs which indicate a compliance with the shorter hours of work and the increased wages that the N.R.A. stands for, when, as a matter of fact, they are the same old sweatshops?

Mrs. PINCHOT. Yes. The wages are exactly the same. I do not recall a sweatshop any place where the wages are much more than $8 or $10 a week, and there are plenty of places in Pennsylvania where they are working for $5, $6, and $7 a week or less.

The CHAIRMAN. I thought the minimum wage provision of the code had eliminated wages of that class?

Mrs. PINCHOT. If the code was being enforced; but you see the machinery of enforcement in Pennsylvania is a dead letter. I can give you thousands of instances where the workers have been batted around from one board to another, to Washington and back to the local boards, and the only thing that happened is that the workers who complained were dismissed.

The CHAIRMAN. Have these complaints been called to the attention of the authorities of the N.R.A. here?

Mrs. PINCHOT. Oh, sure.

The CHAIRMAN. And what has been done?

Mrs. PINCHOT. Nothing at all. There was a man in here the other day who said that one of the devices they have is to ask the employees to sign off, as it is called. That means to sign a minimum record

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sheet, that they are only working 40 hours a week, when they may be working a great deal more. There was one case where four girls refused to sign off and this manufacturer called in his whole shop and he said, "Now, I am going to dismiss everybody who refuses to sign off for short hours. I guess we don't want any more of this N.R.A. business here."

The CHAIRMAN. I am surprised to hear, Mrs. Pinchot, that there has been such a noticeable disregard of the objectives of the N.R.A. To what extent have these sweatshop wages and conditions prevailed?

Mrs. PINCHOT. Senator, it is very hard to tell. I cannot give you any case as to just how far this extends, because we have no way of finding out.

The CHAIRMAN. We have had a remarkable advance in working conditions and a recovery in the textile industry, for instance, by reason of the code.

Mrs. PINCHOT. Would you think so?

The CHAIRMAN. In my State; yes.

Mrs. PINCHOT. Would you think so? Would you think that the textile industry was paying good wages?

The CHAIRMAN. The evidence before us here is that every textile mill in the country has a minimum wage of not less than $12.

Mrs. PINCHOT. Would you like to hear some evidence on that from Mr. Edelman, who is the head of the hosiery works?

The CHAIRMAN. The representatives of the textile labor organizations testified that there undoubtedly had been a great improvement in the minimum wage, and the minimum wage provision of the code was generally being obeyed, but they did state that the wages in the higher brackets had not, in all instances, kept up with the wages paid in the other brackets.

Mrs. PINCHOT. I think I have a case here, it is one of the biggest textile industries—I am not going to give you the names of any of these places today because I do not think that is the proper thing to do.

Senator METCALF. In Rhode Island, I think, they all pay the minimum wage at least.

Mrs. PINCHOT. Would you know that, Senator?

Senator METCALF. I am very well acquainted with it.

Mrs. PINCHOT. Have you made an investigation? I would be very much obliged to send you a transcript on Rhode Island. I know a good deal about Rhode Island.

The CHAIRMAN. What I want to say, Mrs. Pinchot, that is one par excellence experiment of the N.R.A. that many point to as being the most successful one, the cotton-textile industry. You know that, of course, that is the one thing that the administration and everyone points at as being the most successful undertaking. We would like to get some testimony about the cotton textiles.

Mrs. PINCHOT. Would you like me to get you some?

The CHAIRMAN. Yes; I wish you would. The whole record here is that the cotton-textile industry has tremendously improved its working conditions. I wish you would give us some evidence later on if any is available.

Mrs. PINCHOT. I haven't it here, I will try to get you some. I would like to introduce now this advertisement which appeared in a big Philadelphia department store yesterday—or 2 days ago, I think it was. It is a swagger suit, including 4 pieces, a coat, a skirt, a waist, overcoat, a hat, and a pocketbook, for $8.25.

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Senator WALCOTT. Do you object to the lowness or the highness of the price?

Mrs. PINCHOT. I was going to say it is both ways. It is not altogether a question of highness of prices. I think anyone who knows anything about industry would realize that for $8.75 you cannot take cloth or shoddy material and make it into a 4-piece suit, make a hat and pocketbook, and pay adequate wages. In this store, unlike the case of soil pipes, the price has not gone up. And the shop that is selling this thing is flying the Blue Eagle.

Senator WALCOTT. Do you know whether they are paying below the minimum wage?

Mrs. PINCHOT. Can you guess yourself, Senator?

Senator WALCOTT. I would not guess until I knew these facts.

Mrs. PINCHOT. Well, I would guess. I think $8.75 for a cloth coat, a skirt, a waist, a hat and pocketbook, I think anyone who knew anything about industry could give you information on that.

There was another department store flying the Blue Eagle; the manager was discussing blouses with the owner of a clothing factory. He wanted the blouses made for a certain price. The operator who was running a union shop, protested that he could not make them at that price and still pay N.R.A. wages. This was a man who is very prominent in the N.R.A., and he said: "That is all right, go ahead and make the blouses and send them to me. We will sew the labels on here."

The owner of that department store is a man who had a good deal to do with the drafting of the code.

I asked General Johnson the other day if he could name one town in Pennsylvania where the workers were getting more than 50 percent of the protection that the N.R.A. allowed.

The CHAIRMAN. As I get your position, Mrs. Pinchot, you personally favor the N.R.A.?

Mrs. PINCHOT. Surely.

The CHAIRMAN. You complain against its nonenforcement?

Mrs. PINCHOT. Precisely. I thought you would rather not have me take your time in saying what I thought. I thought you probably would rather have the facts.

I asked General Johnson if he could name one instance, if he could give me the instance of one town in Pennsylvania where the workers were getting even a 50 percent protection of the N.R.A. General Johnson wrote me a letter which had nothing to do with the matter. I mean it was a clear evasion. He said he was sorry not to be present. He finished by saying:

> Of course no one has more admiration for your great husband than have I.

That is one point on which General Johnson and I agree. I would like to have one point on record on which we agree.

I have a great many letters here telling the conditions. I don't know whether you want me to read them or just put them in the record. They tell about the same conditions.

(The letters referred to are as follows:)

> At the time of my discharge they were paying skilled labor only 27 cents per hour, and I, thinking that I had the backing of not only one State but also that of our Federal officers, according to their statements through the papers and the radio, thought I had a chance to organize the men and better our condition. But

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after losing my job through my efforts due to my confidence in the word of the said officers, all I got out of it was hardships for my family and being ignored by some of them and seeing others trying to pass the buck. Mrs. Pinchot, it is almost enough to convince one that we do not have any honest officers any more.

If you want any affidavit I will send one on, or do anything I can to assist, so that I get back to work again. The labor board in Pittsburgh has investigated a few cases in town. Instead of getting the two parties together they go to the boss and abide by what they say, and drop the case on no grounds. I don't think that is fair to the little fellow, for he is not there to defend himself.

Perhaps you could do something for the girls that work in the shirt factory. The girl workers there often earn less than $1 a day of 8 hours, and then when the pay roll closes every 2 weeks our wages are figured out, and we are supposed to take the amount earned and divide by 32½ cents and whatever hour that gives us we are to mark on our pay card. If we don't abide with these rules we are to be fired. Is there nothing that can be done about such treatment? We are under the N. R. A. in name only.

I am writing a letter to you to ask you if we cannot have a little justice in * * *. I am not employed there at present. I was forelady there, but I was replaced by a girl for $8 a week. I am writing this on behalf of the girls, as they ask me every day to do. I understand you are a friend to the working girl, so I am asking you what we can do. I know from experience that the girls are not making but $3, $3.50, and $4 per week. He is getting N. R. A. prices and paying the girls so little. Why must the girls endure this when they must work for their maintenance? Please give the girls a break, as they need it.

Since writing to you before, we, the girls, have tried to organize a union, and in some underhanded way he found out some of the girls' names that belong to the union, and now he is laying them off, he doesn't tell us he is discharging us, he gives each one a different story; one girl, he didn't say anything, only that he had no work for her. The next girl, the superintendent told that Mr. ——— was going to move the factory out of town, and he was going to induce him to stay, and he would call her and let her know the results. The next morning at a quarter to 9 o'clock, he sent for her to come in to work. The next girl he laid off, he said to her, "You can see what agitators done for you, now see if they will give you something to eat." Then he called me to lay me off. He told me there were certain laws and requirements that had to be lived up to concerning the N. R. A., as much as to say I wasn't coming up to the standard. Now, I have worked at that kind of work for the past 10 years, and used to make very good wages, and now he tries to tell me I can't turn out the required amount of work in a week * * *. On Monday of this week, Mr. ——— was here from New York, and he made a speech to the girls, telling them he was going to move the factory out of town and he also asked who the union leaders were, and to come out and show who they were.

Unfortunately they were home for lunch so no one showed themselves. He called them cowards and said they were yellow and he had some of those cheap little foreign girls yell "throw them out." There are some 2 or 3 hundred girls and men working in this factory.

I have read in the paper about you helping factory girls. Here are pay envelops of different girls marked "the amount of pay we worked and the amount of pay for the days" and our factory is a member of the N. R. A. I am enclosing the N. R. A. stickers we sew on our dresses. This man always works his girls hard for very little money. And we work 40 hours a week. There are girls in our factory making $3 for 10 days' work which is 30 cents a day.

(Envelops enclosed showing $10.35 received for 10 days' work. $14 received for 10 days' work. $8 received for 9½ days' work.)

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* * * I worked last summer at the ——— box plant. They had an N.R.A. arrangement which they never lived up to. They agreed to pay us 32½ cents an hour, 40 hours a week. The third week I was there they cut the pay to 26 cents an hour and laid us off each afternoon. $5.20 a week is all they paid us. Then when I complained and went to the compliance bureau here in St. Louis I told them they were displaying the Blue Eagle large banners on all their factories but were chiselers against the N.R.A. They laid me off. I met one of the girls the other day who has been working for them 9 years who said she had a sick mother to support and all they paid her was $6 a week. Think of it, yet they are displaying the N.R.A. Blue Eagle and fooling the public. I know of two more cases where they are paying their girls only $4 a week for 7 hours work a day; they said they would not join the N.R.A.

The receivers have been very unfair in opening up about 2 weeks ago the ——— plant which had been closed at least a year, while the ——— plant has been closed not more than 5 months. The employees of the ——— plant went on strike when the receivers of the company attempted to invoke the stretch-out system by giving 8 machines to the weaver instead of 6 that each worker had been running, and in addition cut the wages on the basis of from $1.09 per 100,000 to 86 cents per 100,000 picks.

When the employees refused to be subjected to this unfair stretchout system, the company officials told them they had no more orders booked for this mill and would not permit any person to work unless the lower wages and larger number of machines were undertaken. This the employees refused to do and walked out.

It has been apparent to all those who understand the conditions that the receivers and company officials took this stand with a view to having the mill closed, because no efforts were apparently made to obtain further orders, and over one third of the employees had already been laid off. It is also apparent that the attitude of the receivers and officials has been to strike back at the employees solely because they had organized a union known as ———.

I am writing you asking if you can do anything for us at the ——— Furniture Co. It looks as if the company can get away with anything and nothing can be done. They are paying us from $4 to $7 for 40 hours, and this is the reason I am writing you asking you if you can do anything to help us. I am talking for all employed. The manager says that is enough for us. We don't deserve as much as Negroes. It is hard to take this and let them get away with it. We had four men in our room that actually made 49 cents today. You talk about a sweat shop. This is one. The Furniture Co. runs the whole town. They control the Chamber of Commerce and the town council. We asked both to help us but they said they are running their own business and can't help us.

The N. R. A. committee is composed of furniture officials. If it is possible to have you investigate please don't take the officials' word. Go through the factory and ask the men to show their books. We have all our work written down day by day for the last 4 years.

NORTHUMBERLAND, PA., *April 5, 1934.*

To the honorable MRS. GIFFORD PINCHOT:

DEAR MADAM: We are writing you and asking if you will kindly investigate the working conditions at the Muriel Garment Co. located at Northumberland, Pa.

This garment company has signed up with the Government to stand by the code and pay the wages as specified in the code.

Our wages have amounted to between $6 and $10 for 2 weeks' work, while the code calls for $13 a week.

Recently the proprietor, Mr. Joseph Swartz, requested of the workers to sign a paper which stated we were receiving the wages as called for in the code.

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Some 15 of the workers refused to sign same and they were immediately laid off. Will you kindly investigate same or else advise us what to do under such circumstances.

With kindest regards,

We are sincerely yours,

MRS. ELSIE BARDALL,
256 Hanover Street, Northumberland.
STELLA CONRAD,
Northumberland, Pa.

Mrs. PINCHOT. There was an investigation made a short time ago of 50 factories, and it was shown that within the 50 factories 15 percent of the workers were found to be receiving less than the prescribed minimum under the N. R. A. There are very few factories that openly violate the law. They have all sorts of devices. One is the "sign off" of hours, as I told you. Another is if an employee gets, say, $8 a week instead of the prescribed minimum of the legal 32½-cent rate, the $8 that she has made is divided by 32½ cents and the resulting 25 hours number is the hours that the record shows she has worked that week. There are a thousand other devices which I will not take your time to relate here. The point I want to make is that where there is an effective union organization these violations are not occurring or are only occurring in a very slight degree.

Now, big business on the whole, I think, does not violate the N. R. A. so far as wages and hours are concerned, or at least not in a wholesale way. Probably there is no great falsifying of records, and wages on the whole probably do come up to the minimum wage set by the N. R. A. But it is section 7–A, guaranteeing the right to organization, that big business is refusing to accept. They say:

> It is all very well for the Senators in Washington to give workers the right to organize, but we will not permit anything of the kind.

Confident that General Johnson will not lift a finger to interfere, big business has gone deliberately and systematically to work, without subterfuge, out in the open, shamelessly, to defy the Government and to stamp out the organization of the workers at any cost.

Now, if you want me to give you specific instances, I can give you instances where they have used intimidation, they have even shot some of the workers. There have even been some murders committed in Pennsylvania. Mr. Pinchot is having an investigation made of the position of deputy sheriffs. They are trying to do away with deputy sheriffs through the legislature, but so far they have been unable to. I would like very much, when that investigation is completed, to get permission to send it in so that it may be included in the record.

The CHAIRMAN. We will be pleased to have you send it to us.

Mrs. PINCHOT. That probably will not be completed for some months.

Last December, I spoke at Vandergrift, which was a steel town, where no hall could be hired for an N. R. A. meeting, where no church, no school would open its doors to the workers. The authorities refused to permit to speak on the street, but I went there and I spoke to more people than there were in the town. I told the workers that the N. R. A. specifically guaranteed to them the right to organize, that if any man was dismissed because of union activities, I could guarantee that he would be reinstated by applying to Washington, and I

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except for odd jobs for 2 or more years. It is the unbiased belief of the members of this association that complete union domination of building labor would have the immediate effect of erecting a huge "bumper" that would effectively halt any and all contemplated construction.

Chicago's experience with the rule of unionism in the building industry is one with which the entire country is, or should be, familiar. Bombing of buildings under construction, and of contractors' homes, maltreatment and intimidation of workmen, interference by varied means with the delivery of material, encouragement of hoodlumism, the practice of extortion from contractors, workmen, and property owners—these are only a few of the numerous factors with which, until the formation of the Landis Award Employers' Association, the building industry in the Chicago territory had to contend.

The increasingly discouraging situation in Chicago, persisting and becoming more intolerable each year over a period of at least 20 years as the labor unions ruling the building tradesmen become more and more domineering and unfair in their demands, culminated in the early part of 1921 when the major building operations in this city completely ceased. This condition, which aggravated an exceedingly acute housing shortage, drew the attention of the Illinois Legislature and resulted in the appointment of a commission of investigation, at the public hearings of which all of the above uneconomic conditions as well as many others equally obstructive were disclosed as common occurrences.

Facts presented at these hearings showed that control of many of the unions had come into the hands of men with criminal records, whose control had been obtained and then maintained by gangs of thugs and gunmen. Apparently, the American Federation of Labor, with which these unions were affiliated, was not sufficiently interested in the welfare of the union members to take notice of these vicious conditions. At least, no action was taken by this national organization to counteract the affects of hoodlum-controlled unionism.

Realization of the chaotic conditions in the building industry in the Chicago territory, due to union domination and racketeering, finally resulted in the appointment of Judge Kenesaw M. Landis, then Judge of the United States District Court, as arbiter in what was known as the Chicago Building Trades arbitration. His decision as to equitable working conditions and wage scales, handed down after 3 months of extensive discussions is the basis upon which the Landis Award Employers' Association was organized and has since operated.

It is, perhaps, appropriate to quote herewith certain pertinent paragraphs of the Landis decision:

> It is the violation of no confidence to say that building construction had gotten into bad repute in this community. There was a general disposition to keep away from it as a thing diseased. Capital avoided it. The wise dollar preferred most any other form of activity or no activity. And this applied to the whole range of building construction from the cottage to the skyscraper. This attitude of the public added to the profound commercial and industrial depression generally existent resulted in a virtual famine in housing accommodations and brought about the idleness of many thousands of men willing to work. It was in view of these conditions that the umpire conceived it to be his duty to aid these parties to rehabilitate the industry in the esteem of the public, the great unrepresented party to this arbitration, but, nevertheless, the one upon whom the consequences of the award fall. This loss of public faith was not due entirely to the wage question. * * * The real malady lurked in a maze of condi-

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tiations itself with General Johnson, and it has all been through Senator Wagner.

Mr. Charles P. Pierce.

STATEMENT OF CHARLES P. PIERCE

The CHAIRMAN. Your full name?

Mr. PIERCE. Charles P. Pierce.

The CHAIRMAN. Your residence?

Mr. PIERCE. Chicago, Ill.

The CHAIRMAN. Your occupation or business?

Mr. PIERCE. Vice president of the Landis Award Employers' Association.

The CHAIRMAN. How large an association is that?

Mr. PIERCE. One hundred and seventy-five members.

The CHAIRMAN. Are they manufacturers?

Mr. PIERCE. No; they are building contractors.

The CHAIRMAN. Are they all in the city of Chicago?

Mr. PIERCE. Yes.

The CHAIRMAN. You appear representing that association here?

Mr. PIERCE. I appear on behalf of the association and the workmen that are affiliated with our association.

The CHAIRMAN. Are you an officer of the association?

Mr. PIERCE. Yes.

The CHAIRMAN. Are you yourself a contractor?

Mr. PIERCE. No; I am not.

The CHAIRMAN. You are just in the managerial office for the association?

Mr. PIERCE. Yes, and I also manage a contracting company.

The CHAIRMAN. You may proceed.

Mr. PIERCE. I am here in behalf of the many thousands of skilled building tradesmen, engaged for many years in the active pursuance of their respective trades in the Chicago construction industry, and in their behalf the Landis Award Employers' Association hereby offers the following brief in support of its contention that Senate bill no. 2926, known as the "Wagner labor disputes bill," shall not be enacted into Federal law.

First and foremost, this organization holds that this bill, if permitted to become an active law, shall of itself and by reason of its inequitable provisions defeat the very purpose for which it is proposed—encouragement of recovery in business and increased employment. Unquestionably, from the viewpoint of the members of the Landis Award Employers' Association and others who have had to contend with certain intolerable conditions that have, and to some extent still exist, closed-shop unionism thrust upon the construction industry, which we believe would be the result of the enforcement of this act, would immediately result in a complete stoppage of all building activity in this territory.

Members of this association firmly believe that should the Wagner labor disputes bill become law, labor costs, dictated by a monopolistic unionism would inevitably rise to a point which would positively eliminate any meager possibilities of the resumption of construction activity that might now exist. The building industry in recent months has witnessed signs pointing toward increased activity which would provide employment for numerous tradesmen who have had no work

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finished up by saying the United States Government was stronger than the Steel Trust.

Well, I could not say that today. To my bitter shame I do know that under the present administration of the N.R.A. the Steel Trust is stronger than the United States Government and that it can and does openly flaunt its defiance of the Government and is being allowed to get away with it. I can give you plenty of facts to prove that. I have not brought you individual cases, but if you want them I can do that, too.

In Clairton, for instance, 700 men were locked out because of union activities 5 or 6 months ago. They have complained and written to Washington and to local authorities, but their case has been bandied like a football between different committees and boards and what not, but those men are still locked out.

I could give you hundreds of individual cases where men are pacing the streets because they have been dismissed because of union activities, they can't get a job in Pennsylvania, they cannot get any protection from any of the boards of administration that have been set up here.

I think the turning point of this whole question of the N.R.A. occurred in the early part of last summer, when the Frick Coal & Coke Co., a subsidiary of the Steel Trust, refused to recognize the United Mine Workers of America. It is a long story. I will not take your time to go into it, it is easy to get it. But the gist of it is that General Johnson completely failed to stand up for the law, he then decided that he was not going to enforce the law as far as "big business" was concerned. He has plenty of power to do it. He had the power of publicity which he would not use. He had the power most of all of licensing the different individual businesses. Most of all, the Steel Trust was prepared to get an order from the United States Government. They only had about 2 months of coal left. Now, General Johnson had the game entirely in his own hands, and it was when he decided that his job was not to protect the workers but his job was to give to "big business" everything it wanted, and that then the turning point came, and immediately right through Pennsylvania, you could see the temper of the employees change. That was not only in Pennsylvania.

I was told of a little town where two men had refused to sign the N.R.A., and they were looked down upon, and then this thing happened, and they were the heroes of the town. Immediately the employers got the significance of General Johnson's position, even before the general public did, even before the workers did. They knew that it was only the small corner grocery or beauty shop, without financial backing, that needs fear the doughty general; that big business would be allowed to write its own codes and to go its own way

The CHAIRMAN. I gather from what you say, Mrs. Pinchot, that you do not favor the suggestion that the licensing provision which expires July 1st should be discontinued?

Mrs. PINCHOT. Yes. General Johnson has come up and he has thrown down his arms. I have heard of Chinese generals giving ammunition to the enemy, but I have never heard of an American general doing it before.

As I say, the employers realized that General Johnson had made up his mind to make a dead letter of all of the provisions in the law

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that protected the workers. They knew that he was not going to use his powers to protect the consumers; they knew that he had decided in his own mind that his job was to help pile up dividends for Wall Street.

Look at the results.

It is not only the workers that need have protection, but it is business that needs protection, because the fundamental purpose of the N.R.A. was to increase the consuming power of the American people.

Mind you, also, the honest manufacturer is at a terrible disadvantage in this way, because he cannot compete with the man who is chiseling, who is running a sweatshop, and selling his goods far below what the honest manufacturer can sell them for.

I think that the Wagner bill is needed, not only for the protection of the workers, but it is needed for the protection of the honest manufacturer, and it is needed for the protection of business itself. You have seen what is happening. The concentration of wealth is getting greater and greater. Dividends have been piling up. Wages have gone up 7.5; food, 21 percent; clothing and furniture, 25 percent. It is certainly an inverted pyramid. The workers' pay envelop today buys less than it did last March.

The Wagner bill is necessary to strengthen the hands of the workers so they can have the power to get for themselves what Congress promised but what has not been given them.

And the Wagner bill will make for industrial peace. Of course, I do not know if these gentlemen who have referred to industrial peace mean it is a certain peace where you can get your opponent on his back on the ground and you have your foot on his throat. I do not call that peace. It is quietness anway. I fear the present policy of the N.R.A. is leading to industrial unrest, and I think I know something about that. I am getting anywhere from a hundred, perhaps, to 500 letters a day from all over the country telling me what the conditions are, and in the last few weeks the letters have begun to change. The workers say they know they cannot get help from Washington, so that they will have to resort to direct action. That means unrest.

Now, if the N.R.A. had been administered as it was intended when you gentlemen passed the law, probably this bill of Senator Wagner's would not have been necessary, or not so necessary, anyway. As a matter of fact, if I were a union worker, and had to choose between the passage of the Wagner bill and a National Recovery Administrator who was on the level, I should let the Wagner bill go and take a "new deal" in the administration of the N.R.A., if I could not have both.

Look at the Petroleum Board, for instance. The administration of that board has been in the hands of Mr. Ickes. As I am told—I do not know from my personal observation—there are no violations. Mr. Ickes does not have any more power than General Johnson, as I understand, and in his industry the workers do not need any protection because there are no violations of the law. That is because although the problems are very much the same, that was because he intended to administer the law exactly as it was written.

The CHAIRMAN. It was argued before the committee yesterday by ex-Governor Miller of New York, and it has been argued by others,

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that there are penalty provisions or enforcement provisions in the N.R.A. law that would permit, if enforced, the punishment of the unfair practices enumerated in this bill.

Mrs. PINCHOT. Now, Senator, there have been something like 400 codes written, and in less than a dozen, more or less, I haven't got the figures, does labor have any representation. The enemies of labor have been put in as administrators and deputy administrators, and they have written the most vicious codes very often.

For instance, I was told of a case the other day, as I understand it, it was some Government project, and the union men wanted to get together with the contractors, they said, "We can work this out by ourselves." "We can get together and work this out for our mutual benefit, and benefit to everyone."

I understood, or I was told, that it took 3 months for the deputy administrator to draft the code. Those people were pretty well prevented from getting together with the employers, because the arrangement that they were going to work under was so much better for the workers than the code.

The CHAIRMAN. It is represented to us that no code is accepted until it is submitted to a labor board under the N.R.A., and that they have to O. K. the labor provisions, and that body is composed of representatives of labor, before the code is finally approved by the President.

Mrs. PINCHOT. Yes; that is true. They are representatives of labor if you choose to call them representatives. It is a question as to who they do represent now, isn't it?

Senator WALCOTT. Mrs. Pinchot, I think at this point, we ought to check up a little bit. We are here for information, and we want to get the real picture.

Mrs. PINCHOT. Surely. I am trying to give you the picture in Pennsylvania.

Senator WALCOTT. I know you want to give it to us. I would like to know if you think it is true that General Johnson is making a complete failure of the N.R.A.?

Mrs. PINCHOT. He is not making a failure as far as business is concerned.

Senator WALCOTT. You say he is not administering the N.R.A. fairly in Pennsylvania, that he is letting it go by the boards?

Mrs. PINCHOT. He is supposed to enforce it.

Senator WALCOTT. And that the labor representatives that helped draw the labor provisions of the N.R.A. codes are dishonest men?

Mrs. PINCHOT. I did not say they were dishonest men.

Senator WALCOTT. You strongly implied it.

Mrs. PINCHOT. No, I do not say they are dishonest men.

Senator WALCOTT. You said they did not represent labor?

Mrs. PINCHOT. I said they did not represent the point of view of labor anymore, some of them.

Senator WALCOTT. We ought to get the names. Who have you in mind particularly? That is a pretty serious thing. We are here to defend labor as much as we are here to defend employers, and as much as we are here to defend honest business. I do not think you ought to make a statement like that unless you can mention their names.

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Mrs. PINCHOT. I think some very vicious codes have been put into effect that have been O.K.'d by labor. I am speaking of the cotton code, which I understand was accepted by a man named Leo Wolma. I think he let the most vicious code go through that has ever gone through. I think Donald Richberg let the automobile code go through, which was a violation, certainly, of the provisions of the N.R.A. I think I can give you a great many more instances. I am not making any comment, I am not here to make comments.

The CHAIRMAN. I think Mrs. Pinchot is to be commended in her willingness to state the facts and give names.

Mrs. PINCHOT. I am not here to make comments.

Senator WALCOTT. It is our duty to bring the facts out.

Mrs. PINCHOT. Senator, would you defend the cotton code?

Senator WALCOTT. I am not here to take sides on the matter at all.

Mrs. PINCHOT. Do you think that the cotton code is a fair code?

Senator WALCOTT. I am not familiar enough with it to have any opinion. I would not venture an opinion until I found what the facts are and if there are abuses.

The CHAIRMAN. The cotton textile code is put forward as the par excellence code.

Mrs. PINCHOT. It recognizes discrimination between men and women. It recognizes discrimination between North and South.

The CHAIRMAN. You agree with me on that?

Mrs. PINCHOT. No; I do not think it is a good code.

The CHAIRMAN. That is what has been represented to us.

Mrs. PINCHOT. I did not know that.

The CHAIRMAN. Oh, yes. The cotton textile code is the one code that the Administration or the N.R.A. people think is one of the best of all codes.

Mrs. PINCHOT. I happen to know something about the violations in the cotton code, because I happen to know something about the code authorities. I think those reports ought to be made officially, if the cotton code has been represented as one of the good ones.

The CHAIRMAN. It is the one code above all others that the National Recovery Administration holds forth as being most successful for industry, and as advancing the welfare of the employees.

Mrs. PINCHOT. I didn't know that.

Senator WALCOTT. Are not you in favor of the attempt of the cotton code to minimize or reduce the difference between the wages of the North and the South by raising the wages of the South?

Mrs. PINCHOT. Yes; but there is another discrimination, there is the discrimination between men and women in the cotton code.

Senator WALCOTT. What is the difference?

Mrs. PINCHOT. I do not want to start giving you facts, because you know those things are so technical, I might be wrong.

Senator WALCOTT. I happen to know them.

Mrs. PINCHOT. The cotton code does actually allow a recapture of wages, if it can be proven that a man has been paying below the minimum. It can be proven in certain instances and it has been, and the wages are going back, but there is no penalty, therefore, it is the direct interest of every manufacturer not to pay adequate wages, hoping he will escape, and if he does not escape, he is none the worse for it, but it is so much the better for him. I do not think that provision is on the level. I understand when the code authority

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goes to the manufacturer and says, "You must do so and so", the answer is, "Lady, I ain't goin' to", and nothing is done.

Senator WALCOTT. I think you said there were certain employers in Pennsylvania who had killed some employees. Didn't you say that?

Mrs. PINCHOT. Yes. That was in the Frick Coal & Coke Co. Mr. Pinchot had to call out the National Guard twice in order to protect the miners of the Frick Coal & Coke Co., from the illegal attempt of the Frick Co. to shoot down miners and to intimidate and by violence to get them into submission. Twice the National Guard was called out in order to guarantee to the miners their constitutional rights and the rights that they were guaranteed under the N.R.A.

Senator WALCOTT. Will you give us the names of the employers who did the killing?

Mrs. PINCHOT. You can read that in the record. I can send that to you, if you want it. Hackney is the name of the sheriff in Uniontown.

There is a terrible system in Pennsylvania where the company can hire deputy sheriffs. They are supposed to hire gunmen from New York and other places.

The CHAIRMAN. There are sections in Pennsylvania where the sheriffs are really the agents of the employers?

Mrs. PINCHOT. Surely. Let me tell you about these facts in Pennsylvania, and the methods that I believe lead to violence. I am thinking of a strike now in which Mr. Edelman's workers were involved in Montgomery County, and the deputy sheriff was put on the roof of the factory with a machine gun and he actually shot some of the workers when they came in. Mr. Pinchot sent for the sheriff, and he said, "Your methods are leading to violence." The Governor cannot remove the sheriff, but he said, "I think your methods are leading to violence. If you will agree to step aside, I will take over the settlement of this strike." And one of the sheriffs said, "Yes, but we are from Fayette County, we could not do that." The troops were called out, and the sheriffs were refused to come in there. Mr. Pinchot called in the leader of the union and asked him if he could guarantee order. He said he would. Mr. Pinchot never at any time had any disorder. In every case the union men entirely took over the situation which had been full of violence and trouble, and the strike was conducted in an orderly manner. Sometimes that was hurting the cause of the workers, and yet they were willing to cooperate and were responsible for the order that existed, as I said, in every case that I remember when the sheriff was removed.

What causes industrial violence is the fact that the police officers are using their powers to try to break this strike. That is not only true in Pennsylvania, that is true in many other States.

Senator WALCOTT. Mrs. Pinchot, if I may interrupt?

Mrs. PINCHOT. Surely. I will agree to answer any questions.

Senator WALCOTT. You say that these abuses exist and serious results come from these abuses. Is that true since the N.R.A.?

Mrs. PINCHOT. As a matter of fact, some of these strikes were before the N.R.A. went into effect. Some were after and some before.

Senator WALCOTT. Hasn't the Governor any authority to get into the situation?

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Mrs. PINCHOT. If he did, there would be no violence in Pennsylvania, I will tell you that. That is too easy.

Senator WALCOTT. Well, as you know, the Governor has been a lifelong friend of mine.

Mrs. PINCHOT. Surely. Do you think he would tolerate violations of law?

Senator WALCOTT. No. I do not think he would, but I wanted to bring that fact out, whether he has any authority in that matter?

Mrs. PINCHOT. No, he has no authority. They have given to the Secretary of Labor just lately the right to make some investigations, but he has no right to enforce them.

Senator WALCOTT. That is very interesting.

Mrs. PINCHOTT. Now, I think that since the N.R.A. went into effect, the workers of America have shown qualities of patience, of self-control and of discipline that was utterly amazing, but I don't know how long that can last.

I think the Wagner bill is necessary if you believe in the N.R.A. Of course, if you do not believe in the N.R.A., I can easily see that you would not want the Wagner bill. I believe if you believe in the N.R.A., that the Wagner bill is necessary, because, as you have seen—and I think I can prove every statement I have made—the workers have been betrayed. A law was passed to increase mass production power and to correct the lack of balance between labor's share in industrial earnings and that of capital. This law has been twisted from its objective, and in some ways has been used, in effect, against the very people that it was passed to help.

I do not want to go on record as saying that wages have not gone up in Pennsylvania, because they have in a great many instances. I can give you the figures on that. There has been an increase in employment and there has been a very marked gain in some manufacturing or mercantile establishments, but I do want to say with all the earnestness at my command that the Wagner bill is necessary to give to the workers the power while there is still time to save the N.R.A.

Senator WALCOTT. Are you familiar with the Wagner bill, so I can ask some questions about it?

Mrs. PINCHOT. Surely. I have it before me. The Wagner bill is in two parts. I am talking most about the first part.

Senator WALCOTT. I was wondering whether you feel that it is a bad thing for labor to have the provisions, or a good thing to have the provisions that are in the Wagner bill with reference to power given to the labor board to compel them to join any given union?

Mrs. PINCHOT. Does it do that?

Senator WALCOTT. I think it does.

Mrs. PINCHOT. Will you point out to me where it does?

Senator WALCOTT. Yes.

The CHAIRMAN. While he is looking for that would you mind, Mrs. Pinchot, letting me have your views about this set-up in the bill about the board or commission?

Mrs. PINCHOT. The labor board?

The CHAIRMAN. Yes.

Mrs. PINCHOT. I am very doubtful about that, I mean I am not perfectly sure about that, how I stand on that.

The CHAIRMAN. There is a difference of opinion about that.

Mrs. PINCHOT. Yes; I know.

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The CHAIRMAN. Some feel very strongly that it should be a board composed of members representing the public interest alone.

Mrs. PINCHOT. Yes.

The CHAIRMAN. It is alleged that these boards that have three members representing the public interest and others representing the employers and employees do not always function satisfactorily; that it results in compromises. Have you formed any opinion about that?

Mrs. PINCHOT. It is a very difficult problem, humanity being what it is, to get men by any device who will give an impartial opinion. I do not know that any one device is better than another to cure those men.

The CHAIRMAN. You have heard some of the evidence this morning about company unions?

Mrs. PINCHOT. Yes.

The CHAIRMAN. Have you made any study of the company unions in Pennsylvania?

Mrs. PINCHOT. I have seen a certain amount of company unions. I have not known so many of the men personally. I would like very much to ask, in all the evidence that was introduced before you in reference to these company unions, whether any company union has ever increased wages or changed or touched on hours? I think sometimes they get certain conditions, they may get certain terms in working conditions, that I do know.

The CHAIRMAN. I must admit that there is evidence presented by representatives of the unions that they actually had hours of labor reduced and wages increased.

Mrs. PINCHOT. Before the company was prepared to do it?

The CHAIRMAN. You heard one witness' testimony this morning, Mr. Sullivan, didn't you?

Mrs. PINCHOT. I could not hear him. I am sorry.

The CHAIRMAN. He testified that his shop, through the work of the company union, was the first to get the 8-hour day of any steel plant in the country.

Mrs. PINCHOT. After Mr. Morgan decided that in Wall Street; after he decided that it was good for the industry.

Mr. SULLIVAN. I would like to tell Mrs. Pinchot that again. The company union that I spoke a few faulty words about, the Wisconsin Steel Co., here about 2 months ago, or maybe 9 weeks ago, we bargained for and got a 7 percent increase before any other plant in the steel industry. That is one of the many things that we have gotten through what I think is wrongly, in our case, called a company union.

Mrs. PINCHOT. Then you were testifying for company unions?

Mr. SULLIVAN. We are just as free as the air.

Mrs. PINCHOT. You admit the company union is not free, because you are free. You are not a company union. That is exactly my position here. I got it out of his own mouth. He is not a company union because he is free.

The CHAIRMAN. There are, of course, different kinds of company unions, as the testimony shows.

Mrs. PINCHOT. This man admits that most company unions are not free.

The CHAIRMAN. I was wondering whether you have any observations to make on that.

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Mrs. PINCHOT. I have seen a great many complaints; yes, thousands of complaints. There is one good company union in America, in Philadelphia, and that was rather terrible when we came down to it.

The CHAIRMAN. I wanted to read to you, Mrs. Pinchot, what Mr. Miller said yesterday, that is rather confirmatory of what you have said. He said, "I think the N.R.A. law now contains ample provisions for the enforcement of many of the violations that you have mentioned."

Mrs. PINCHOT. Governor Miller came here because he was entirely satisfied with the provisions, so he came here to protest against any further amount of power to anyone. It is obvious if he represented the Steel Trust, if he thought there was enough power that he would not want any more.

The CHAIRMAN. This is, perhaps, in point; I have the quotation here: "Those are the very words of section 7–A. The law certainly is adequate to deal with that." Dealing with the abuses or violations that have arisen under section 7–A.

Mrs. PINCHOT. Well, this bill would be merely interpreting it and making it a little clearer and carrying it a little further, which would be unfortunate for the people that Governor Miller represents, wouldn't it?

Did you find those provisions, Senator Walcott?

Senator WALCOTT. Surely.

Mrs. PINCHOT. Will you show me where it is?

Senator WALCOTT. Yes. If the N.R.A. has enough teeth in it to protect labor in every respect, then we would not need the Wagner bill, would we?

Mrs. PINCHOT. Do you think that?

Senator WALCOTT. I am asking you.

Mrs. PINCHOT. No; I didn't say that.

Senator WALCOTT. I thought you said if the N.R.A. was enforced, fully enforced, we would not need the Wagner bill.

Mrs. PINCHOT. I said that my choice between getting the Wagner labor bill and getting a man who was going to enforce the law would be to get the man who was going to enforce the law before the Wagner Law. I did not say I did not want the law. That is quite different. Will you show me the provision that shows they must join a well-known organization?

Senator WALCOTT. I do not claim they have to join. I think the Labor Board could make it so that an individual might be practically kept from making his own negotiations.

Mrs. PINCHOT. Can an individual do his own negotiations, Senator?

Senator WALCOTT. I should hope so.

Mrs. PINCHOT. Would you tell me how? Would you just tell me the process? Does he go to his boss and say, "I do not like the unions"?

Senator WALCOTT. As I say, the citizen has a right to talk to any one of his employers.

Mrs. PINCHOT. He is a free citizen, but the employer fires him, doesn't he?

Senator WALCOTT. I do not think so.

Mrs. PINCHOT. Can you give me any case where an employee has ever gone up to a big industrial representative and complained about conditions all by himself and got a hearing?

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Senator WALCOTT. Thousands of cases in my own business, that I have been connected with; thousands of cases. I have seen employers that are all the time talking with this man or that man, from foremen down.

Mrs. PINCHOT. Yes, but not on any big questions of hours or wages.

Senator WALCOTT. They get the point of view of individuals. This precludes it, this precludes practically all social contact.

Mrs. PINCHOT. Senator, if you were a typical employer, perhaps we would not need this, we would not need protection. I wish you were.

Senator WALCOTT. I do not have any comment to make on that.

Mrs. PINCHOT. I know something about your industry, too.

Senator WALCOTT. Well, I have been out of industry for 12 or 14 years.

Mrs. PINCHOT. Yes.

Senator WALCOTT. Never having had a strike and having known what it is to have the working men's point of view, having worked with it for years, lived in his boarding house with him, I know the American workingman is a conservative, honest, patient man and needs protection, all that we can give him, but I do not believe that it is right to discriminate as between the workingman and the employer. They are absolute partners.

Mrs. PINCHOT. Page General Johnson, will you?

Senator WALCOTT. Well, then, don't you think that this tends to give a union, not specifying which one, but a union which might be a consolidation of all other unions, autocratic power, which is unfair to the laboring man? I have heard of a good many men, whom I trust and who have had a lot of experience with labor, say the Wagner bill is so extreme that it would destroy a great many of the best unions, and bring a positive injury to labor.

Mrs. PINCHOT. A labor man said that?

Senator WALCOTT. Oh, yes, several labor men have told me that.

Mrs. PINCHOT. On this part of the bill, the second part of the bill?

Senator WALCOTT. No, the first part of the bill. Section 304 also. I would like to get your opinion about that.

Mrs. PINCHOT. I was wondering whether you think the trade associations are very bad for industry. If a labor man came and testified that trade associations were awfully bad to industry and he wanted to protect industry from them, what would you think?

Senator WALCOTT. I wish you would tell me what you mean by trade associations, because there are a great many different kinds of trade associations.

Mrs. PINCHOT. I mean the organizations through which the employers and manufacturers function. Are they bad for labor; are they bad for industry? Of course, I admit it is not a complete parallel, but I mean you do admit it is not difficult for an employer to organize and it is extremely difficult for employees to organize, therefore I mean the parallel is not such that you would have to give Government protection to it, so long as the code provides for employers to organize.

Senator WALCOTT. I think that is true. That is all I have, Mr. Chairman.

Mrs. PINCHOT. Were you going to show me that provision?

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Senator WALCOTT. Yes. It is on page 23, section 304, subsection B of section 304. I was wondering whether you approved of that. It reads—

Any term of a contract or agreement of any kind which conflicts with provisions of this act is hereby prohibited, and every employer who is a party to such contract or agreement shall immediately so notify his employees by appropriate action.

Mrs. PINCHOT. That refers, doesn't it, to the unfair practices?

Senator WALCOTT. It refers to the provisions of this act, whatever it may be. Do you think that is good law?

Mrs. PINCHOT. I am not a lawyer, but I would imagine that perhaps it was a little too clear for lawyers not to misinterpret, but I think the intention is clear. I think any lawyer can twist it around to make it mean something else. I mean I do not know what would be held against me if I should say I believed in that provision, but I believe what I imagine to be the intent of the provision, which I thought was clear enough.

The CHAIRMAN. We thank you, Mrs. Pinchot.

Mrs. PINCHOT. Thank you, sir.

The CHAIRMAN. A telegram received from Mrs. Pinchot some hours later will be inserted in the record.

APRIL 7, 1934.

Senator WALSH: Believe we were talking at cross purposes about cotton code. I was referring to cotton garment and you to cotton textiles. It was my mistake and I was stupid not to catch your use of the word "textile." At that I can give you many instances of violations but I am not familiar with the code itself. Would appreciate this correction in record.

CORNELIA BRYCE PINCHOT.

(The remarks of Miss Charlotte Carr, secretary of labor and industry, Commonwealth of Pennsylvania, presented to the committee during the afternoon of Saturday, April 7, 1934, are, by direction of the chairman, inserted in the record at this point.)

STATEMENT OF MISS CHARLOTTE CARR

The CHAIRMAN. Your full name?

Miss CARR. Miss Charlotte Carr, secretary of labor and industry, Commonwealth of Pennsylvania.

The CHAIRMAN. How long have you held this position?

Miss CARR. I have been secretary of labor since last July.

The CHAIRMAN. Prior to that?

Miss CARR. I was deputy secretary before that time.

The CHAIRMAN. Before that?

Miss CARR. That is right.

Mr. Senator, I had not planned to present data to you today, but because of the testimony that was presented to you this morning, it occurred to me that there were two points that I might make that might assist the committee in its thinking on a decision in this important matter of the Wagner bill.

First of all may I say that I have had personal contact in company unions. I have been employed with an establishment having a company union.

When the representatives from the company union talked this morning I realized full well with what sincerity they were speaking, with what real belief they were presenting their case; I understood

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that they could believe that it would be possible for them to have protection in their company union, but my experience has been that, however sincere the employer is, however desirous he is to have the company union really represent the workers, there are circumstances in industry over which the individual has no control which tend to weaken and entirely disrupt the company union as an organization in any sense representing the workers.

The CHAIRMAN. When were you connected with a company union?

Miss CARR. I would prefer, if you do not object, not to give the name of the company, but I can put that in the record if you want it?

The CHAIRMAN. How long ago was it?

Miss CARR. I have been in three establishments with some form of company union. This was in the State of New Hampshire in the textile industry.

The CHAIRMAN. Some years ago? Not in recent years?

Miss CARR. May I say——

The CHAIRMAN. It is not necessary to give the company's name if you do not wish to, but I wanted to know how far back it was.

Miss CARR. I think this point is relevant, Senator, that if the circumstances were true from 5 to 10 years ago, they would be more true today, because in those days there was not the incentive to build up a company union to kill organized labor that has been developed with the organization of the N.R.A.

In the company union in which I had my longest experience we had an employer intending in every way to play fair with the workers. This employer, however, was a member of the manufacturers association in his industry, and, although he did not feel that it was necessary for his workers to get outside advice and counsel in the determination of their policies, he did feel it was necessary for himself. He, therefore, was a member of a manufactuers' association, and that association determined that all members of the association in that industry would have a cut of 10 percent in earnings and an increase from 48 to 54 in hours, and that one employer was quite helpless to vote against that decision, he had to go along with it, which meant, of course, that however much he wanted to stand by his company union, the representatives in the company union, not being a part of an organization of all of the workers in the industry, were quite helpless. After a desultory, expensive disastrous strike, the workers went back at the lower earnings and at the longer hours, and one very big and important step downward was taken toward the depression in which we now find ourselves.

I have one other point to make if I may.

The CHAIRMAN. Certainly.

Miss CARR. That has to do with the real problems of the enforcement of the N.R.A. codes and the importance of the assistance of organized labor if we are to make any pretense at all toward enforcing these codes.

May I say, Senator, that in my judgment, the taxpayers of these United States cannot afford to pay for the enforcement that will be required to see that the N.R.A. codes are observed if we do not have and do not stimulate the organization of labor to work toward the enforcement of the codes.

The Department of Labor and Industry of Pennsylvania has been asked by the compliance board in Pennsylvania, to make investiga-

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tions of the reported violations of the codes, and we more than welcomed—indeed, we perhaps inserted ourselves into their discussion of how enforcement could be arrived at because we felt we had an obligation to the employers and workers in Pennsylvania to do what we could to see that the codes were in fact enforced.

All we could do was to do what we could to see that the codes were in fact enforced.

All we could do was to do what they gave us power to do. They gave us power only to investigate. Now, there are two things vitally wrong with the procedure that is used in the enforcement of the code, and unless something is done about them, it is absurd to spend the money that we are spending in the pretense of enforcement.

The first thing that is vitally wrong with the methods used in compliance is that no investigation is made except as there is a report of violation.

Now, in the labor department in the regular course of our inspections, of course, we do not wait until we hear of a violation, but we go to a plant in a routine way. We cover the establishments in the Commonwealth.

Under the N.R.A. no plant is entered unless there is a reported violation. That, of course, puts the responsibility upon organized labor to make those reports. Unorganized labor will not dare report violations because of the very real possibility of being dismissed. Although there are provisions in the N.R.A. saying that the worker will not be dismissed if he reports a violation, you and I and anyone with any knowledge of industry realizes that there are a thousand excuses which can be made, which can be used as the reason when the real reason is that the employee had reported a violation. That is one weakness.

The second weakness is in the regulation under which the N.R.A. is being administered, and this is where I feel it is utterly absurd. There is no compliance authority, no representative of our department, permitted to go into an establishment to find out if there are violations until that employer has been written to and told there has been a reported violation and given an opportunity to write back and say whether it is true or not. It would be perfectly absurd for us at our inspection work in the department of labor and industry to write to an employer and say, "We hear you are violating the law. Is it true? If it is, we are coming around and check up on it." Now, that is actually being done.

The Department of Labor and Industry, at real expense to the Department is making an investigation of the cases where the violations have been reported and where the employer knows we have come for that purpose. In 50 establishments in the garment industry with everything prepared against any evidence, there were 13 percent of the workers found to be receiving less than the minimum, actually and openly and blatantly on the records of the employer, in spite of every opportunity that that employer had to do something about it.

Now, we realize that the proportion not receiving the minimum was considerably higher than that, and the reason we realize it is because there is no policy under the code for the reporting of hours. Therefore, if the worker gets $13 a week, you can say he worked as many hours that week as 32 cents divided in $13 makes. If he worked 40

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or 50 hours, there is no report of it, no evidence of it, except as the individual workers give us that data.

It is a hopeless job that we have in front of us unless we have the assistance of organized labor in the observance of these codes. It is manifestly unfair to the workers, it is a demoralizing thing in the community, to have laws that are not observed, and that is the condition we have now

The CHAIRMAN. Are there any labor organizations in this garment industry?

Miss CARR. In some of them. There are some strong organizations. There is no question but what there is some. We are having figures collected which we can give to you. They are not completed, but I feel confident you will find that there is a direct relationship between the amount of observance and the strength of the organization in labor. Where there is no such organization it is not done.

With all due respect to the splendid thinking that has been done by the International Harvester Co., and I admit it—I think a great contribution has been made by that company, in bringing out in the open what are the important standards in industry, to have one isolated industry that has a corner on the market in the industry to be used as an example of what is going to be necessary if we are going to have N.R.A. complied with, is quite absurd, it seems to me.

Have you any questions?

The CHAIRMAN. No. Thank you. We thank you for the constructive suggestions. They are very helpful.

Miss CARR. Thank you.

The CHAIRMAN. The committee stands adjourned until 2:30 this afternoon.

(Thereupon at 1 p.m., the committee adjourned until 2:30 p.m. of the same day.)

AFTERNOON SESSION

(The hearing was resumed at 2:30 p.m., following the recess.)

The CHAIRMAN. The committee will come to order, please. Mr. Doragoff.

STATEMENT OF NATHANIEL DORAGOFF

The CHAIRMAN. Your name is what?

Mr. DORAGOFF. Nathaniel Doragoff.

The CHAIRMAN. Where do you reside?

Mr. DORAGOFF. This is my business address. 130 West Forty-second Street, New York City.

The CHAIRMAN. What is your personal business?

Mr. DORAGOFF. I am an attorney and a member of Local 306.

The CHAIRMAN. What union?

Mr. DORAGOFF. Motion Picture Operators' Union, the one I am complaining of.

The CHAIRMAN. How many are here with you?

Mr. DORAGOFF. Four of us.

The CHAIRMAN. What are their names and addresses?

(The members of the committee accompanying Mr. Doragoff gave their names and addresses as follows:)

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Morris Barth, 1562 Ocean Avenue, Brooklyn; Samuel Sole, 553 Hinsdale Street, Brooklyn; L. Brodsky, Richmond Hill, New York; Lewis Phillips, 11635 Two Hundred and Twenty-fourth Street, St. Albans, Long Island.

The CHAIRMAN. You four gentlemen are here representing yourselves or other members of this union?

Mr. DORAGOFF. We represent a substantial group of that union.

The CHAIRMAN. And the union is known as what?

Mr. DORAGOFF. Local 306.

The CHAIRMAN. Of what?

Mr. DORAGOFF. Of the International Alliance of Theatrical and Stage Hand Employees of the United States and Canada.

The CHAIRMAN. How many members in that union?

Mr. DORAGOFF. About 1,850.

The CHAIRMAN. Where is it located?

Mr. DORAGOFF. 1,850.

The CHAIRMAN. Are you all employees in some of the theaters?

Mr. DORAGOFF. Either were or are.

The CHAIRMAN. You desire to appear here on this bill?

Mr. DORAGOFF. I do.

The CHAIRMAN. We will be pleased to hear you.

Mr. DORAGOFF. I am representing here a committee of five union men to urge the passage of the Wagner labor-disputes bill.

We feel that this bill has a very important shortcoming. No provision whatever is made to protect the individual members constituting the rank and file of organized labor from being oppressed, discriminated against, and exploited by some ruthless and unscrupulous labor leaders.

To that end we advocate that a board be provided for in this bill to hear, determine, and enforce the decisions of that board where grievances and complaints may be presented by individual members. We, at the present time, find that we have no redress against the misconduct of labor leaders through labor.

In order to have this committee understand how we arrive at that conclusion, we will cite facts that transpired in the Moving Picture Machine Operators Union, Local 306. Every member of Local 306, whether employed or unemployed, is compelled to pay $40 per year dues, 25 cents per week toward the sick fund, $1.11 for every death, and in addition, 12 percent of any and all money earned each and every week. Local 306 is located in New York City; has a membership of approximately 1,850 men.

When Harry Sherman, the present president, assumed office on February 11, 1933, he received from the International Alliance money belonging to Local 306 amounting to $360,000, and the members paid into the local from February 11, 1933, to January 31, 1934, the sum of about $657,000, making a grand total of $1,017,000. On January 31, 1934——

The CHAIRMAN. In whose possession was that money?

Mr. DORAGOFF. That money is in the possession of the organization. Incidentally, or naturally, it is in the possession really of the president.

The CHAIRMAN. The president or the treasurer?

Mr. DORAGOFF. The president, treasurer, and recording secretary.

The CHAIRMAN. Is it deposited in the bank?

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Mr. DORAGOFF. It was deposited in the bank.
The CHAIRMAN. Originally?
Mr. DORAGOFF. Originally.
The CHAIRMAN. When he took office?
Mr. DORAGOFF. The $360,000 was in the bank. The rest of the money——
The CHAIRMAN. Has come in since?
Mr. DORAGOFF. Yes.
The CHAIRMAN. When was the date the $300,000 was in the bank?
Mr. DORAGOFF. The $360,000? It was February 11, 1933.
The CHAIRMAN. Very well.
Mr. DORAGOFF. On January 31, 1934, there was a balance on hand of $100,848.69.
The CHAIRMAN. So that nearly $1,000,000 disappeared?
Mr. DORAGOFF. That means that $900,000 was spent during that period.
The CHAIRMAN. Proceed.
Mr. DORAGOFF. How that money was spent, what it was spent for, we only have the following answers:

At a meeting of Local 306 on November 15, 1933, Harry Sherman, president of Local 306, inadvertently reported in his financial statement that $7,500 was paid to Mr. Spitaly. The only thing we know about Mr. Spitaly is that he is a notorious racketeer and that he was an intermediary in the Lindbergh kidnaping case. The sum of $25,000 was paid to the Diamond Detective Agency. What services were rendered by Mr. Spitaly and the Diamond Detective Agency we cannot learn and at no time did the union authorize the employment of these people and the expenditure of these sums.

In the financial report covering the period of February 11, 1933, to April 30, 1933, $158,000 was expended to "rehabilitation." In the inancial report covering the period of May 1, 1933 to July 31, 1933, $88,000 was expended for "rehabilitation." In the financial report covering the period of August 1, 1933 to October 31, 1933, $92,500 was expended for "rehabilitation." In the financial report covering the period of November 1, 1933 to January 31, 1934, $76,803 was expended for "organizing." Now the term "organizing" is substituted for "rehabilitation."

When Harry Sherman was questioned by some of the members what these "rehabilitation" moneys were spent for, his answer was, "If I was to tell you how and for what this money was spent for I would have to go to jail. So I won't tell you."

According to his reports submitted for this period of 1 year Harry Sherman spent $415,303 for "rehabilitation." The balance of the expenditure between the $900,000 and this $415.303 for a period less than a year, amounting to about $500,000, could never be explained away.

Another extraordinary expenditure is that of $70,000 for an attorney. This attorney never handled any litigation for Local 306. When members questioned the officials of Local 306 to find out why that money was paid, and what services he rendered, no information could be secured.

The penalties for being inquisitive and criticizing these enormous expenditures are very severe—loss of jobs, being kept unemployed, being assaulted, and being fined. At the present time there are

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serious charges of larceny of trust funds against Harry Sherman before the district attorney of New York County.

The CHAIRMAN. I was about to ask you if these facts had not been presented to the district attorney?

Mr. DORAGOFF. They have been presented.

Harry Sherman became the president of Local 306 not because the body wished it but because the International officers willed it. Harry Sherman was elected to the presidency of Local 306 because of the threat by the International Alliance officials that unless 306 elected Sherman, the charter would be revoked. The majority of the members had no other alternative than to elect Harry Sherman.

It might be interesting to note the career of Harry Sherman as a labor man. In 1916 he became a member of Local 306 and shortly thereafter became financial secretary. In 1922 while he was financial secretary of the local, after a suspicious robbery had occurred in his office and after he had been charged with a shortage in funds of $3,500, his bond was revoked by the bonding company. Thereafter he had to resign.

Then he became an organizer for International Alliance. Sherman retained that position until about 1924 when he, together with Edward Canovan, first vice president of the International Alliance, with two other executive board members of the same body, that is, William C. Elliott, the present president, and John P. Nick, the present first vice president, conspired to remove Charles Shay as president of the International Alliance.

Charles Shay had expended about $80,000 for organizing purposes during a period of 10 years. Now, these four above-named conspirators demanded that Charles Shay account for that money. Shay was not able to account and so was compelled to resign and subsequently died, a broken man. Edward Canovan became the president of the International Alliance and Harry Sherman was promoted for his good work as assistant to the president.

At this time the studio workers organized a union and were chartered by the International Alliance. Shortly thereafter, being discontented with their conditions, they called a strike and that strike was progressing very successfully for them. Sherman called a meeting of the workers and advised them all to return to their jobs and that he would settle all matters to their satisfaction. The workers heeded his advice. It was settled to their "satisfaction". Every one of these workers was fired from their jobs within a short period of time thereafter.

Sometime in 1927 the Paramount Publix Corporation induced Harry Sherman to leave the employ of the International Alliance and work for them as labor adjuster. Harry Sherman worked faithfully for his efficient employers by cutting wages and manpower of stage hands and operators.

Then about 1929 Sherman had his brother made the doctor for local 306 at a salary of $10,000 per year. This Dr. Sherman resigned shortly before this from Kings County Hospital during an investigation by the grand jury of that county. His salary there was $4,000 per annum.

Meanwhile, late in December 1931, Canovan, president of the International, resigned, and W. C. Elliott, one of the other conspirators in the Shay episode, became president. Sherman's position with

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the Paramount Public Corporation became insecure and Sherman attempted to have Sam Kaplan, then president of Local 306, ousted through his friends, William C. Elliott and John P. Nick, but Elliott needed the support and aid of Kaplan for the June 1932, International election, and so he refused to heed Harry Sherman.

Meanwhile, Kaplan had spent about $11,000 to help get Elliott elected. After the election, Elliott began to heed Sherman. Thereafter, on November 30, 1932, the International Alliance officials removed Sam Kaplan and attempted to appoint Harry Sherman as president thereafter, but were unsuccessful because Justice Miller in re *Kaplan* v. *Elliott*, ordered an election. Then, on February 10, 1933, Harry Sherman was elected president of Local 306. Thereafter Sherman had his salary increased, contrary to the constitution, from $1,800 per annum to $20,000 per annum.

It is futile for us, in view of what has been aforesaid, to appeal to the International Alliance to secure redress from the International Alliance officials. This is particularly true in view of what transpired at our regular meeting of February 21, 1934, when William C. Elliott, International president, appeared before our body and told us, I am tired of you members complaining to the district attorney, going to court, and making complaints to us. If I get more complaints from you, I will revoke your charter and turn it over to three different organizations. The American Federation of Labor informs us that it has no jurisdiction in such matters, that the American Federation of Labor is merely the servant of the International and the last word is had by these Internationals.

The CHAIRMAN. I suppose that is true, is it not?

Mr. DORAGOFF. Very true. Incidentally, the American Federation of Labor is about the most democratic institution that I know of.

The CHAIRMAN. There is no complaint against it.

Mr. DORAGOFF. We are often asked, "How can one man dominate a group of 1,850 members?" It is not one man. It is because of the aid of the International officers that he can do so.

Therefore, we urge the committee to establish some machinery in the National Labor Board to provide redress to abused individuals who are members of organized labor.

The CHAIRMAN. You and your associates have shown a spirit of courage and you are rendering a fine public service in continuing to bring about the prosecution of these officers of the union, if the facts which you have presented are true. We thank you.

Mr. DORAGOFF. Thank you, sir.

(The remarks of Miss Charlotte Carr, secretary of labor and industry, Commonwealth of Pennsylvania, will be found at the end of the morning session of this date, following the remarks of Mrs. Gifford Pinchot.)

The CHAIRMAN. Mr. Edwards.

STATEMENT OF HAROLD EDWARDS

The CHAIRMAN. Your full name?

Mr. EDWARDS. Harold Edwards.

The CHAIRMAN. Your residence?

Mr. EDWARDS. Syracuse, N.Y.

The CHAIRMAN. Your occupation or business?

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Mr. EDWARDS. I am president of the O. M. Edwards Co., Inc.

The CHAIRMAN. Are you here representing that company or a larger group of manufacturers?

Mr. EDWARDS. I am representing that company and a group of 75 manufacturers in central New York, employing about 25,000 employees, from whom I have letters authorizing me to appear for them and present their view point and protest the enactment of the Labor Disputes bill, Senate 2926. I request that I may be allowed to include their names in the record without taking the time to read them now.

The CHAIRMAN. Thank you. That may be done.

(The names of the concerns authorizing Mr. Edwards to speak in their behalf are as follows:)

THE O. M. EDWARDS CO., INC.,
Syracuse, N. Y., April 5, 1934.

Hon. DAVID I. WALSH,
Chairman, Senate Committee, Washington, D. C.

DEAR SIR: The following concerns have requested me to represent them and present arguments against the Labor Disputes Act, S. 2926.

The Straight Line Engine Co., Inc.; the Engelberg-Huller Co., Inc.; the Prosperity Co., Inc.; the Porter-Cable Machine Co., all of Syracuse, N. Y.; Benedict Manufacturing Co., East Syracuse, N. Y.; Lennox Furnace Co., Inc.; Kane & Roach, Inc.; J. M. Wall Machine Co., Inc.; Beaver Machine & Die Casting Corporation; Rollway Bearing Co., Inc.; Precision Castings Co., Inc.; Tompkins Brothers Co.; Syracuse Chilled Plow Co., Inc.; Diefendorf Gear Corporation; Allen Tool Corporation; Dunning & Boschert Press Co., Inc.; Easy Washing Machine Corporation; San-Equip Incorporated; Kilian Manufacturing Corporation; Pass & Seymour, Inc.; Iroquois China Co.; Syracuse Stamping Co., Inc.; W. C. Lipe, Inc.; Onondaga Pottery Co., McMillan Book Co.; Brown Co.; W. H. H. Chamberlain, Inc.; Mack, Miller Candle Co.; A. E. Nettleton Co.; Lamson Co., Inc.; Syracuse Lighting Co., Inc.; Continental Can Co., Inc.; Gaylord Brothers, Inc.; Paragon Plaster Co.; L. C. Smith & Corona Typewriters, Inc.; Crouse-Hinds Co.; Muench-Kreuzer Candle Co., Inc.; John Marsellus Casket Co., Inc.; Hall & McChesney, Inc.; Frazer & Jones Co., all of Syracuse, N. Y.; Bossert Corporation and Brunner Manufacturing Co., Utica, N. Y.; Morris Machine Works, Baldwinsville, N. Y.; Oneida Community, Ltd., Oneida, N. Y.; Rome Manufacturing Co.; General Cable Corporation; Revere Copper & Brass, Inc., all of Rome, N. Y.; E. D. Clapp Manufacturing Co.; Crouse & Pope Foundry Corporation; Columbian Rope Co.; Auburn Button Works, Inc., all of Auburn, N. Y.; Brewer-Titchener Corporation and Champion Sheet Metal Co., Inc., both of Cortland, N. Y.; Beacon Milling Co., Inc., Cayuga, N. Y.; Dilts Machine Works, Inc., and Peter Cailler Kohler Swiss Chocolates Co., both of Fulton, N. Y.; International Nutyp Tool Corporation; Ames Iron Works; Oswego Candy Works, Inc., all of Oswego, N. Y.; Pierce, Butler & Pierce Manufacturing Corporation, and O. M. Edwards Co., Inc., both of Syracuse, N. Y.

Very truly yours,

HAROLD EDWARDS,
Chairman Manufacturers of Central New York.

PETER CAILLER KOHLER SWISS CHOCOLATE CO., INC.,
Fulton, N. Y., March 26, 1934.

Mr. HAROLD EDWARDS,
Chairman Central New York Manufacturers, Syracuse, N. Y.

DEAR SIR: The Manufacturers Association of Fulton, at its meeting March 13, took formal action to appoint as their proxies the representatives which might be sent by your group to Washington to protest against the Wagner bill on labor disputes.

In accord with that action we authorize Harold Edwards, W. L. Hinds, and Richard H. Pass to represent us at such meeting and to vote for us.

There has been no labor disturbance in Fulton in the last 20 years which is evidence that our employers and their employees are able to handle labor prob-

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lems satisfactorily to both groups along the present lines and that there is no reason for changing the present methods, or to bring in people from the outside.

Some plants have representative committees which have functioned for nearly 20 years, while others deal directly with various divisions or departments of their plants. We are strongly opposed to any change which might disturb our successful and harmonious methods.

We append a list of employers supporting this stand together with the numbers of employees involved.

If this list were to include the local plant of the American Woolen Co., it would represent 100 percent of all the people employed in our local industries. The American Woolen Co. is omitted for the reason that as a company policy such matters are handled by their general management and local plant officials are not authorized to take independent action.

It has been stated, however, by one of the officials that the fine spirit of Fulton employees and the lack of disturbances is one of the factors which favor the continuance of operations in Fulton.

Very truly yours,

CHAS. W. HILL,
Chairman, Manufacturers Division, Fulton Club.

Fulton industries, Mar. 26, 1934

	Employees
Aluminum Container Corporation	55
Velvet Tissue Corporation	28
Foster Bros. & Chatillon Co	44
Armstrong Cork Co	177
Hunter Fan & Motor Co	40
Hunter Arms Co., Inc	50
Oswego Falls & Sealright	857
North End Paper Co	27
McHenry Milhouse	40
Victoria Paper Mills	122
Allen Excelsior Co	16
Olympic Silk Mills	434
Peter Cailler Kohler Swiss Chocolate Co., Inc	750
Total	2,640

The CHAIRMAN. Proceed, please.

Mr. EDWARDS. These companies represent industries of various sizes, the greater number of which employ less than 250 men, and many are located in the smaller cities and villages. They have established a close personal contact with their employees extending over many years, and with some over half a century, with continual peaceful relations during this time.

After listening to the testimony this morning, I was coming down here to say that I was a manufacturer, but I am commencing to feel now that probably I am an idealist because in central New York the concerns that I am representing have had no labor disturbances. The last labor disturbances were in 1919.

During the time that the codes were being adopted we have had no difficulties. To my knowledge there were three disturbances in the 75 plants that I am talking about, and they were due to organizers coming in, and there was some discussion of unionizing the plants, but, at that, there were no strikes.

I feel, Mr. Chairman, that the majority of manufacturers are decent and have ideals. I feel that the majority of workers are fair and intend to give a full day's work for a full day's pay. If I can be personal about it, I would like to describe our organization.

The CHAIRMAN. The organization of your employees?

Mr. EDWARDS. Yes, sir.

The CHAIRMAN. We will be glad to have it. Are the employees in all these plants organized?

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Mr. EDWARDS. No, sir.

The CHAIRMAN. In some they are and some they are not?

Mr. EDWARDS. No; I do not know of any plant that is organized.

The CHAIRMAN. You do not know any that is?

Mr. EDWARDS. No, sir.

The CHAIRMAN. So that dealing today with the employees is individual usually?

Mr. EDWARDS. It is individual dealing in the case of the small companies and the medium-sized companies. In some of the larger companies they have developed employee representation plans.

The CHAIRMAN. Such as have been described here, I suppose?

Mr. EDWARDS. Yes; and they go further. The majority of the companies I am talking about go back 40 or 50 years. They have got oldtime employees that are working for them and they have built up an esprit de corps. What I cannot get through my mind in this discussion is this: Every manufacturer today, especially the small manufacturer, has to depend on teamwork with his employees to compete. We have got to have their cooperation, and instead of saying that they work for us, they are working with us, and we are in the same boat. That is the way we talk about it.

I have had a grand experience with our men during this depression. They have certainly stood by. I have been able to go to them and present the problems and I have found just 100-percent cooperation.

The CHAIRMAN. You were going to describe the organization in your plant. Will you do that?

Mr. EDWARDS. Yes. I am president and general manager of the O. M. Edwards Co., Inc. Our products are railway and transportation supplies and special metal furniture for banks, hospitals, and so forth.

Our business was established in 1889 by my father, and at present we employ about 250 men. As to the matter of dealing with the men, it is individual dealing with each man. The example I am giving of our plant is typical of the plants, Mr. Chairman, of central New York. They handle it along very similar lines.

In a plant of that size you know each man, many of the men you were in grammar school with, and you have a personal contact with them. The men come to you with their problems, if they are in a jam financially, and so on, they come and talk it over with you and you help them, not with the feeling that you are building up your organization, but you have a real friendship with those men, you cannot be associated with men over a period of years, upstanding men, and not have a feeling of real friendship for them.

In the capital goods industry we were hit hard, we had to make lay-offs, and the manner in which was done, was that the superintendent and myself would go over the pay-roll lists, man by man, name by name, finding out the condition of the man, whether he was married, the number of dependents, what their financial situation is. I know in many cases, and if I do not know, I find out. We tried to take care of our organization so that the men that needed the jobs would stay on.

When it comes to wage decreases they come before me personally, any wage decrease. On wage increases, they are recommended by the foreman to the superintendent and approved by me. Any time any man has any grievance he has a right to come to me.

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Now, here is the point: You cannot kid your workmen. You are either being on the level with them and giving them a square deal or you are not, and if you want to get cooperation from those men, and you need it if you are going to trim your competitor today, you cannot kid those men; they know whether you are being regular or are not. I think that is increasingly so, especially as the men who are coming along have played in sports they know the way you win in sports is with team work, you have got to have cooperation, and I think the hope for industry is that we get that idea across of team work, team play.

It is the unanimous belief of the companies that I represent that the passage of this bill would disrupt and tend to destroy the present friendly relationship between the management and labor in their organizations, and they have requested me to bring to your attention the following objections to certain provisions in the bill:

First, we cannot agree that the underlying thought in title I, section 2, of the bill applies to the small and medium-sized companies; otherwise our past and present harmonious relationship with our employees could not have been possible.

Second, we believe that in section 3, paragraph 2, the exemption of "any labor organization" as an employer is unfair, and also that disenfranchising in section 3, paragraph 3, "an individual who has replaced a striking employee", is against the American conception that every man has a right to work.

Third, we believe that section 5, outlining "unfair labor practices" is unjust, as penalties should be imposed on unfair labor practices from any source and not exclusively on the employers.

We believe that a strict interpretation of section 5, paragraph 1, would prevent our managements from discussing or advising on any personal subjects with our employees and this would certainly disrupt our present relationship.

We feel that the powers conferred on the National Labor Board in title II of this act are entirely too broad and drastic.

We appreciate the difficulty in drafting legislation which is national in scope when there are so many varying factors to be considered.

With the safeguards now embodied in the various codes for industry, regarding the rights of employees, we feel this legislation is unnecessary and dangerous to recovery.

I would just like to add one other statement, Mr. Chairman, and that is that the average wage in our shop when we went into the Fabricated Metal Code, was 56 cents an hour, and the minimum rate under the code was 40 cents an hour. We only had to increase the officeboy to comply with the requirements.

I could recite scores of companies in central New York where the conditions are such, but my company is typical of them.

The CHAIRMAN. Thank you, sir. We are pleased to have your statement for the record. Mr. Weed?

STATEMENT OF HUGH H. C. WEED

The CHAIRMAN. Your full name?
Mr. WEED. Hugh H. C. Weed.
The CHAIRMAN. Your residence?
Mr. WEED. 2840 North Spring Avenue, St. Louis, Mo.
The CHAIRMAN. What is your business or occupation?

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Mr. WEED. Vice president and general manager of the Carter Carburetor Co.

The CHAIRMAN. You are here representing that corporation?

Mr. WEED. I am here representing that corporation.

The CHAIRMAN. How many employees has that corporation?

Mr. WEED. At this time we have—the last report I have here shows 1,074 man-weeks, that many people for that full time per week.

The CHAIRMAN. What do you manufacture?

Mr. WEED. We manufacture carburetors.

The CHAIRMAN. You may proceed.

Mr. WEED. The situation that the last speaker has just described pretty well typifies the situation in our company.

I have been with this company for 20 years in an executive capacity. We have grown from a few people to the leading concern of the type in the world, and one of the leading elements in that growth is the cordial cooperation we have had with our people.

This is a small business in the sense that it is small enough for us to know all of our men. As a matter of fact, it was only this year that we have grown to any such proportions as I just indicated. The largest number of people we ever had before this year, or before the N.R.A., was between 500 and 600, and the N.R.A. and the increase in business together have been the cause of this increase in the number of employees.

Now, our relations with our men are so close and so intimate and they are so much our friends that they talk to us all the time about their problems, and, as a result of this, we have never had any labor trouble at all.

When the depression started we made unusual efforts to keep our men. It would have been very simple to do as most of our competitors did—cut rates—but in all this period we have only made one cut from the 1929 rates, and when we did that we reorganized our facilities so that the earning power under the changed rate was equal to what it was before, so that without any help from anybody and just by cooperation with our people we have been able to keep our men employed so that at this time they are earning higher rates than they earned in 1929.

When the N.R.A. started our men were told by organizers that they were compelled by the Government ruling to join an outside union. They knew us well enough to come and talk about it, and we showed them the law and showed them they were under no compulsion, that it was a matter of choice. But, if this Wagner bill becomes a law and someone from the outside makes a false statement of that character, we have no recourse but have to let them accept the statement, because if we attempt to show them the truth about the situation we are breaking this law and are performing a criminal act.

Now, it seems to me purely un-American and purely unethical that a law should be passed that would compel the abandonment of that close personal, friendly relationship which, after all is said and done, is the finest thing in business. For that reason, in the first place, we protest against this bill.

In the second place, the National Industrial Recovery Act, as interpreted by the President, seems to me to amply cover every situation that can arise in safeguarding the workingman in his collective bargaining.

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We have the greatest respect for what N.R.A. has accomplished; it has been a perfectly marvelous thing. I was brought up as a Connecticut Republican, but in spite of that fact I take off my hat to this administration for what it has done in that respect. It has had the result of bringing together competitors who never really knew each other before, and, as far as the man is the shop is concerned, it gives him every safeguard for collective bargaining, but if the proposed Wagner bill goes through he no longer will really be represented as he chooses to be.

The principal difficulties that our men have had have been coercion from without, from men who were inserted in our plant with the idea of securing or forcing or misleading them into joining an outside union, and I certainly protest against a bill which permits that sort of thing and prevents an honest employer from trying to work with the employees, from discussing the matters with them, and telling them the truth of the situation.

The Wagner bill says that its purpose is to remove obstructions from interstate commerce. In my opinion, this law will put more hurdles into our recovery program than anything that I have seen suggested.

In the first place, when N.I.R.A. started, business was scared, capital was scared, but they have found that the President and his advisers are trying honestly to administer that law in a frank, fair, straightforward manner. Things are beginning to show, the increase that we have had in our employment is typical. Now, if this bill is passed, in my opinion, it will set the whole recovery act back on its heels, nobody will know where they are going, industry will be scared again.

We have already added substantial capital equipment to our business and we plan to go further, but if this bill were passed I would not dare to recommend putting additional capital equipment in.

The worst thing about this bill is that it proposes to set up a board, remote from the people concerned, which will endeavor to adjudicate matters that they cannot possibly see the inside of; whereas, under the present arrangements, where the men can bargain through representatives of their own choosing with their employers, matters can be equally and fairly adjudicated.

I know a good many other concerns in our neighborhood and I have yet to find one that is not sincerely and conscientiously trying to live up to the spirit of this act. That does not mean that there are not any anywhere that are not, but the point I want to make is that there are many honest manufacturers trying to do an honest job now who should not be penalized because some employer somewhere is chiseling.

It seems to me the mechanism is already set up to accomplish exactly what the sponsors of the N.I.R.A. had in mind.

Just one other thing, and that is that it seems to me absolutely unfair to bar in any act the rules of evidence and to permit the employing of an outside agency to bring in any kind of an accusation without the rules of evidence, without having to say where the information comes from, without having financial responsibility, without having any supervision of their officials and without any financial responsibility for their acts, when, on the other hand, the employer must be financially responsible and must be held accountable for his acts.

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The CHAIRMAN. Thank you very much. Mr. Boyd. Is Mr. Boyd here?

(No response.)

The CHAIRMAN. Mr. Edelman.

STATEMENT OF JOHN W. EDELMAN

(Statement of Mr. John W. Edelman is as follows:)

AMERICAN FEDERATION OF HOSIERY WORKERS,
March 27, 1934.

Senator DAVID I. WALSH,
Washington, D.C.

DEAR SENATOR WALSH: For many years now it has been a common occurrence to have employers bring puppet committees of workers before legislative bodies to testify against social legislation of one kind or another. Last year, when the 30-hour bill was up in Congress, southern manufacturers induced, either by some species of coercion or guile, many of their workers to write letters to Senators or Congressmen against the legislative proposal for a shorter work week. Since the passage of the N.R.A., we have had cases before labor boards where nonunion employees have been paid by their employers to protest decisions favoring union workers.

In Philadelphia today, I was informed by telephone that Mr. William Meyer, president of the Apex hosiery mills of this city, was forcing his employees to send letters to their Senators and Congressmen asking that the Wagner bill should not be passed by Congress. It seems to me high time that the Senate should investigate cases of this kind, where employers have been using their economic power to force workers into action against their own interests and contrary to their real desires. This practice is at least as evil as forcing a man or woman to vote against their conscience at an election for local or national officials.

It is difficult for an agency which has no authority to obtain the real facts in a case such as I mention here. An obviously frightened, but indignant, hosiery worker called me on the telephone today and described what happened in the Apex mill. Posters had been placed around the plant setting forth arguments against the Wagner bill and instructing workers who wished to do something about the matter to report to the office to receive instructions as to what course to follow. Obviously, this was an invitation for every "sucker" in the mill to put himself in right with the management. The worker who will not volunteer to engage in the campaign against the Wagner bill obviously opens himself up to some form of discrimination.

According to my informant, on leaving the mill today each employee was given a form letter in a plain paper envelop and on plain paper addressed to Senator David S. Reed of this State in which the Senator was asked to vote against this measure. The employee was supposed to sign his name and address to this letter and mail it to Senator Reed who would then be in a position to give elaborate statistics about the "flood" of letters he has received in opposition to the bill which would give labor fair treatment in this country.

The manufacturers (and probably Senator Reed) will, of course, attempt to justify their action in a case of this kind by saying that the labor unions do the same sort of thing. There is, of course, all the difference in the world between what labor unions do and what employers do in such matters. When a union representative is asked to help prepare statements for or against certain legislation, the workers of their own free will, and without dictation, have arrived at a decision and are acting in a thoroughly democratic manner. The employer who can hire or fire at will, as the proprietor of the Apex Hosiery Mills can and does, takes an unfair, undemocratic, and throughly reprehensible advantage of his position when he dictates the thinking and actions of his help in matters relative to social legislation or the like.

I would strongly urge that Mr. William Meyer of the Apex Hosiery Mills be called before a Senate committee and questioned as to the truth or lack of truth in this report I am now passing on to you.

Incidentally, we would not jump at conclusions in this case were it not for the fact that we know this manufacturer fairly well and can describe the methods by which he used the courts of this state in the past to prevent unions from approaching his workers. An injunction secured by the Apex Co. prohibited unionists

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coming within six blocks of this mill. Later, virtually all local hosiery union officials in Philadelphia were cited for contempt, charged with violating this injunction, and declared guilty. Judgments were placed against the homes of many union workers who as a result were unable to secure adjustments in their mortgages, and came within an ace of losing everything they have.

There is much more we could tell about the record of the Apex, but this is enough to indicate the situation.

Hoping that you can take action in this matter, we remain,

Sincerely yours,

JOHN W. EDELMAN, *Research Director.*

STATEMENT OF AXTELL J. BYLES, PRESIDENT, AMERICAN PETROLEUM INSTITUTE

The CHAIRMAN. I present for the record at this point statement of Axtell J. Byles, President, American Petroleum Institute, of New York City:

AMERICAN PETROLEUM INSTITUTE,
New York, N.Y., April 5, 1934.

To the Committee on Education and Labor of the United States Senate:

GENTLEMEN: The executive committee of the board of directors of the American Petroleum Institute, a national trade association of individuals engaged in the petroleum and allied industries, hereby expresses opposition to the enactment of Senate bill 2926 (commonly referred to as the Wagner labor disputes bill) for the following reasons:

1. Despite its avowed declaration, the bill would not leave the individual employee or any minority group of employees free to choose the method of bargaining.

2. The bill is wrongly premised in that it will foster discord and dispute between labor and management, rather than further peaceful industrial relationship.

3. The bill proposes to direct by government fiat the type of labor union or organization which may exist, thereby in effect creating a labor monopoly without authority in the Government to regulate such a monopoly and compel observance of fair practices. Such a system once establlshed would inevitably lead to further encroachment upon what are now recognized as the inherent rights of labor.

4. Section 5 makes it an unfair labor practice for an employer in any way to restrain, supervise, or influence employees in their steps leading to organization, while paragraph 6 of this section provides:

"* * * That nothing in this Act shall preclude an employer and a labor organization from agreeing that a person seeking employment shall be required, as a condition of employment, to join such labor organization, if no attempt is made to influence such labor organization by any unfair labor practice, if such labor organization is composed of at least a majority of such employer's employees, and if the said agreement does not cover a period in excess of one year."

The first five paragraphs of section 5 proclaim the duty of employers to withhold all influence over labor organizations; paragraph 6 abandons any pretense of securing the liberty of the employee and permits the employer to agree with the labor union to compel the minority to join the union. For freedom to contract there has been substituted compulsion to join a labor organization, and the employer, while restrained from advising his employees, is empowered to compel them even against their will to pay dues to a labor union and make it their only contact with their employer whether they like it or not.

5. The bill confers upon a National Labor Board and its agents drastic, unwarranted and probably unconstitutional powers. As it stands, the bill is primarily framed to confer rights and power not upon American labor but upon the National Labor Board and upon labor organizers.

6. The bill abrogates existing contracts between employer and employees without regard to their merit or benefit to either or both parties to the contract.

7. The effect and probable intent of the bill is to destroy what is known as "employee representation plans," many of which have existed satisfactorily to workers in the petroleum industry for a long period of time.

We believe that the President, in his settlement of the recent automotive industry situation in Detroit has written for American labor and employers

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alike the essence of any desirable labor legislation pertaining to collective bargaining.

Respectfully submitted.

LETNER T. BYLES,
President American Petroleum Institute.

The CHAIRMAN. Are there any other witnesses? The committee stands adjourned until Monday morning at 10 o'clock.

(Thereupon, at the hour of 3:45 p.m., the committee adjourned until Monday, Apr. 9, 1934, at 10 a.m.)

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TO CREATE A NATIONAL LABOR BOARD

MONDAY, APRIL 9, 1934

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The committee met, pursuant to adjournment, at 10 a.m., in room 318, Senate Office Building, Washington, D.C. Senator David I. Walsh (chairman) presiding.

Present: Senators Walsh (chairman), Copeland, Murphy, Thomas, Metcalf, and Davis.

Senator DAVIS (temporarily presiding). The committee will come to order, please. Mr. Young.

STATEMENT OF GEORGE W. YOUNG

Senator DAVIS. Mr. Young, you are president of the Chicago Chamber of Commerce?

Mr. YOUNG. Chicago Association of Commerce.

Senator DAVIS. Will you give your name, and your address, and your occupation, please?

Mr. YOUNG. George W. Young, 222 North Bank Drive, Chicago, care of Marshall Field & Co.

Senator DAVIS. You are here in opposition to the bill?

Mr. YOUNG. Yes.

The CHAIRMAN. You may proceed.

Mr. YOUNG. Mr. Chairman and members of the Senate Committee on Education and Labor. Your witness is George W. Young, president of the Chicago Association of Commerce.

As president of the Chicago Association of Commerce, I have been delegated to appear and present an official protest against the labor disputes bill (S. 2926) introduced by Senator Wagner, and a companion measure in the House introduced by Representative Connery (H.R. 8423).

Before doing so, may I qualify the Chicago Association of Commerce for having a viewpoint it believes representative on this proposed legislation.

As you know, Chicago is the second city in the Nation from a population standpoint, having 3,376,438 people in 1930, according to the official Government census of that year.

From whatever standpoint we consider Chicago—industry, commerce, transportation, education, or art—it occupies a position of outstanding importance.

Within its metropolitan area, a radius of 35 miles, 7.3 percent in value of the Nation's manufactured products are produced, 4.35 percent of the Nation's industrial workers are employed, and 6.9 percent of industrial wages are paid.

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Chicago's retail trade normally exceeds $2,000,000,000 a year in volume, and its wholesale trade $5,000,000,000 a year. The nation-wide census of distribution of 1930 disclosed Chicago wholesale houses doing 7½ percent of the country's total wholesale business.

The Chicago Association of Commerce represents some 4,500 commercial, industrial, financial, and professional interests in its membership. Because of the far-flung activities of our leading industrial and commercial concerns, it represents an area and influence much larger than the city of Chicago alone.

These business leaders are associated together to advance the best interests—civic, commercial, and otherwise, of the city of Chicago, and to promote trade, industry, and the public good.

I would like to emphasize that in arriving at a viewpoint upon a matter of public policy, the association does not take hurried action, nor permit subsidiary committees to make their findings public or to bind the association.

Through 39 standing committees and 58 trade and professional group committees, all questions affecting the public welfare, the interests of business, or the advancement of our community are carefully considered and appraised.

The conclusions of committees with their recommendations are forwarded to our executive committee where they are again analyzed and either approved or disapproved. If approved, they become the official position of the association.

Thus, the proposed labor disputes act, now the subject of hearing before your committee, was studied by our industrial development committee in response to wide-spread demands from our membership. The report of our industrial development committee was discussed in detail by our executive committee and with some modifications adopted.

For the purpose of saving your time and insuring that I accurately present our viewpoint, I will read the report. In doing so may I state that I am not a lawyer and in consequence not prepared to discuss the legal phases and implications of this proposed legislation. While lawyers in our membership have approved the conclusions reached, the report itself represents the work of business executives, of which I trust you will consider me as an example. [Reading:]

Report of the Executive Committee, The Chicago Association of Commerce

S. 2926, and H.R. 8423, bears the misleading title, "A bill to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes." As a matter of fact, the effect of the bill as readily noted from a reading of its provisions is to handicap employers in dealing with their employees and to encourage rather than adjust disputes between them.

More properly the measure could be termed, "A bill to unionize all business and industrial establishments", since it gives the National Labor Board and its regional labor boards and agents unrestricted power to declare as unfair labor practices nearly every act of an employer in his relations with employees.

It would abolish company unions, legalize and insure the closed shop throughout business and industry, and impose severe penalties for violation of any of its terms. Once passed, it would forever remove the last vestige of control an employer possesses over his labor costs, and in large part over the management of his business. It would create a labor party stronger in power and influence than either of the existing political parties. It would impose the will of approximately 10 percent upon 90 percent of the Nation's employees.

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The recitals as facts in section 2 of the act that the balance of bargaining power between the individual employer and employee has long since been destroyed; that the individual worker is helpless to exercise actual liberty of contract to secure a just reward for his services or to preserve a decent standard of living are, we believe wrong in principle, generally untrue in fact, and together with other similar recitals should not be permitted to go unchallenged

More particularly the last paragraph of section 2 and the provisions of section 5 reveal the real purpose of the act to be the forced unionization of business and industry under authority of Federal law. Workers in all establishments from the smallest to the largest are to be denied the freedom of choice guaranteed them in section 7 of the National Industrial Recovery Act. They can no longer bargain through self-organization or individually but are to be compelled to bargain only through union labor organizations whether that represents their real choice or not.

More specifically the bill—

A. Creates a national labor board of seven members appointed by the President and confirmed by the Senate. Two members represent employers, 2 represent employees, and 3 the general public. With the consent of parties to a dispute the board may act as a conciliator, mediator, or arbitrator.

B. Defines employees as those on strike or out of employment as the result of unfair practices and excludes as an employee anyone replacing a person on strike.

C. Forbids employers to supervise, participate in, or finance any labor organization or compensate anyone for services in a labor organization.

D. Forbids an employer from excluding union men, but authorizes agreements providing that a person seeking employment join a labor union; that is, insures the closed shop.

E. Declares a lockout by an employer to be an unfair labor practice, but specifically preserves to employees the right to strike.

F. Permits employees to designate a labor organization as their representative instead of individuals employed.

G. Requires the employer to recognize representatives of employees and make every reasonable effort to reach an agreement with them.

H. Abrogates any existing contract contrary to the act and requires employers to immediately notify employees of such abrogation.

I. Defines as unfair labor practices acts not heretofore regarded as unfair or unlawful, and limits the acts so enumerated solely to those of employers, thus ignoring all unfair acts on the part of employees.

J. Defines unfair labor practices to include interference, influence, restraint, favor, coercion, refusal to recognize or deal with representatives of employees, and any practice as to wage or hour differentials, advancement, demotion, hire, tenure of employment, or reinstatement, which might encourage membership or nonmembership in any labor organization.

K. Authorizes the board to summon employers for a hearing whenever the board or its agents receive a complaint or information from any source alleging an unfair labor practice. The source of the board's information or complaint does not have to be disclosed.

L. Complaints served do not limit the scope of the board's inquiry, and any examiner or the board is not limited in its proceedings by the rules of eivdence which prevail in the courts.

M. Gives the board or its agents authority to demand papers, books, and records of all kinds.

N. Requires other Government Departments to turn over records on request, for example, income tax, census, or Federal trade reports.

O. Makes findings of fact by the board conclusive.

P. Gives the board power to hold hearings at any place in the United States or its possessions. The Government pays expenses of its witnesses, but the employer must pay his own expenses and those of his witnesses. Thus the board or its agents could hear any complaint, however trivial, and put everyone concerned to enormous expense.

Q. Gives the board sweeping authority to order reinstatement of discharged employees, payment of back wages, assessment of damages, and performance of other acts by the employer.

R. Gives the board or its agents authority to serve notice of compliants and hearings upon any officer or director of a company.

S. Gives the Board power to go into the Federal courts or the Supreme Court of the District of Columbia to enforce its findings by injunction.

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T. While the employer is denied the right of injunction in the Federal courts to protect his property, no such restriction is placed upon labor unions.

U. Provides a $5,000 fine for any employer who resists, prevents, or impedes, any member of the board in the performance of his duties.

V. Provides that if an employer appeals to the court, he cannot urge any matter not the subject of protest before the board and is limited to the findings of fact made by the board.

W. Makes the provisions of the act supersede those of section 7 of the National Industrial Recovery Act.

X. Makes the act, if passed, permanent in character, rather than limited to the period of an emergency.

In order to compel unionization, employers are denied the opportunity to establish and maintain friendly relations and interest in the welfare of their employees individually or collectively through fear that some act or acts may be construed as unfair labor practices.

Apparently the entire act is based upon the theory that all employers are unfair in their labor relations and the interests of employers and employees are essentially antagonistic rather than mutual. Nowhere in the act is the employer given an opportunity for fair treatment. Nowhere in the act are labor unions subjected to the same onerous conditions as are employers. In our opinion, the act is one of the most unfair and un-American measures ever submitted to the Congress.

END OF REPORT

In conclusion, may I say that since this report was written and adopted the crisis in the automobile industry over labor relations developed and a threatened tie-up of this important industry was averted only through prompt action of the President aided by the cooperation of representatives of employers and employees.

In President Roosevelt's official statement of the basis on which this automobile controversy was settled, I think he has made exceedingly clear the meaning of section 7 (a) of the National Industrial Recovery Act. This gives complete freedom of choice to employees to bargain with employers on matters of wages and working conditions, on any basis they see fit, whether as individuals, as members of so-called company unions, or as members of labor unions.

I join President Harriman of the United States Chamber of Commerce, in the belief that we need no further legislation on the subject of labor relationship at this time. Section 7 (a) of the National Industrial Recovery Act covers the subject adequately.

Meanwhile we all forward recovery best if we will permit employers and employees to work out their labor relationships under this act by mutual cooperation, free from outside restriction imposed by either Federal, State, or local government.

The Chicago Association of Commerce emphatically opposes the principle and the form of these bills.

Mr. Chairman and members of the committee, I thank you for the opportunity given me to present these viewpoints.

The CHAIRMAN. Thank you very much. Mr. A. F. Thompson.

STATEMENT OF A. F. THOMPSON

The CHAIRMAN. Your full name?

Mr. THOMPSON. Arthur F. Thompson.

The CHAIRMAN. And your residence?

Mr. THOMPSON. Racine, Wis.

The CHAIRMAN. What is your business or occupation?

Mr. THOMPSON. I am secretary and manager of the Manufacturers Association of that city.

The CHAIRMAN. How many members constitute that association?

Mr. THOMPSON. Thirty principal members.

The CHAIRMAN. What do those manufacturers produce?

Mr. THOMPSON. Automobiles, agricultural machinery and implements, electrical goods, and, in addition, a wide variety of industrial products.

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The CHAIRMAN. You may proceed to give us the views of the members of the association.

Mr. THOMPSON. I am here to state in my own words as best I can the feelings of the employers of labor in that city, which happens to be the second largest city in the State of Wisconsin.

I would like briefly to give you a bit of background of the industrial relations in the city, inasmuch as I have been and am directly on the firing line in labor matters.

The city is entirely industrial. By that I mean that the mercantile end of the business of the city depends on industry. Under normal conditions, between 1925 and through 1928, taken as an average, industry has about 15,000 employees on its pay roll. The 1930 census lists Racine as having a population of 67,542. That would indicate that about 22½ percent of the total are employed in industry?

The CHAIRMAN. Is that not a large percentage?

Mr. THOMPSON. It is unusually large. It is roughly 1 out of 5.

Now, between the years 1920 and 1934 labor trouble was virtually nonexistent in that city. The management and the men have worked very closely together. The concerns of that city are known both nationally and internationally. One of them has been in operation continually under the same name and in the same place since 1850. That city has prospered only as its industries have prospered.

I do not believe there is any finer example in the entire country of the fact that the enterests of employer and employee and the community are inseparable than that particular city.

Now, I would like to cite briefly an example of the attitude of Racine industry toward its employees and the community. Without describing them in detail, there have been promoted in the city housing projects, one in particular backed by a concern that is outstanding in its civic attitude. We have the employees mutual benefit associations for employees, and many of them have medical service extended to the employees. A large number of them have insurance policies which furnish protection and coverage for accidents outside of the field of industrial compensation and for death benefits.

Senator DAVIS. Are those benefits paid out of the wages of the workers or out of the profits of the companies?

Mr. THOMPSON. Out of the company; by the company. Incidentally, since you mentioned that point, there is a growing feeling that where the employer pays all of the cost of such insurance it frequently is not as well appreciated as though there were some reasonable contribution made by the employees. Nevertheless, a great many of them, having started on that basis, are continuing the payment of the full costs of such coverage.

Only recently one of the outstanding companies of the city has paid out of its own treasury and reserve, a figure of approximately $270,000 to establish a system of old-age pensions. That is not a departure from its old policy. The son, who is now the president of that company, is following in the path that his father followed in establishing and developing that business.

Senator DAVIS. What business is that?

Mr. THOMPSON. That happens to be a company that manufactures floor wax, polishes, and wood finishes. I have no objection to mentioning it by name. It is the S. C. Johnson Co.

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Local industry in the city early recognized the symptoms of depression and the consequences of the depression to an industrial locality. Through our group we sponsored the building of inventories in excess of normal requirements of business. We put through a campaign to stimulate the repair of buildings, the tearing down and wrecking of buildings that were obsolete and in a bad state. That particular effort yielded in 1931 over $2,000,000 in the community. That much money was spent by this group of concerns to stimulate employment in a period where business was declining and where the state of the ledger and the income of orders did not warrant it.

In the drive for relief in the year 1931 an amount of $440,000 was set up, of which $360,000 toward relief was contributed by the employers of that community. That was done for the purpose of avoiding at that time the drain on city funds or the petition to the Federal Government for Federal moneys for relief.

I know of one concern that paid out of its own cash $60,000, $5,000 per month, for the 12 months that followed that drive. Another one contributed directly $25,000.

In my own instance, just to cite this to show the background of the industrial relationship efforts that are put forth there, three quarters of my time is donated to relief work in the city, in addition to which we hire a competent man and pay him a salary to investigate conditions in connection with relief in that city.

None of this shows management ignoring the employees or proceeding on a principle that the employer-employee interests are divergent. I think, if it shows anything, it shows exactly the opposite.

Now, in 1933 business began the upturn and it at once reflected itself in increased optimism of worker and employer.

Our industrial relations were undisturbed. The morale of the community at that time improved simultaneously with the change of employment conditions. Then we arrived at that point where we have section 7 (a) appearing in the National Industrial Recovery Act. Now, despite its acceptance by industry we find trouble entering into the picture. For the first time, in October 1933 we had the first strike in 14 years in that city. I would rather not mention the name of this company at this time——

The CHAIRMAN. It is not necessary.

Mr. THOMPSON. But I would like to cite two or three of the major requirements or demands that were made by this group of strikers. They demanded the closed shop, and exclusive contract to engage only union labor.

The CHAIRMAN. At the time of this strike in October were the workmen organized? Was there a company union or any other kind of a union there?

Mr. THOMPSON. There was nothing that resembled what is termed a company union.

The CHAIRMAN. So the company had been dealing with the individual men?

Mr. THOMPSON. Dealing with the men directly and individually.

The CHAIRMAN. With power to hire and discharge them and engage them individually? Was there a movement in October to organize a trade union?

Mr. THOMPSON. There was, Senator.

The CHAIRMAN. And how much progress was made toward that?

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Mr. THOMPSON. The active drive of organization began in the late summer of 1933.

The CHAIRMAN. Did they actually organize and seek to enter into negotiations and bargain with this company?

Mr. THOMPSON. They had not arrived at that point.

The CHAIRMAN. Was the strike due to claims made by anybody that the company was not engaging in collective bargaining with them?

Mr. THOMPSON. That followed the calling of the strike.

The CHAIRMAN. Just on what basis was the strike called, so far as was alleged by the employees?

Mr. THOMPSON. They alleged that the company violated the N.R.A., that it refused to meet and deal with its employees; that President Roosevelt said, "Organize"; this company said, "No", and all sorts of other signs and statements of that character.

Notwithstanding those statements, that company had not refused to meet and discuss and deal with any of its employees who sought management for that purpose.

Their demands called for the closed shop, and exclusive contract; the check-off system, whereby the dues to the union would be deducted from the pay roll before the employee who had worked and earned his money could place his fingers on it.

Senator DAVIS. Did they demand the check-off?

Mr. THOMPSON. That is exactly what they demanded, and certain other demands that are naturally consequential to that preliminary.

Particularly vicious were the insinuations that the employers of labor were slave owners and slave drivers, and from every soap box and grandstand and vacant lot in the city there began to appear these gentlemen who preached the doctrine of hatred and class consciousness, and I do not mind saying that they had their effect on the community.

We see there the beginning of the driving in of the wedge between management and men, grounded perhaps in the misuse and misquotation of the law as then on the statute books, but nevertheless making use of that as the wedge to which they add the power of the blow of their own peculiar and particular interpretation of the meaning of that section.

It was only a few months before that that we had heard the slogan, "We want work! We want work!" Beginning at that time they rubbed the "a" out of the word "want" and substituted the letter "o"—"We won't work, unless, if, and until."

Now, in February of 1934—when I said I came from the front I meant exactly that—we were hit with an epidemic of strikes, the end of which is not yet in sight, according to a press report which has been mentioned to me since my arrival in Washington.

The CHAIRMAN. In other words, you have had a series of strikes in these different plants?

Mr. THOMPSON. At one time we had five companies on strike at the same time.

The CHAIRMAN. Between October and the present time?

Mr. THOMPSON. That is beginning in February 1934.

The CHAIRMAN. But the first one you referred to was in October?

Mr. THOMPSON. That was the first one in 14 years.

The CHAIRMAN. I cannot quite understand men leaving their work and going on strike on a claim that the employers are not

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meeting with their representatives when you state there were no representatives for them to meet with.

Mr. THOMPSON. The picture I will try to complete for you is this——

The CHAIRMAN. Here I am running an industry and all of a sudden I hear about the men organizing, and then all of a sudden the men walk out and they claim it is because I have refused to meet and negotiate with them or their representatives in collective bargaining. You say all the employers state there was no organization for them to meet with. I cannot quite see how men could be induced to leave their work unless there had been some attempt made to reach their employers. Perhaps the employers did not think they represented a majority of their employees.

Mr. THOMPSON. I will answer that this way first and then proceed with the detail of the answer. We have had one illustration in that city where the demands were served after the walkout, and in that particular instance——

The CHAIRMAN. I think I can understand that possibility.

Mr. THOMPSON. In that particular instance, Senator, there were 21 employees out of 300 who walked out, but 1,200 persons massed around that plant the following day and succeeded in blocking traffic and preventing the balance of the employees, 80 percent of whom were loyal and desired to return to work, from going into a great extent.

The CHAIRMAN. How many strikes have there been in these different plants?

Mr. THOMPSON. There have been six strikes since October, 1933.

The CHAIRMAN. What is the total number of plants in Racine?

Mr. THOMPSON. Our chamber of commerce lists 180.

The CHAIRMAN. I mean substantial plants.

Mr. THOMPSON. I would say 50.

The CHAIRMAN. Of course, chambers of commerce list plants where they employ 5 or 10 people.

Mr. THOMPSON. I will divide that by three.

The CHAIRMAN. Were these plants all manufacturing the same commodity?

Mr. THOMPSON. Oh, no.

The CHAIRMAN. Different lines of business?

Mr. THOMPSON. Yes; varied.

The CHAIRMAN. Very good. Were the bases of all of them thought by the employers to be movements among trade union leaders to organize them into trade unions?

Mr. THOMPSON. Precisely. There is one strike that I understand we had high hopes of settling as I was leaving on Friday. Yesterday I was told that 1 plant of the 3, owned by 1 employer—they are located, by the way, in 3 different cities, Milwaukee, Racine, and Kenosha—Dr. Wolman was there with his board, and they negotiated for 2 or 3 days with the representatives of the union, and with the management, and they arrived at a basis of settlement that was accepted by those in negotiation, but with the condition that that agreement must be ratified by each of the locals, separated, you understand, in 3 different cities, and with the further understanding that if the Milwaukee local did not ratify, for instance, that the employees on strike in the other 2 cities could not go back to work.

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Now, then, we come directly to the bill (S. 2926) purporting to clarify and fortify section 7 (a).

Before going directly to the bill itself, I would like to make this statement, That business is not a rugged rock of Gibraltar impervious to attack. On the contrary, it is sensitive. It is sensitive, not only to the stock market, but it is particularly sensitive to this industrial relations aspect and the management of industry is worried, harried, and perplexed.

I have in mind a certain man in industry, and I know the background of the man to whom I refer, a man in an adjoining city, a manufacturer, who went through an exceedingly bitter strike in 1928. The boys who struck were young men of that city who came to work in that plant and built themselves up. The strike dragged on for 3 or 4 months and they finally settled the affair peaceably, made their peace with the employers, and they returned to work. He has gone through this depression, 3½ or 4 years of it, and a few days ago a committee of the employees walked in again with a new organization, I understand, and out of the clear sky set before him an ultimatum as to what they were going to have or else.

That man died the other day, and I am just as sure as I can be personally that it was just too much for the man's heart. He was a pretty decent citizen and he had done things for the city in which he lived. There are a lot more people in the same boat.

Now, in introducing his bill, Senator Wagner said, and I am referring now to the Congressional Record, volume 78, no. 46, page 325:

> The bill I am introducing is designed to clarify and fortify the provisions of Section 7 (a) and to provide a means of administering them with adequate enforcement powers.

The bill, if it does nothing else, clarifies and it certainly fortifies.

Now, to me, the text of this bill makes the whole business as clear to industry as that touching scene in Little Red Riding Hood when the wolf answers the plaintive query, "What big teeth you have, grandma", with, "The better to eat you, my dear."

In the next paragraph, the Senator uses the word "cooperation." There has been a great deal of misuse of this pet word. In less academic circles cooperation is understood to mean concerted, coordinated action arising from a common or mutual understanding toward a common purpose or end. Anything short of this is not cooperation, but it may be coercion.

First. This bill is destructive of the very things it allegedly seeks to preserve and advance. It cripples, if not totally destroys, American industry as such. It does this by driving a wedge between employee and employer, by establishing a bureaucratic despotism and by legalizing class consciousness based on the Marxian principle of traditional enmity between the employer and the employee.

Second. The proposed bill virtually repeals the thirteenth amendment to the Constitution wherein it is declared that "Neither slavery nor involuntary servitude shall exist within the United States." It does this by creating a monopolistic controlling union organization to which individual workers must surrender and pay tribute if they are to retain their employment. Whenever a group, minority or otherwise, whether in the employment relationship or otherwise, is placed in a position where it must surrender its legal rights and

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constitutional rights, we have nothing more or less than slavery in fact.

Reference is again made to the Congressional Record, volume 78, no. 46, Senate proceedings of Thursday, March 1, 1934. On page 3525 under the heading "Amendment of National Recovery Act—National Labor Board", Senator Wagner makes a preliminary statement and argument in favor of his bill before having it printed in full in the Record. Senator Wagner presents himself as an advocate of a peculiar kind of bargaining. He states along with other remarks:

> No real advocate of collective bargaining would argue that a worker should be free to bargain individually * * *.

It were better that Senator Wagner placed his period after the word "free." The principle here involved then would be perfectly clear and undisguised.

With complete union domination no individual, unless subservient to the rules and whims of the dictators of the organization, could hope to have and hold a job as a free citizen. Further, it would be well within the power of the labor despots to inflict organizational excommunication on an individual workman and prevent his employment wherever he went in a fruitless and pathetic search for the opportunity to earn a living for himself and family. This in spite of the fact that the victim might "otherwise" be a law-abiding, respectable individual and accomplished artisan.

The forcible unionization of every American workman as contemplated by this bill would produce this state of affairs.

Third. Second only to the Czaristic powers conferred on the union organization would be the bureaucratic autocracy of the National Labor Board as conceived in this bill. Between the upper and nether millstones of this labor machine the last vestige of freedom of contract and industrial and economic liberty would be ground to dust and obliterated. In determining who shall be fed into the hopper of this mill it should be borne in mind that all the unfair practices listed refer exclusively to the employer. The union is recorded as being without sin and hence is invested with the unrestricted and ancient right of kings who could do no wrong.

Fourth. Exclusive of the direct bludgeoning of industry by the bill there is another impact on American Government to which the Congress should not close its eyes. Passage of this act will inevitably create a supergovernment dictated by those who will attain that power in the exclusive union organization which they will control. From a practical standpoint, the Members of Congress will be equally hamstrung by a vast and powerful lobby of affiliated unions whose coffers would be swelled by dues to the point where any expense would be to them trivial and where opposition to the union viewpoint would mean political extinction for the individual member having the temerity to voice such views. A rubber stamp bearing the union label would be all the equipment required by a Member of Congress. It would be the only equipment he could safely use.

Fifth. While every fair-minded person must be heartily in accord with the elimination of labor disputes and the settlement of such controversies, I am unable to see any justice in a measure which effectually strangles one party to the dispute, and which must ultimately result in the forcible unionization of every American workingman.

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It seems to me that we should analyze most carefully the measure by which this program is to be accomplished.

Sixth. The act purports to be a means of equalizing the bargaining power between the individual employer and the individual employee. As a matter of fact, its exact purpose is to tip the scales entirely the other way, and it will ultimately place the power to make every industrial contract in the United States within the hands of the National Labor Board, an appointed body, subject to the political view of whatever party may be in power. That is to say, the National Labor Board will have the power to review every industrial contract, and it apparently can alter or amend the same as it sees fit. It is difficult to see any remaining vestige of the right to freedom of contract guaranteed under the fifth amendment of the Constitution of the United States.

Seventh. Subsection (2) of section 3 defines an employer as a person who has one or more employees. Thus, the measure is extended to every farmer in the State of Wisconsin who has a hired man or any domestic help, and he is subject to all the drastic provisions and penalties of the act. I can well sense the difficulty which farmers will have in understanding the purpose of this act. I appreciate, of course, that the act ostensibly is based upon principles of interstate commerce but, if constitutional at all, it may well be extended to a farmer growing crops with the ultimate view of disposing of the same in an interstate transaction.

Eighth. Subsection (3) of section 3 provides that any man replacing a striking employee at once loses his status as an employee under the provisions of the act. This is regardless of whether or not the strike may be a just or unjust strike, and is based upon the principle which seems to permeate the entire bill to the effect that the employer is always wrong and the employee always right.

Subsection (5) of section 3 defines a "labor organization" as any organization in which the employees participate to any degree whatsoever. That is to say, the participation and right of the individual employee in the particular organization may be limited to little or nothing and still that organization will have the exclusive power to deal for the employee. Subsection (6) of section 5 specifically permits discrimination in favor of union employees as against nonunion employees and expressly permits the employer and the labor organization to deny any employee his right to make his own contract in the event the employer and the labor union so agree. Personally, I am not willing to confess that the fundamental constitutional principle of freedom of contract under which this country has developed to the most powerful nation on the globe should be scrapped. That is to say, we cannot assist in recovery by suspending or emasculating constitutional principles which, after all, have their foundation in human right.

Ninth. You have no doubt observed with interest the procedural provisions of the bill and the legal effect given to the orders and decrees of the board. Under subsection (b) of section 205, a hearing may be set 24 hours after the service of the complaint. In other words, the person complained against may have not more than 24 hours to prepare his case for trial. By the same section a complaint may be amended at any time without notice and the original complaint shall not be regarded as limiting the scope of the inquiry.

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In other words, the person complained against may be called upon to meet charges of which he has no notice. By specific provision the rules of evidence do not apply in hearings before the board. Notwithstanding this utter lack of conformity in judicial procedure, the order or decree of the board is given the full effect of a judgment of a court of law or decree of a court of equity. Subsections (d) and (e) provide for method of review and expressly limit the function of the appropriate district court or Supreme Court of the District of Columbia to findings which are unsupported by the evidence. Inasmuch as there are no rules of evidence in proceedings before the board, it is difficult to see how there can ever be any effective review. Appeal from the district court is expressly limited by the certiorari provisions of the Judicial Code. In connection with this, it is interesting to note that where the appeal is taken by a person aggrieved by the order, the petition for review must be filed within 10 days after the entry of such order. Thus, the right of appeal may be precluded in the event the party does not have notice of the entry of the order.

It is furthermore provided that no objection to the order may be raised in the district court which was not presented at the hearing. Inasmuch as there is no limitation to the scope of the inquiry before the board, the person aggrieved may have had no opportunity to object to provisions of the order.

Tenth: The bill as drawn is as defective as it is vicious. The complacent and utter disregard of the framers of this bill for the Constitution is evidenced by the last provision of the act which very naively abrogates any existing contract conflicting in any manner with the terms of the bill, and failure of the employer to notify the other party of the cancelation or abrogation of the contract is specifically made an offense. Thus, a new principle is added to the law, namely, that any person relying upon the constitutional prohibition against impairing the obligations of a contract may be punished.

Conclusion: There should be no room in the United States for this bill, either as it is, or in any amended form. It should be killed entirely and buried permanently.

Abraham Lincoln, who once had a modest part in national affairs, at one time told a story that illustrates a point in connection with this bill.

It seems there was a little two-by-four steamer with a half pint boiler that plied the Sangamon River. The skipper was an ambitious man, too, so he installed a whistle suitable to the Bremen. Everything was to his liking except when he blew the whistle the boat stopped.

This Wagner bill is the whistle which, if affixed to the ship of industry, not only will stop the boat but sink it.

The CHAIRMAN. Thank you. Before we call the next speaker I have an announcement to make. Several members of the press have asked me with regard to General Johnson's appearance before this committtee this morning. Senator Wagner informed me on Friday that General Johnson would be here this morning at 10 o'clock. Senator Wagner's secretary is here in the room and informs me that General Johnson's office called Senator Wagner's office this morning, and his secretary or some assistant in his office said that General Johnson was out of town and they do not know whether or not he will appear before the committee. The committee has had no nego-

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tiations itself with General Johnson, and it has all been through Senator Wagner.

Mr. Charles P. Pierce.

STATEMENT OF CHARLES P. PIERCE

The CHAIRMAN. Your full name?

Mr. PIERCE. Charles P. Pierce.

The CHAIRMAN. Your residence?

Mr. PIERCE. Chicago, Ill.

The CHAIRMAN. Your occupation or business?

Mr. PIERCE. Vice president of the Landis Award Employers' Association.

The CHAIRMAN. How large an association is that?

Mr. PIERCE. One hundred and seventy-five members.

The CHAIRMAN. Are they manufacturers?

Mr. PIERCE. No; they are building contractors.

The CHAIRMAN. Are they all in the city of Chicago?

Mr. PIERCE. Yes.

The CHAIRMAN. You appear representing that association here?

Mr. PIERCE. I appear on behalf of the association and the workmen that are affiliated with our association.

The CHAIRMAN. Are you an officer of the association?

Mr. PIERCE. Yes.

The CHAIRMAN. Are you yourself a contractor?

Mr. PIERCE. No; I am not.

The CHAIRMAN. You are just in the managerial office for the association?

Mr. PIERCE. Yes, and I also manage a contracting company.

The CHAIRMAN. You may proceed.

Mr. PIERCE. I am here in behalf of the many thousands of skilled building tradesmen, engaged for many years in the active pursuance of their respective trades in the Chicago construction industry, and in their behalf the Landis Award Employers' Association hereby offers the following brief in support of its contention that Senate bill no. 2926, known as the "Wagner labor disputes bill," shall not be enacted into Federal law.

First and foremost, this organization holds that this bill, if permitted to become an active law, shall of itself and by reason of its inequitable provisions defeat the very purpose for which it is proposed—encouragement of recovery in business and increased employment. Unquestionably, from the viewpoint of the members of the Landis Award Employers' Association and others who have had to contend with certain intolerable conditions that have, and to some extent still exist, closed-shop unionism thrust upon the construction industry, which we believe would be the result of the enforcement of this act, would immediately result in a complete stoppage of all building activity in this territory.

Members of this association firmly believe that should the Wagner labor disputes bill become law, labor costs, dictated by a monopolistic unionism would inevitably rise to a point which would positively eliminate any meager possibilities of the resumption of construction activity that might now exist. The building industry in recent months has witnessed signs pointing toward increased activity which would provide employment for numerous tradesmen who have had no work

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except for odd jobs for 2 or more years. It is the unbiased belief of the members of this association that complete union domination of building labor would have the immediate effect of erecting a huge "bumper" that would effectively halt any and all contemplated construction.

Chicago's experience with the rule of unionism in the building industry is one with which the entire country is, or should be, familiar. Bombing of buildings under construction, and of contractors' homes, maltreatment and intimidation of workmen, interference by varied means with the delivery of material, encouragement of hoodlumism, the practice of extortion from contractors, workmen, and property owners—these are only a few of the numerous factors with which, until the formation of the Landis Award Employers' Association, the building industry in the Chicago territory had to contend.

The increasingly discouraging situation in Chicago, persisting and becoming more intolerable each year over a period of at least 20 years as the labor unions ruling the building tradesmen become more and more domineering and unfair in their demands, culminated in the early part of 1921 when the major building operations in this city completely ceased. This condition, which aggravated an exceedingly acute housing shortage, drew the attention of the Illinois Legislature and resulted in the appointment of a commission of investigation, at the public hearings of which all of the above uneconomic conditions as well as many others equally obstructive were disclosed as common occurrences.

Facts presented at these hearings showed that control of many of the unions had come into the hands of men with criminal records, whose control had been obtained and then maintained by gangs of thugs and gunmen. Apparently, the American Federation of Labor, with which these unions were affiliated, was not sufficiently interested in the welfare of the union members to take notice of these vicious conditions. At least, no action was taken by this national organization to counteract the affects of hoodlum-controlled unionism.

Realization of the chaotic conditions in the building industry in the Chicago territory, due to union domination and racketeering, finally resulted in the appointment of Judge Kenesaw M. Landis, then Judge of the United States District Court, as arbiter in what was known as the Chicago Building Trades arbitration. His decision as to equitable working conditions and wage scales, handed down after 3 months of extensive discussions is the basis upon which the Landis Award Employers' Association was organized and has since operated.

It is, perhaps, appropriate to quote herewith certain pertinent paragraphs of the Landis decision:

> It is the violation of no confidence to say that building construction had gotten into bad repute in this community. There was a general disposition to keep away from it as a thing diseased. Capital avoided it. The wise dollar preferred most any other form of activity or no activity. And this applied to the whole range of building construction from the cottage to the skyscraper. This attitude of the public added to the profound commercial and industrial depression generally existent resulted in a virtual famine in housing accommodations and brought about the idleness of many thousands of men willing to work. It was in view of these conditions that the umpire conceived it to be his duty to aid these parties to rehabilitate the industry in the esteem of the public, the great unrepresented party to this arbitration, but, nevertheless, the one upon whom the consequences of the award fall. This loss of public faith was not due entirely to the wage question. * * * The real malady lurked in a maze of condi-

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tions artificially created to give the parties a monopoly and in rules designed to produce waste, for the mere sake of waste, all combining to bring about an insufferable situation, not the least burdensome of which was the jurisdictional dispute between trade members of the same parent organization.

It is further respectfully called to the attention of your committee that complete unionization of all building tradesmen, which we persist in believing would be the logical result of the passage of the Wagner bill, would add such burdens to thousands of workmen, in the form of union dues and fees, as to make it absolutely impossible for most of them to even dream of hope for employment. This situation—being forced to join unions or forego all opportunity for regular work—faces an overwhelmingly large proportion of building tradesmen.

Recent investigations have brought to light facts which lead to the conclusion that at least 70 percent of all operations in the construction industry are conducted without union agreements. Any condition which would serve to change this situation—and the Wagner bill enacted into law would have this effect—would immediately bring about a situation in which the workmen involved in the 70-percent group could no longer employ themselves at their trades until they had become affiliated with closed-shop unions.

Consider, for a moment, please, what this horribly unfair condition would mean to thousands and thousands of workmen who are not in a position to pay the highly exorbitant union initiation fees and monthly dues. What an impossible situation this condition of becoming a union member would mean to an already impoverished group of workmen is indicated by the following figures relating to various unions in the Chicago territory: Carpenters, initiation fee, $165, with dues at $3 a month; plasterers, fee of $125; glaziers, $1,500 fee with $100 annual dues, payable quarterly, and in addition $10 a week assessment for unemployment; bricklayers, $100 fee; sheet metal workers, $137.50 fee, with dues based on hours of pay received; roofers, $100 fee and $2.50 a month dues.

Just a moment's thought should convince any fair-minded individual that, due to the lack of construction activity during the last 3 or 4 years, very few tradesmen have been in a position to steadily earn sufficient to pay these outrageously high fees and dues. This has meant that union organizations in Chicago as well as in most other territories have faced a constant drain of memberships, placing most unions in the desperate situation of using force and other subversive means of maintaining their strength. With the passage of the Wagner Act, however, we feel that even the workmen, themselves, will be detrimentally affected by reason of the huge fees they will be compelled to pay out of their meager earnings from the comparatively few construction jobs that will be available.

Past experience has definitely proven that the closed-shop principle, encouraged and practically demanded by the Wagner bill, is the worst thing which workers can be called upon to face. This principle takes from the men their very freedom. They are forced—and by the use of that word, we mean actual force—to obey the dictation of an outside labor leader, who, in innumerable instances, has been unequivocally proven to be a criminal, a grafter, a racketeer, with only his own selfish interests in mind. Do we, in this country of vaunted freedom, wish to saddle our workmen with this type of dictation?

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We, as members of the Landis Award Employers' Association, consider the Wagner labor disputes bill, purely and simply as an audacious attempt to establish a complete labor-union dictatorship over American industry. It forces upon labor, by compulsion of Federal law, closed-shop unionism under the complete domination of one group. It makes it obligatory for a workman to show a union card before he can expect to earn his daily bread. Emphatically, unanimously, and with our utmost power, we protest the passage of this iniquitous legislation.

The CHAIRMAN. What kind of organizations have these contractors in Chicago that you represent?

Mr. PIERCE. This organization that I represent, the Landis award group, are contractors working under the principles established by Judge Landis who acted as arbitrator between the unions and the contractors back in 1921.

The CHAIRMAN. There are organized unions?

Mr. PIERCE. Yes; there are two associations of union contractors in Chicago.

The CHAIRMAN. Are there any other witnesses who desire to appear before the committee?

(No response.)

The CHAIRMAN. Mr. Clerk, have you any other witnesses?

Mr. CLARK. That completes the list.

The CHAIRMAN. The remarks of William F. Dunne, on behalf of the Trade Union Unity League, New York City, presented Thursday, March 22, will be printed in the record at this point.

STATEMENT OF WILLIAM F. DUNNE

The CHAIRMAN. Your full name?

Mr. DUNNE. William Francis Dunne.

The CHAIRMAN. And your residence?

Mr. DUNNE. New York City.

The CHAIRMAN. What is your occupation?

Mr. DUNNE. I am at present working in the educational department of the national committee of the Trade Union Unity League.

The CHAIRMAN. Whom do you represent here?

Mr. DUNNE. The national committee of the Trade Union Unity League.

The CHAIRMAN. How large an organization is the Trade Union Unity League?

Mr. DUNNE. Some 125,000 organized workers, principally in textile, steel, metal, automobile, and shoe and leather.

The CHAIRMAN. I understand you appear in opposition to this measure?

Mr. DUNNE. My organization is opposed to this bill.

The CHAIRMAN. All right, Mr. Dunne, you may proceed.

Senator WAGNER. May I ask you one question, if you do not mind? If you do not care to answer it you need not, of course.

Is your organization committed to the Communistic Doctrine?

Mr. DUNNE. The organization is not.

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The CHAIRMAN. I asked him yesterday some questions along that line. It is in the record.

Senator WAGNER. I did not know that.

Mr. DUNNE. The program of our organization is not a Communist program.

The CHAIRMAN. There are some Communists in it, I assume, from what you said yesterday?

Mr. DUNNE. There are; yes. The program of the organization, however, is based on the class struggle, on the recognition of the fact of the class struggle.

The CHAIRMAN. What percentage of these 125,000 would you say entertain Communistic views?

Mr. DUNNE. It would be very hard to say, Senator. I would say that the membership of the Communist Party in the organization would represent probably 5 percent of the total membership. I have a few preliminary remarks, if I might be permitted, and I have a prepared statement which I would like to read and also make some comment on various proposals that have been made here.

I have been a member of organized labor for more than 25 years. For some 20 years at intervals I have been a labor organizer and an editor of labor papers. I am speaking here for the Trade Union Unity League, the only trade-union organization in the country that accurately predicted the coming of the crisis, its difference from previous crises, its long duration and intensity, and so forth.

Early in 1930, January 6, we called for the enactment of Federal unemployment insurance. We showed that the stagger plan was a share-the-hunger program. With the advent of the "new deal" we warned American workers that clause 7 (a) would not do what was claimed for it.

Senator WAGNER. Mr. Dunne, when did you say you advocated unemployment insurance?

Mr. DUNNE. In 1930. We warned them that the National Recovery Act was essentially a program for capitalist recovery, that it was intended basically to carry still further, although under another guise, the drive against wages, working conditions, and living standards, and to increase profits.

Appearing before the Senate committee on the Black bill in 1932, on behalf of the national committee of the Trade Union Unity League——

The CHAIRMAN. That is the 30-hour bill, is it not?

Mr. DUNNE. Yes. I made these same statements in essence.

The Wagner bill, in our opinion, is a further step in the so-called "Roosevelt recovery program." It would be stupid to consider the Wagner bill as a thing in itself, something separate and apart from the National Recovery Act and the general basic program of the Roosevelt administration.

It is true that the Wagner bill has a certain emergency character but its main provisions are inherent in clause 7 (a) of the National Recovery Act of which it is an extension. As such, the Wagner bill, under the guise of stimulating and increasing the so-called "bargaining power" of labor organizations, actually diminishes the power of workers to obtain better wages and working conditions by putting still more obstacles in the way of effective use of the strike weapon—

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that is, the ability of labor organizations to stop production for profit by refusal to work until their demands have been acceded to, or an acceptable compromise reached. That is all that so-called "bargaining power" is. Conflicts between employers and employees——

Senator WAGNER. Could I interrupt you there or would you rather finish?

Mr. DUNNE. No, if you do not mind spending the time.

Senator WAGNER. You do not agree with the large employers of labor who say it gives the worker too much power?

Mr. DUNNE. This will be made clear as I go along, Senator.

Conflicts between employers and employees, between workers and capitalists, over questions of wages and hours, working conditions the union shop versus the open shop or nonunion shop, are never decided on the basis of "right", "justice", "human welfare", and so forth, or other shibboleths used by well-meaning but misguided people, or by conscious demagogues in the leadership of labor organizations, in Government positions and the spokesmen of the industrial and financial overlords, for the purpose of deluding workers and others into believing that the present mode of production, capitalism, is something else than a cold-blooded system of production for profit.

A dispute over wages and working conditions is in essence a test of power between capital and labor—with Government always on the side of the employers as a class. This is necessarily so because so-called impartial government is a polite fiction. Government that does not represent the interest of the dominant class in any given epoch of society is a paradox. Government is the organized power of the dominant class. In the United States this is the capitalist class. In the Union of Socialist Soviet Republics government represents also the interests of the dominant class—the working class.

All this is, of course, elementary. Conscious representatives of the capitalist class know this just as well as do Communists and other class-conscious workers. But capitalists and their representatives are very anxious to conceal this fact from the great mass of the toiling population. If they cannot succeed in doing this—and the present economic crisis, now of 4½ years' duration, with its indescribable misery for all sections of the toiling population, makes it increasingly difficult—political crises inevitably develop.

More and more the ruling class and its spokesmen and general staff are forced to resort to complicated maneuvers. As the purpose of these maneuvers are discovered by the workers, a whole series must be invented, one following the other. As these fail to achieve the desired results, that is, to confuse the whole working class, especially that section in decisive industries, divide its ranks, create suspicion and dissension, and make its struggles hesitant, weak, and ineffective, and prevent the outbreak of conflicts between employer and worker, more forcible measures are indicated.

We see this strategy at work in the railway and auto situation—with President Roosevelt and Mr. Green duplicating the role of Wilson and Gompers in the steel campaign of 1919, when the full pressure of the Government and the official A. F. of L. leadership was brought against the struggles of terribly exploited and oppressed steel workers.

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Promises to workers whose burdens have become intolerable—promissory notes that always have and always will be repudiated much faster than the war debts, are much in vogue now.

But these kinds of promissory notes have a feature all their own; foreclosure proceedings take place against those to whom they are given—not against those who sign them. In between the lines of these documents there always lurks the threat of further suppression or jeopardy of workers' rights, either by force in one form or another, or by cajolery and deception, or by a mixture of both.

The Wagner bill is this kind of a document. This we will show later. First it is necessary to be specific in regard to the present economic and political situation in the country—a situation whose main features must give the greatest concern to the general staff of American capital and its government. It is out of these specific instances that the Wagner bill arises. Since the Wagner bill is intended to strengthen or replace clause 7 (a); since clause 7 (a) brought about the greatest development of company unionism ever seen in this country; since clause 7 (a) was intended to substitute futile negotiations under control of Government agencies for effective organization and struggle by workers; and since the economic and social status of the American working class as a whole has been reduced, by price rises, inflation, and the actual operation of clause 7 (a), as representatives of the Trade Union Unity League and its affiliated unions told workers would be the case, and since in spite of clause 7 (a) many hundreds of thousands of workers have seen the necessity of organized struggle for better wages and conditions, thus cutting into profits, it follows logically that the Wagner bill, if it is not a mere literary exercise, must be intended as part of the recovery program, to protect profits; to make it more difficult for workers to exercise effectively their bargaining power, i. e., the strike weapon.

The following outstanding recent developments are some of the main features of the present situation which gives rise to such measures as the Wagner bill:

1. The contradiction between lowered income of the working population, increased production, giving concentration of capital, a huge increase in profits, and rising prices—the economic basis for the present wage demands, organization movements, and wage of strike struggles.

2. The contradiction which has impelled the Roosevelt administration to expose big bankers in order to allay popular discontent and win popular support; the same contradiction, that is, the necessity of winning support from workers and working farmers whose interests are opposed to monopoly capital for a program of monopoly capital—the contradiction which in the President's anniversary speech impels him to praise the bankers and make a congratulatory telegram from them the high point of his speech. This results in loss of moral prestige for the administration—especially among ruined farmers, small business men, and the upper stratum of more highly paid workers who lost their savings in the bank crashes.

It also necessitates the invention and use of new weapons against workers—the announcement of General Johnson, for instance, in regard to a 10-percent increase in wages and a 10-percent reduction in hours.

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Right here, Mr. Chairman, I would like to quote from a letter sent out by the Kiplinger Service in which they give their estimate of General Johnson's proposal. They say:

It is not necessary—

Speaking to the employers, of course—

to cut your hours to 36 from 40 in any impulsive or panicky spirit. Take your time. Figure whether you can afford it, whether you can manage a larger pay roll, whether you can spread employment. The Government must put on the pressure for shorter hours because labor demands it, and labor has great political power. But the Washington orders are not meant to apply uniformly to all. Actually there's considerable difference of opinion within the Government as to the propriety and the results of the move toward 36 hours. * * * Wise managements will recognize as a fact (not a theory) that political forces are in position to force down the general level of weekly working hours, and force up the average hourly rate of pay. It seems wise to go along to whatever extent you can, stretching all the points you can. * * *

Purchasing power in the aggregate will not be increased by as much as 10 percent and there will not be a 10 percent increase in employment, as the effort to cut hours to 36. The administration's expectation on these points are moderate.

According to this Employer's Agency Service, General Johnson's proposal is not to be taken very seriously.

Now, one of these new weapons mentioned above is the Wagner bill.

The fourth point in regard to the situation in the country is that there are huge new contingents of workers in basic industries, never before involved in struggle, who are now engaged in big wage, organization, and strike movements of a scope never before seen in this country.

The unstable character of the A. F. of L. leadership and that of its affiliated unions is an outstanding fact in these movements. The control of these leaders is secured only through concessions to rank and file sentiment and by continuous promises that the Government will give them justice. The slogan of these leaders now is: "The employers kept clause 7 (a) from being applied. Wait for the Wagner bill. Wait for the President to act."

5. There is a Nation-wide revolt against company unions and all forms of so-called "employee representation" even in their recently "liberalized" form.

6. The stubborn nature of these movements and struggles is a significant fact—never before seen to the same extent in the United States. This is shown by the length of these strikes in the face of unprecedented use of forces—mass arrests, clubbings, gassings, shootings, and actual murder of strikers and pickets—by the employers' private forces and various Government agencies. Furthermore, there is to be seen the phenomenon of strike, restrike, and strike again, by the same groups of workers in coal mining, auto, steel and metal, seamen, taxi drivers, shoe and leather workers, agricultural workers, textile workers.

7. There is the beginning of a definite revolt against the present wages and working conditions and reduction of working forces among railway workers—who hitherto have taken little or no part in the struggle against the devastating effects of the crisis and the capitalist offensive against the workers.

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8. There is to be seen the development of a new corps of leaders direct from the ranks of the workers, who have received their training during the present crisis, who are much closer to the working class and represent the interests of the workers as the so-called "recognized" trade-union leadership does not.

9. There is an increase of sympathetic strikes—as in auto, sections of the metal industry, among steel workers (statement of Weirton workers regarding strike with auto workers) and such significant movements as in Centralia, Ill., where a whole working-class community and even some small businessmen struck in sympathy with 400 shoe workers.

10. There are growing manifestations of a great desire for unity among workers irrespective of union affiliations, as seen in an Ohio conference of steel workers, where A.A. members invited members of the steel and metal workers union to attend, as in Chicago where the Federation of Labor endorsed the movement of the unemployment councils against the starvation relief plans of C.W.A. as among shoe workers in New York and Massachusetts, where four or five unions have united, etc.

11. There is the special and extremely significant fact of the conjunction of all these movements and struggles with the mass movement developing against the C.W.A. program, among the unemployed, and uniting with them many unions both A. F. of L. and T.U.U.L. unions, as well as some independent unions.

12. There is to be noted an unprecedented solidarity between employed and unemployed workers.

13. Many of these struggles and movements have developed, or are developing, a definite political character, that is, they take place in defiance of N.R.A. and its local and regional boards. This is to be seen especially among coal miners, aluminum workers, in such incidents as that of the boycotting of the election at the Budd company and the booing of General Johnson. It has been noted among the thousands of striking New York taxi drivers, and in many other places.

So far it consists mainly of refusal by the workers of supervision of their voting on working conditions and wages, in regard to union affiliation and in general is against the theory that the interests of capitalists and workers are identical and that the Government is an impartial authority.

14. There is to be seen the advent of large numbers of negro workers in the South into struggle for better wages and working conditions and union recognition as in the Alabama coal mines, together with white workers. There are such developments as the struggle of negro workers in the Civilian Conservation Camp near Tuscaloosa, Ala., against intolerable conditions, discrimination, and segregation.

15. There is the growing mass support of the workers' unemployment and social insurance bill (H. R. 7598), providing for compulsory Federal insurance for all unemployed workers at the cost of the Government and the employers, over the opposition of the heads of the American Federation of Labor. Hundreds of A. F. of L. unions, many city central bodies and State federations of labor have endorsed this bill. There have been no refusals to endorse where workers have been reached with the bill.

16. There is a marked growth of antimilitarist sentiment which the press notes principally in schools, colleges, and among intellectuals

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and professional workers, but which is unquestionably developing widely in the ranks of workers. In fact, there is developing in the United States a new labor movement of a character much more militant than in the past, and which is determining as it goes along in the struggles the kind of leadership that it wants. It will make its own selections and may have to proceed by trial and error, but when the process is finished it is stated that it will not be present kind of leadership, and the labor movement as such will not be the present kind of labor movement that exists today.

Senatro DAVIS. What kind of leadership would you like to see in the labor movement?

Mr. DUNNE. I would like to see a leadership in the labor movement, Senator Davis, that represents the interests of the workers, that is elected directly by the workers themselves and directly responsible to them and removable by them at any time.

Senator DAVIS. Are not practically all local union officials elected by the membership?

Mr. DUNNE. Yes. Of course, there are cases where those elections are managed, too many of them, but it is precisely these local union leaders who are now beginning to take on more than local significance and local activity, as well as the new workers who recently have come into the organized labor movement.

Senator DAVIS. What sort of activities have these new labor leaders taken on?

Mr. DUNNE. Well, their activities, Senator——

Senator DAVIS. These local leaders, I mean?

Mr. DUNNE. They are exercising leadership in the struggles that I have been speaking about. I think this is perceptible to anybody who follows more or less closely the development of the struggles that are taking place in the country today.

Senator WAGNER. My observations have been that the general bylaws of all local unions have the right to elect their officers. Most of them elect their officers every 6 months.

Mr. DUNNE. Local union officers, however, in normal times, are subject to the orders of the higher officials. Is that not true, Senator?

Senator DAVIS. No, not always; but, then, after all, usually the so-called international officers are always subject to the referendum of the entire membership in conventions of the officers, and some of them are elected by a referendum, and they come to the Federation of Labor convention and they elect the president and officers of the American Federation of Labor and fix the policy of the American Federation of Labor.

Mr. DUNNE. It all sounds very simple and democratic when so stated, but in practice is quite the reverse.

Senator DAVIS. It is the same system of election that we have for our own officials where every member can go and vote.

Mr. DUNNE. I do not want to make comparison here because I do not think it is germane to the subject, between the workings of democracy in the United States as it shows itself in elections and the selection of our Government, with a similar process in the trade-union movement, but I do know from years of experience in the American Trade Union movement that democracy is a fiction except where it is enforced by the referendum and appeal to the workers themselves.

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Senator DAVIS. Well, through the referendum don't they have it in their hands to do as they please?

Mr. DUNNE. They do not. Have you not read, Senator, about the dozens or even scores of organizations of gangsters and racketeering local unions and central labor bodies and district councils where the rank and file has been terrorized and blackjacked, clubbed, and murdered by gangsters paid by union officials, so much so that a vote against the machine was almost tantamount to incurring the death penalty?

Senator DAVIS. You would not think the officials of the American Federation of Labor would be a part of that, would you?

Mr. DUNNE. I not only think so, but I know so. Why didn't they stop it? President Green has great powers apparently——

Senator DAVIS. What powers has he over an international leader?

Mr. DUNNE. Well, I know this, Senator, that when it is a case of a policy that is opposed to the official policy and supported by the rank and file, it is for the benefit of the membership, that Mr. Green finds it very easy, not only in the case of individual members, but whole local unions and central bodies, working through the Internationals, to see that pressure can be exercised through the International to eradicate these conditions. Gangsters, in my opinion, are nuisances, and it is simply that they did not feel like doing it for one reason or another.

Gentlemen, I am not here this morning to talk especially about racketeering. That is only one phenomena in connection with the whole series of questions. I will resume, if you do not mind, Senator.

Now, in connection with the above development and in connection with the provisions of the Wagner bill, we must regard with the utmost seriousness such other developments as indicate a classification of the N.R.A. program. These facts force the conclusion that the N.I.R.A. and its administration will take on more and more the character of an open offensive against the economic and social standards and elementary political rights of workers and their organizations.

Some of these factors are:

A. The progressive militarization of N.R.A administration by the systematic appointment of military officers to key posts in the administration. There are some 7 or 8 of these incidents in the last month or 6 weeks.

B. Then there is President Roosevelt's description of the relationship of workers and employers in so-called "representative government" in industry, which he emphasized in his anniversary speech; and his emphatic restatement of the purpose of N.R.A.:

> To promote organization in industry for the purpose of cooperative action in trade groups and to induce and maintain unified action of labor and management under adequate Government sanction and supervision.

If the committee desires it, I will quote from the President's speech on this point. I am quoting from the speech as published in the New York Times on Tuesday, March 6. President Roosevelt said:

> Now, to be more specific in regard to N.R.A. itself. You have set up representative government in industry. You are carrying it on without violation of constitutional or the parliamentary system to which the United States has been accustomed. Your industrial groups are composed of two parts—labor and management; and the Government is a participant in this organization in order to carry out this mandate of the law "to promote organization of industry for the purpose of cooperative action of labor and management under adequate Government sanction and supervision."

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This, of course, as I say, is the central point of the whole N.R.A. program, and that is the theory of identity of interests of capital and labor, of employer and employee.

Then, there is General Johnson's inspired eulogy before the employers of leaders of the American Federation of Labor, such as Mr. Green, Mr. Berry, Mr. Lewis, and Mr. McDonough, stating "their interests are your interests", meaning that the interests of the leaders of the so-called "recognized" American labor movement are the same as those of the employers.

Then, there are such incidents, perhaps minor incidents in the minds of some people but nevertheless of great political importance, as the 2- to 4-year prison sentence handed out in Pittsburgh to Phil Frank, the leader of the biggest unemployment council in the country, of some 20,000 workers. His crime was that of organizing workers to fight against starvation.

Then, there are such incidents as the revocation of the citizenship of one Emil Gardos, recently, on the basis of a charge arising out of an 8-year-old strike case in Passaic, N.J., I believe.

Now, it seems to me that such rulings do not flow out of the facts in this specific case; that such rulings are intended to establish precedents—precedents through which mass deportations of foreign-born workers can be carried out, and this, of course, is a move against the working class.

Then there is the actual incorporation of official leaders of the American Federation of Labor into the administrative apparatus of N.R.A.; in other words, into the main machinery set-up for capitalist recovery, where they operate under the guaranty given by General Johnson to the employers, "their interests are your interests."

The Wagner bill fits perfectly into this mosaic. The bill itself is a sort of combination of the Lemieux act of Canada and the Watson-Parker Railway Act. The Watson-Parker Act features of the Wagner bill, with the Watson-Parker law features bulwarked by the emergency railway act, were noted by Otto Beyer, former efficiency union expert for the Baltimore & Ohio Railway and the National Association of Machinists, and the now labor expert for Railroad Coordinator Eastman, in his testimony before this committee. He said, according to the press, that the Wagner bill contains no new or untried provisions, only the amplification of labor provisions of the emergency railway act of last June which, he said, has operated to prevent unfair labor practices.

Now, our definition of unfair labor practices, and those of Mr. Otto Beyer and of the Wagner bill, differ widely. What is the present status of railway workers who have been under the beneficent influence of the Watson-Parker law and the emergency railway act since May 1926? The railway magnates are loud in their claims that railway workers have received only a 10-percent wage deduction during the crisis. This is formally true. But what has become of approximately 1,000,000 railway workers formerly employed? Around August of last year, for the first time since 1888, there were less than 1,000,000 railway workers employed on the railway systems of the United States. Between 900,000 and 1,000,000 railway workers had been squeezed out of the industry by labor-displacing machinery, equipment, and speed-up and the decrease in traffic under the railway labor act.

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The CHAIRMAN. Mr. Dunne, will you suspend for a moment? I want to make an inquiry. Are there any other witnesses here who desire to be heard this morning?

(No response.)

The CHAIRMAN. Mr. Leeds has not arrived?

(No response.)

The CHAIRMAN. With the permission of the witness, I will leave the committee and go to my office where I have some things to do and leave Senator Davis in charge of the committee.

May I announce that on Monday morning the committee will resume its hearings and General Johnson is definitely scheduled to appear at 10 o'clock. We do not know what his views are in regard to this bill, so we will be interested to have him.

Following General Johnson, Mr. James A. Emery, national counsel for the National Associated Manufacturers, will open the opposition to this measure.

With your permission, Mr. Dunne, I ask to be excused and Mr. Davis will continue the hearing.

Mr. DUNNE. Now, with regard to the opinions of the displacement of railway workers under the railway labor act, I have a copy of the monthly labor review issued by the United States Department of Labor which deals with the decrease of the workers and the decrease of man-hours of employment in relation to passenger miles. I think it would save time if I merely refer to these figures and then pass on.

They substantiate what I have been saying, and also in the record of the Senate subcommittee on the Black bill there are statistics furnished by officials of the railway unions themselves.

Now, according to Mr. Otto Beyer, the railway companies have been prevented from indulging in unfair labor practices, but they have destroyed the labor market for this vast army of railway workers.

Neither has the Watson-Parker law prevented the maintaining of company unions. As far back as 1927, following the passage of the Watson-Parker law, William Z. Foster wrote a pamphlet called "The Watson-Parker Law; the Latest Scheme to Hamstring Railroad Unionism." The statements made in this pamphlet have been borne out by the facts. They speak especially of the tendency of railway management under the act to systematically eliminate workers and thereby reduce operating costs. The pamphlet points out that the act itself was welcomed by the railway companies and their press.

Now in regard to the operations of the Lemieux act, one should start with the question: Why, if laws providing for collective bargaining between workers and employers through arbitration, conciliation, and Government supervision, have been in existence for 27 years in Canada, and these measures do for workers what their proponents claim, are not the wages, working and social conditions of Canadian workers far above those of American workers? They are not. The answer is, of course, that these measures are not introduced to strengthen workers' organizations but to impede confuse, and, weaken them.

Now as business agent of Local Union 213 of the International Brotherhood of Electrical Workers in Vancouver, British Columbia, as an officer of the Vancouver Trades and Labor Council, as a vice president for three terms of the British Columbia Federation of

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Labor, and later as vice president of the district council of the International Brotherhood of Electrical Workers for the Pacific coast district, which included British Columbia, I had much experience with the operation of the industrial-disputes act, called for short the "Lemieux act" by those who favor it. This act is cordially hated by Canadian workers. Numerous attempts have been made by the Canadian labor movement, even by officials who at first favored the act, to secure its repeal. I have here a book by a recognized authority on such questions, Ben M. Selekman. It is an exhaustive study of the operations of what the Canadian labor movement calls the "Lemon" act. Significant enough, this book is entitled "Postponing Strikes." It relates here some proceedings of the Canadian labor congress. I will quote briefly for the record.

A resolution for repeal—

That is, the Lemieux act—

ntroduced by the street-railway employees of Vancouver, was defeated by a vote of 97 to 55. The Congress voted instead to refer the entire subject of the disputes act to the executive council, with definite instructions to secure from competent council, interpretations of the amendments proposed by the Minister of Labor.

By the following year, however, hostility toward the act had reached such proportions that it swept the convention to an unqualified demand for repeal. Various events had added to complaints already existing.

And so on.

Other events illustrate the intensity of feeling at the convention. First, the delegates refused to consider the appointment of a special committee, in accordance with previous custom, to consider and report upon the act. They contended that the time for referring to committees had passed, and instead the act should be discussed by the convention as a whole. Their attitude was revealed by the reception they accorded the Minister of Labor, who was present at the convention. Some delegates suggested on the floor of the convention that he speak on the act; others, that he simply confine himself to answering questions; others again, that he be prohibited from speaking at all. The delegates rejected a proposed bill to amend the disputes act. * * * The convention took action definitely opposing the act—this time without any qualifying statements. The resolution was short and to the point. It read: "*Resolved*, That we go on record as opposing the Lemieux (disputes) act in its entirety."

There are further quotations which report the statements of fraternal delegates from the Canadian Labor Congress to American Federation of Labor conventions, reporting back to their organizations. They say that they believe that it is necessary for the integrity of the Canadian labor movement to force the repeal of this act, since it is being used to hoodwink the American labor movement into the belief that these arbitration and conciliation acts under Government supervision are beneficial to labor.

Now the Lemieux act never aided workers or their organizations. On the contrary, it was used to delay their action until its effectiveness was greatly lessened or made entirely ineffective. This is the purpose of all similar measures. The Canadian workers never received in terms of wages or better working conditions as much under the Lemieux act as they could have secured without it. The facts speak for themselves. Their conditions are no better today than are those of workers in the United States, and in many instances are somewhat worse.

An additional purpose of such legislation is to strengthen the illusion regarding the identity of interests of employers and employees,

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of capitalists and laborers. In fact, this is the formal theory behind all such measures.

Historically speaking, the collective bargaining provisions of the N. R. A. and of the proposed Wagner bill are the concrete expressions of this false and dangerous theory which the leadership of the American Federation of Labor adopted as its program following the World War. Immediately after the World War, the American trade union movement was a powerful organization embracing, if the Railway Brotherhoods and so-called "independent unions" are included, close to 5,000,000 workers.

Instead of unifying and extending this powerful organization, the official leaders continued the craft divisions in the labor movement, failed and in many instances refused to aid in the organization of decisive sections of the workers as in the steel industry, automobile, oil, meat packing, and so on. While Samuel Gompers had clung to the identity of interests theory, many powerful organizations affiliated with the A. F. of L. rejected it, among them the United Mine Workers with some 400,000 or more members. It was by no means the official policy of the entire labor leadership.

But following the World War, when labor officialdom was represented in the War Labor Board, and a no-strike policy inaugurated, there was launched, together with certain sections of the employers, what was called "labor-management cooperation." A classic expression of both the theory and practice contained in this program is quoted in a pamphlet written by me in 1927, entitled "The Threat of the Labor Movement—Efficiency Unions for the Bosses or Effective Unions for the Workers." In this pamphlet I quoted from an editorial by President William Green in the December, 1926, issue of the American Federationist, the official organ of the A. F. of L. The quotation is as follows:

> Under various systems of union-management cooperation workers have felt a responsibility and a partnership in the industry which has stimulated intellectual effort and brought substantial benefits to the industry. Prevention of waste, saving of materials, better production methods, even inventions of machinery to increase efficiency have been part of the workers' contribution. They have gone out to their communities to solicit trade for their employer. Local union meetings have become discussion forums for plant problems, producing practical suggestions that are carried into the shops for practical demonstration. National officers have contributed expert advice and direction. Unions with banking system have given financial help to employers in difficult times. The workers' demands under this system of cooperation have been restrained by better understanding of the facts of production. * * * The individual effort of the most enlightened employer cannot maintain as high a production impetus as the collective efforts of management and unions.

I wish to make only one more quotation on the subject. This is from an official of the Brotherhood of Locomotive Engineers, who deals with another phase of labor management cooperation, a phase that is no longer of great importance, the so-called "labor bank." This is Mr. H. V. Boswell, vice president of the Engineers Bank, and his statement was syndicated in the Hearst press:

> Who wants to be a Bolshevik when he can be a capitalist instead? We have shown him how to mix oil and water; how to reconcile capital and labor. Instead of standing on a corner soap box, screaming with rage because the capitalists own real estate, bank accounts, and automobiles, the engineer has turned in and become a capitalist himself. Now it stands to reason, doesn't it, that such men won't start any movement to destroy property or run big business? Why, only last spring we bought a substantial interest in the Empire Trust Co. of New York

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City. If you could have seen Schwab, Heckscher, and the locomotive engineers seated around the directors' table, you'd have recognized the whole scene as an entirely new turn in what used to be called the "fight" between capital and labor.

The CHAIRMAN. Will you suspend a moment, please?

Mr. DUNNE. Yes.

The CHAIRMAN. General Johnson just called me on the telephone and said he wanted an opportunity to refute testimony presented yesterday by the representative of the textile unions. He said he, himself, did not care to testify about it, but he would like the representative in charge of that branch of the code to do so. I thereupon told him that we would hear him if he would call down here at once. I assume he will be here shortly. Is Mr. Gorman here?

(No response.)

Mr. DUNNE. Does this mean, Mr. Chairman, that I am to suspend?

The CHAIRMAN. No; you may proceed.

Mr. DUNNE. I would like to conclude. I think I will not be much longer. Now there is only one comment that occurs to me on these statements concerning labor-management cooperation and trade union capitalism, so-called. They sound very peculiar today, after 4½ years of the crisis. If it was not so tragic for the working class, it would be very amusing, to see these gentlemen coming here and complaining about unfair labor practices under clause 7 (a), when this is a direct outgrowth of their own program and policy. In regard to these labor banks and these blossoming engineer-capitalists, where are they today? Well, where are the shows of yesteryear?

The truth of the matter is that the employers have taken these gentlemen at their word and are continuing the official program as it was before the crisis and as it was and is expressed in their adoption of N.R.A. and clause 7 (a) as the official program of the American Federation of Labor, to which, by the way, Mr. Hillman of the Amalgamated Clothing Workers has now affiliated his organization, seemingly having seen the light.

There is the thought today in these circles, just as there was during the boom period, of keeping industrial peace. Now any labor leader worth his salt knows that workers strike only when conditions have become almost unbearable, or when they believe that a strike will forestall a new attack upon their wages and working conditions and organizations. Any labor man knows that strikes require tremendous expenditure of energy and sacrifice by workers and their families. He knows that in this country they mean, in all probability, that many workers and their leaders will be arrested, jailed, clubbed, and even killed in struggles to maintain or improve living standards. He knows that because of the tremendous power of the employers, their bankers and their government, it is only at certain times that effective strikes can take place, when for one reason or another this combination of forces is weakened and the solidarity of workers is at a high level.

The CHAIRMAN. Granting all that, I think we are not far apart in our estimate of the tremendous harm and damage that strikes cause. Have you a proposal to make to this committee?

Mr. DUNNE. I have, Senator.

The CHAIRMAN. You are going to broach that later?

Mr. DUNNE. I will end with the proposal.

The CHAIRMAN. All right. Your proposal, I suppose, will show more definitely your objection to the pending bill.

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Mr. DUNNE. Yes. I have here a prepared statement of comments upon some features of the bill.

The CHAIRMAN. Do you think the pending bill will be helpful at all?

Mr. DUNNE. As I stated in the beginning, we do not care to offer any amendments to this bill. We are against it in its entirety.

The CHAIRMAN. You are against it in principle. I understand.

Mr. DUNNE. We have, however, certain concrete proposals to make here along the same line, that is, for the improvement of the conditions of the workers, which is ostensibly the purpose of the Wagner bill.

The CHAIRMAN. I do not want to hasten you, but we must go to the floor of the Senate at 12 o'clock. I wish you would put that descriptive matter in the record, and get down to specific recommendations, if you care to.

Mr. DUNNE. I have 9 more pages here—8, roughly—and I think I will be able to complete it, if I may.

The CHAIRMAN. Certainly.

Mr. DUNNE. Therefore, to fail to take advantage of such a favorable combination of circumstances for workers, is to play into the hands of the employers and the whole capitalist class, to strengthen their position as against that of the working class. This is elementary strike strategy. It is therefore treason to the working class. Yet all these gentlemen insist that the maintenance of industrial peace is the paramount factor in national recovery, while such self-appointed friends of labor as the Reverend Father Haas are for the Wagner bill because "its ultimate purpose is to increase purchasing power," and "to maintain equality of bargaining power in the wage contract," and so on and so forth.

There is no such thing as "peace in industry" under capitalist production, and there never will and never can be. The attack of the employers upon the working class and its organizations, never ceases either in boom periods or in periods of crises. During this crisis, wages and living standards have been lowered below those of 20 and 30 years ago. This is easily susceptible of proof. I will not take up the time of the committee with it.

No advances can be registered by the working class as a whole in this period. The employers have taken advantage of every single angle of the crisis to reduce living standards. Beginning with the stagger plan promoted by Walter C. Teagle of the Standard Oil Co., now an honored member of the National Labor Board, and endorsed by President Green, also an honored member of the same Board, every attempt of the rank and file of the workers to fight back has been discouraged. Then came clause 7(a), and now comes the Wagner bill. They ask workers again to depend upon the same government, but with its powers greatly extended, to better their conditions for them.

In other words, they are asking workers to believe that the same government whose clause 7(a) was the soil in which company-unionism found its best field, and under which more striking workers have been arrested, maltreated, and murdered than ever before in a period of the same length in American history, will operate the provisions of the Wagner bill for the benefit of the working class. It sounds incredible, but it is so.

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Just as some employers were doubtful as to clause 7 (a) before they tried it out, some of them are doubtful about the provisions of the Wagner bill. This is nothing but the expression of the inherent inertia of the most reactionary sections of a reactionary class, strengthened by the belief that with the present official leadership of the A. F. of L. American workers can be licked in these developing struggles without any further legislation of this kind. Publications like "Time," the weekly news magazine, are not fooled by the ambiguous phrasing of certain sections of the Wagner bill. In this issue for March 19, 1934, it has a first-page pciture of Senator Wagner, and under his name it says, "He wants a club to keep the peace." Mild-looking as Senator Wagner is, I am convinced that this is just what he wants. In its write-up on the bill it says:

> That measure, when passed, would give him a new club with which to police the labor front and keep the peace.

In conclusion it says:

> Thus last week was Senator Wagner's policing job growing by leaps and bounds. As he paced his beat, with discord and discontent popping around him, his most disturbing thought was this: A few good strikes could create as much unemployment in a day as N.R.A. could cure in a month. Therefore the necessity for police powers.

Senator WAGNER. I am not the author of the article, you understand.

Mr. DUNNE. No, no. I am willing to assume that you did not even know anything about it. Of course the Wagner bill is a club to maintain industrial peace. But at whose expense? Certainly not at the expense of the employers.

There is one other witness who appeared here upon whose remarks I would like to make some comment before proceeding to a brief discussion of some of the specific provisions of the Wagner bill—Mr. Francis Gorman, of the United Textile Workers. Mr. Gorman, with the questions of the chairman of this committee and Senator Davis of Pennsylvania, worked out a very ingenious explanation of the trouble in the textile industry. I hate to take up too much of my short time with this, and I think probably better than reading this in its entirety, as I wanted to do, I will simply quote sections of it. Senator Walsh asked the witness Gorman:

> Has your organization experienced extreme difficulty in competing with organizations that are growin up among the textile workers that are alleged to support communistic principles?

Mr. Gorman obligingly answered:

> Yes; we are combatted on every side by that influence. These people come in when we have created an organization and we not only have to fight the employers but we have to fight them.

Senator Davis asked:

> Do you know who finances the organizations such as the chairman pointed out?

Again the witness obligingly answered:

> Yes. I am not in a position to say, since the recognition of the Soviets, but we did have definite information that they were subsidized from Russia.

Now, I am not surprised at Senator Davis' interest in finance, but I want to say here now, with all the emphasis at my command, that Mr. Gorman here is referring to the National Textile Workers'

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Union, affiliated with the Trade Union Unity League, which led successfully a number of strikes for thousands of workers, and whose leaders Senator Wagner knows.

Miss Burlak, one of their outstanding leaders, spent most of her life in the textile industry here. During the strike in Paterson, involving some 65,000 silk and dyehouse workers, the National Textile Workers' Union offered to cooperate with the United Textile Workers' Union in declaring and organizing a free election of every striker and allowing them to select in this election the leaders they wanted in order to unite all the forces in this struggle against the starvation cotton code.

The CHAIRMAN. I do not understand whether you quoted the questions and answers for the purpose of denying them or admitting them.

Mr. DUNNE. I am going to deny here and now, after this brief explanation, that the National Textile Workers' Union receives or ever has received any financing from the Soviet Union or any organization in the Soviet Union, and for the record I want to say, in answer to this general charge, that the flow of money since the Russian Revolution has been not from Russia to the United States, but from the United States to the Soviet Union. During the famine period in 1920 and 1921 there was collected and sent to the Soviet Union for relief more than $865,000 in cash by workers' organizations, certified by chartered accountants, and several million dollars' worth of clothing, shoes, machinery, and so on.

The CHAIRMAN. Those were charitable contributions without regard to their beliefs or nonbeliefs in the principles of the Soviet Union.

Mr. DUNNE. Well, many of these were made by workers who believed in the principles of the Soviet Union, of course, and by others than workers who believed in them. That process still goes on. There are organizations in this country today, like Ecore, I think it is called, that have fraternal relations with societies of practically every nationality in the Soviet Union and constantly send them money, tractors, machinery, small factory equipment, and so on. I want to blast this canard once and for all, that any labor movement in this country, outside of the American Federation of Labor, is financed by contributions from Moscow, as it is said. We are entirely capable, speaking for my organization, of securing a minimum of finances from American workers. They are only too glad to give it.

Therefore the explanation by Mr. Gorman of the trouble in the textile industry is too simple. It can be compared only to the statements made in some official documents issued recently by President Green and Vice President Matthew Woll, of the A. F. of L., who is also acting president of the American Civic Federation, to the effect that it was Communistic propaganda that closed the banks of this country. I think it would be hard to convince even the Rev. Edmund A. Walsh, quoted by Mr. Woll in his document, regent of the School of Foreign Service of Georgetown University, who recently distinguished himself by issuing the address of the Japanese Imperialist agent, George Bronson Rea, of the truth of these two statements, although he cooperates fraternally with Easley and Woll, of the National Civic Federation.

Now, what started the strike in the silk section of the textile industry—and this is a classic example of the struggles that are

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now going on in this country? The attempt of the U.T.W. officialdom to ram down the throats of the workers a $12 and $13 minimum wage scale. That is what the strike was about. All these strikes are about wages, working conditions, and union recognition.

I have here a paper, a Washington paper of last night, the Washington Times. The first page and second page are practically devoted to listing the number of strike struggles that are going on in this country today, involving hundreds of thousands of workers.

The CHAIRMAN. Are they listed?

Mr. DUNNE. Many of them are listed. The explanation made so often by interested parties that strikes are fomented by agitators falls to the ground in the face of such mass movements as this. The truth of the matter is, in regard to the leadership of this new movement that is developing, that whenever the issue is joined between workers and employers in these days, in any sort of an extended battle line, there is a great tendency for workers to organize their own struggles under the leadership of an elected rank and file committee, which may, and often does, represent all the workers in various organizations, regardless of union affiliation, quite often having representatives of so-called "unorganized workers" on it, and even at times workers who have been forced into company unions. This is something new in the United States; and it is not my fault, or that of the organization that I represent, that the official labor leaders, such as Mr. Gorman and others, fail to realize the causes and significance of this phenomenon. It is a product of the crisis, of the terrible conditions of the working population; it is a sign of the growing maturity and homogeneity of the American working class.

That the leadership of the Trade Union Unity League and its affiliated unions adopted the policy of the united front and encourages strike leadership through united-front committees, that in the factories and industries it seeks to build these united committees for action against company unions and various grievances of the workers, shows that it understood the needs of American workers in this period. It is to its credit. It shows that we have confidence in the initiative and ability of the working class. This is entirely lacking in the kind of leadership which Mr. Gorman represents. They fail to understand that great sections of American workers are coming to know that their so-called industrial peace means surrender of workers' rights and lower living standards.

The question will be asked: If the official policy of this leadership of the A.F.of L., and that of most of its affiliated unions, is a class-peace policy, why is it that so many powerful employers and their press are announcing their opposition to organization under the A.F.of L. label? The answer is, first, these big employers, like those in steel, auto, oil, and the decisive sections of the mining industry, and so forth, do not want any kind of organization among their workers. Many of them did not even have company unions, as was the case of the Steel Trust; they simply organized them formally. Second, these big employers do not believe that the A.F.of L. leaders can control these new contingents of workers sufficiently to enforce the industrial-peace policy. And, third, after all, they are prepared to accept the A.F.of L. leadership rather than unions organized and led by the Trade Union Unity League or independent unions, so-called, led by militant committees of rank-and-file workers.

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Now, as to some provisions of the Wagner bill. The Wagner bill proposes to equalize the bargaining power of the employer and employees. This in itself indicates one of its deceptive features. There can be no equality of bargaining power between employers and employees as long as private property is recognized in natural resources and the machinery of production and distribution.

Section 2 of the bill speaks of providing agencies for the peaceful settlement of disputes. No one should object to the peaceful settlement of disputes between capitalists and workers regarding questions of wages, working conditions, and so forth, providing that the policy which prompts emphasis on peaceful settlement does not militate against the interests of the working class. The present system is based on the employment of workers solely for profit. The workers produce commodities for sale, in all of which there is a certain amount of surplus value—unpaid labor time. Value is created only by workers employed. Profit is only realized through the sale or exchange of commodities. The worker, therefore, is always at the mercy of the market, because, although he and his class are the greatest market, he and it are always producing more than their wages can buy back. This is the main cause of capitalist crises. And these are the facts of capitalist production which render all talk of equality of bargaining power under such a system an attempt to cover up the real causes of the low social and economic standards of the working class as a whole. It is only by taking advantage of favorable opportunities that workers are able to prevent themselves from becoming a group of broken wretches, to use the Marxian term.

While the bill ostensibly recognizes the right of workers to organize and lists a number of acts on the part of the employers that would be considered unfair labor practices, the bill does not change in any way the relationship between employer and employees. On the contrary, the provisions of the bill set up new machinery for maintaining this relationship. Furthermore, it sets up what is practically a self-perpetuating body known as the "National Labor Board" on which there are to be at all times three so-called "representatives of the general public"—a verbal fiction used very freely, especially in the United States, to describe individuals whose class interests are those of the employers, in the main, or, to be more specific, of the capitalist class and the capitalist system, as against those of the working class. There is no such thing as a general public, any more than there is such a thing as the interest of "all the people." There are workers, there are tenant farmers, share-croppers, small individual owners, and wealthy farmers; there are big employers, medium and small employers; there is the capitalist class proper and the middle class; there are the doubly oppressed Negro masses; at times the interests of workers and certain middle-class groups tend to coincide. The middle class vacillates between the working class and the capitalists, but in any decisive issue the larger sections of it line up with the big manufacturers.

The bill seems to intend to set up a new police power. The Federal district courts are invested with jurisdiction to prevent and restrain——

Senator WAGNER. May I interrupt you there a moment?

Mr. DUNNE. Yes.

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Senator WAGNER. You say the bill lines up with big business. If that is so, they do not seem to appreciate it.

Mr. DUNNE. I remarked on that early in my remarks, but I am sure they will appreciate it later, Senator Wagner, just like they did in reference to clause 7 (a).

The bill seems to set up a Federal police power. The Federal district courts are vested with jurisdiction to prevent and restrain any "unfair labor practice that burdens or affects commerce", and so forth. But in the language of the bill, solely at the request of the National Labor Board. In other words, these proceedings are instituted when the Labor Board sees fit.

Section 209, if language means anything, empowers the board with authority to change completely, at its first meeting, or at any time thereafter, all rules and regulations contained in the bill at the time of its passage. These changes are to become effective as soon as published in any manner which the board sees fit. In other words, the board is empowered in this most important aspect of its work to rule virtually by decree.

Section 210 provides drastic punishment by fine or imprisonment, or both, for anyone who interferes with the board or its agents, when acting as its conciliator or mediator in any labor dispute, or even when it is offering its services for such purposes, or objects to elections being held by the board to determine workers' representatives or to the methods of these elections.

In my opinion, these provisions are not affected by section 303 which says that "nothing in this act shall be construed so as to interfere with or impede or diminish in any way the right to strike." The right to strike is not an abstract right; it is an effective right only when it can be exercised at any time and place, and in the manner selected by the majority of the workers involved.

Important as these sections of the bill are, they have small significance when compared with the main purpose of the bill. Running through the whole language of the bill is the intention to delay, and the provisions for delaying decisive action by workers against employers on questions of wages, hours, and working conditions. The more important the employer, the more decisive the industry, the more workers it employs, the more would the National Labor Board, under the provisions of this bill, maneuver to delay action by workers until the favorable moment had passed. The American working class does not need and does not want this legislation. There is too much of it now.

We do not wish to offer amendments to this bill.

The CHAIRMAN. How much more time do you want? Those nine pages took a long time.

Mr. DUNNE. I am down to two and a half now.

The CHAIRMAN. I am going to stop this hearing at a quarter past 12. I will give you 5 minutes more.

Mr. DUNNE. I will be through in 5 minutes.

We are against this bill just as we were against clause 7 (a), and for practically the same reasons—because it is intended to be used as another will-o'-the-wisp to dance before the eyes of the working class while the employers and official labor leaders in the N.R.A. machinery, thinking of "national recovery" in terms of "all the people", which means the capitalist class, which means mainly the big employers,

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trick them further into the swamp of starvation wages and permanent mass unemployment.

We are for union shops, with full representation, secured through democratic elections, and committees elected by this method represent all the workers.

We propose a flat 35-percent increase in wages for all the employed workers in the United States today, and reduction in hours; immediate enactment of the workers unemployment insurance bill, guaranteeing to all unemployed workers at least a standard of living of minimum decency; and the turning over of all military and armament funds for this purpose; and the taxation of incomes over $5,000.

The CHAIRMAN. Well, would you disarm the Army and Navy?

Mr. DUNNE. I beg pardon?

The CHAIRMAN. Would you disarm the Army and Navy? "Turning over the funds", you say, that are used for the Army and Navy.

Mr. DUNNE. I am not raising any such demand at this time. We are demanding now the turning over of all military and armament funds, war funds, for the purpose of the support of the unemployed.

The CHAIRMAN. That is another way of saying putting the Army and Navy out of business.

Mr. DUNNE. All right, Senator. You can interpret it that way. If I thought that was a question involved here, I would speak of it, but I think it is not necessary now.

We demand the cessation of the use of private police and gangsters, of labor spies, paid by employers and employers' organizations. We demand the cessation of the use of police, State troopers, and the National Guard against striking workers. We demand the cessation of the organized lynch and murder terror used against the Negro masses of the South to prevent their organization, their obtaining political rights and equality with white workers, to keep them as a permanent submerged, oppressed nationality, thus maintaining a continual division in the ranks of the working class, since the Negro masses in this country are about 90 percent workers and working farmers.

We demand the abolition of the use of injunctions against workers and their organizations; the cessation of all prosecutions of unemployed workers, of strikers, of unemployed organizers, and of union organizers. We demand the cessation of espionage among foreign-born workers and attempts to deport them for labor activities.

Now, these are proposals that fit into the needs of the working class in this, the fifth year in the worst crisis in the history of capitalism.

Monopoly-capitalism has received great favors and the best of service from its Government. Concentration of capital, with the accompanying ruin of farmers and huge sections of the middle class and the progressive impoverishment of the working class, is the outstanding feature of the New Deal. I have figures here that show the most astounding centralization of monopoly capital ever seen in the history of this country taking place most rapidly. Never in American history has this process been so rapid. The main burden falls upon the working class.

Now, there are those who argue that the big employers, the bankers, and so on, are opposed to the new deal.

The CHAIRMAN. I dislike to have to hurry you.

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Mr. DUNNE. I have two more paragraphs. I am quoting from the Annalist:

> The large aggregates of financial capital stand to benefit substantially in the long run from the new regime—the elimination of competitive methods, the closer welding together of the private banking with the governmental financial apparatus, the increasing control and coordination, all are elements of strength for the future of financial capitalism.

Now, the peace that the Wagner bill and the official program of the A. F. of L. proposes is the pax Romana—the peace of death—for the American working class. It is a program of preparation for a new drive against the working class and its living standards, preparation for imperialist war, and a step toward fascism. We are against it. We shall do our best to expose it, to arouse and organize American workers against it.

The measures we propose are those the working class needs. They in themselves will not solve the main problem facing the working class in America; that is, the question of power, the question of which class is to run this country—a minority of multimillionaires and billionaires, with their hangers-on holding the natural resources and controlling the Government in the interest of their small minority, or the working class, with its dependents, the overwhelming majority of the population, who will rule it in the interests of the working masses and their allies, the toiling section of the population constituting the great majority of the population of the United States of America. I thank you.

The CHAIRMAN. Thank you for your presentation. Senator Davis would like to ask you a question. We will meet at 2:30 this afternoon to hear Mr. Sloan of the Textile Code Authorities, representing General Johnson, in reply to the testimony offered yesterday.

Senator DAVIS. I was not here when you began your statement. Did you put into the record the office that you hold in this Trade Union Unity League?

Mr. DUNNE. I did; yes.

Senator DAVIS. Would you be kind enough to tell me what office you hold?

Mr. DUNNE. I am in the educational department of the national committee of the Trade Union Unity League.

The CHAIRMAN. He said he was the head of the educational department.

Senator DAVIS. What makes up the Trade Union Unity League?

Mr. DUNNE. It is composed of a number of unions in steel, metal, auto, textile, shoe, leather, and so on.

Senator DAVIS. How do they elect their officers, or how do they select their officers?

Mr. DUNNE. The officers are selected at delegate conventions.

Senator DAVIS. They are selected at delegate conventions?

Mr. DUNNE. Yes.

Senator DAVIS. Who elects the delegates that come to the convention, the delegates of the several trade unions?

Mr. DUNNE. The rank and file of the local unions.

Senator DAVIS. And how are you selected? By the officers of the Trade Union Unity League, or by the delegates?

Mr. DUNNE. I am selected by the convention, but my specific duties are determined by the national committee, of which I am a member.

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Senator DAVIS. And all of those are elected from these delegates that get together?

Mr. DUNNE. Yes.

(The following briefs were submitted for the record:)

BRIEF SUBMITTED BY M. H. REYMOND, INDUSTRIAL ENGINEER, OF BINGHAMTON, N.Y.

I am in sympathy with the general purpose of this bill, which is to maintain or improve the standard of living of the laboring man. But I believe the methods by which this bill seeks to achieve this admirable humanitarian result will not only fail to lead to this result but will actually do the opposite—reducing, instead of improving, the standard of living of the laboring man.

Another purpose of this bill is to encourage the amicable settlement of disputes between employers and employees, thus removing obstacles to the free flow of commerce. Here again I believe the methods contemplated by this bill, however well intentioned, will actually do just the opposite—intensifying, instead of reducing, industrial strife and hindering, rather than helping, the free flow of commerce.

I will divide this presentation into two parts: (1) Why the methods contemplated by this bill will not achieve the intended results; and (2) How these results can be efficiently achieved by other methods that will work.

PART 1

The fundamental assumption of this bill, and of the National Industrial Recovery Act, to which this bill is intended as a kind of supplement, is the belief that the standard of living of the laboring man can be improved, and therewith also the prosperity of the country, by forcing wages up and hours down.

This general philosophy was expressed by Senator Wagner in his testimony before this committee in support of this bill on March 14. He predicted a new economic collapse unless labor is given a fuller participation in the recovery program, stating that wages are again lagging behind production and profits.

This same philosophy was reechoed on March 17 by A. F. Whitney, of the railway labor unions. In reply to the railway operators, and in defiance of President Roosevelt's suggestion that the 10 percent reduction in railway wages be continued for another 6 months, he stated: "We are asked to confirm a program of restricted wage payments and reduced employee purchasing power. In plain language, you ask us to obstruct and retard American economic recovery and to support you in your refusal to contribute anything at all to the national rehabilitation. We cannot and will not acquiesce." This is also the underlying philosophy of the American Federation of Labor, and other labor organizations, in their present strike activities.

This belief, that a depression can successfully be combated by raising wages and curtailing hours of labor, is an economic delusion. Senator Wagner and many of our other worthy citizens, including some of our prominent economists, have been misled by this erroneous philosophy. It is based upon a lack of insight and understanding into what causes depressions.

What does cause depressions? Booms and depressions result whenever the general price level rapidly rises or falls. (It is not necessary in this connection to go into the defects in our financial structure which make the general price level periodically rise and fall. These will be described in pt. 2.) A falling general price level always brings with it depression of business and unemployment of labor. Why? Because when prices decline they always decline faster than wage and overhead costs. Why? In the case of wages, this is because human nature, both on the part of employers and employees, resists the rapid reduction of wages. The average employer would rather operate at a loss temporarily than to force a reduction in wages until he has to. And the average employee naturally doesn't want to take a reduction in wages until he has to. In the case of overhead costs, these are usually fixed by contract so that they cannot be rapidly reduced. The result of this more rapid drop in prices than in wage and overhead costs is to reduce profits, and, in the case of most businesses to turn these into losses. What does this do? It causes employers to partially or wholly close down their enterprises, which is what causes unemployment.

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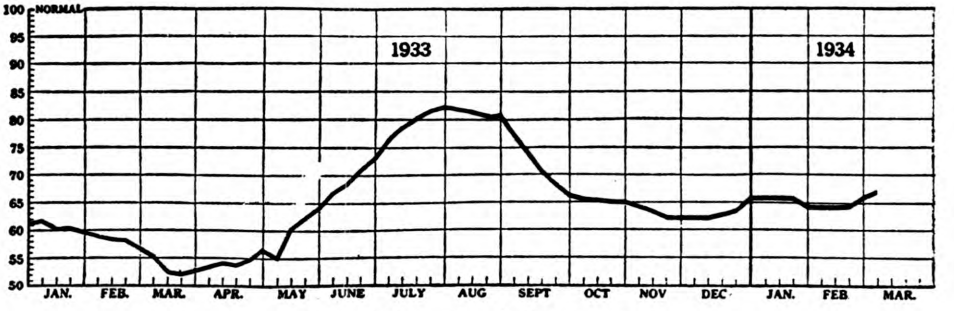
I submit that there are only two ways to intelligently and effectively attack a situation of this kind.

One is to keep the general price level from falling, restoring it to where a sufficient profit is possible (under existing wage and overhead costs) to cause employers to assume the risks of expanding their enterprises sufficiently to absorb the unemployed labor. This, I believe, is the better way of attacking this problem. But this method of attack is a matter of finance rather than a matter of wages and hours of labor. It will be described in part 2.

The other method of attack is to let the financial end alone and concentrate on reducing wage and overhead costs as rapidly as the general price level falls. Or, if this price level has already fallen, reduce these costs until a sufficient profitableness is restored to business to encourage employers to reopen their enterprises and reemploy the unemployed labor. This method is now actually being tried by Premier Mussolini in Italy. Personally I believe this is the poorer way of attacking this problem. It is foredoomed to be unpopular in a democracy. But it is the only logical alternative to properly attacking the problem on the financial end.

With this insight and understanding before us, into what causes a depression and into how a depression can be successfully attacked, the fact becomes apparent that, however well intentioned, the general approach to this problem of the N.R.A. and of the present bill is fundamentally wrong in principle. Forcing a general increase in wage and overhead costs when a condition of general unemployment exists is just the opposite from the right thing to do. It not only does not help recovery but it actually retards recovery. Except for the evil influence



The Course of Business

This graph is a composite of several well known indices of business activity. The curve has been corrected for secular trend and for seasonal fluctuations. In terms of percentage deviation from normal it records the actual course of business by weekly intervals throughout 1933 to the end of the first week in March, 1934.

of the well-meaning but economically unsound N.R.A. we would be further along on the road to recovery than we are today. In support of this statement a chart summarizing business activity during the past year is submitted herewith:

This chart appears weekly on the financial page of the Literary Digest. It is evident from this chart that substantial recovery occurred from March to July of 1933. Then, under the evil influence of the N.R.A. recovery not only slowed down but actually reversed itself back into depression until December. It is only now that we are again beginning to overcome this evil influence. And now, along come the well meaning but misguided N.R.A. enthusiasts with the proposal to again crack down on business as they did in July.

I believe too much attention has been given to detail difficulties with the N.R.A. The present bill is largely an effort to deal with these detail difficulties. I submit that before going into these details careful consideration should be given to the question of the fundamental unsoundness of the whole plan to begin with, as pointed out above.

Now, to briefly touch upon some of the details of the N.R.A. with which the present bill deals, including the humanitarian aspects.

The purpose of desiring to insure to labor a fairer share in the benefits of technological progress is admirable, and I am thoroughly in sympathy with it. But I believe the time to work in this direction is during boom periods when businesses are abnormally profitable, not in depression periods when businesses on the average are not earning enough to permit even normal employment of labor. And I believe there are better ways of achieving this end than by en-

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couraging employers and employees to divide into two hostile camps each trying to see how much it can put over on the other. Houses thus divided against themselves ultimately fall. I have seen many businesses wrecked by exactly this kind of a situation. The progressiveness of business in the United States in contrast to Europe has in part been due to cooperation between employers and employees in contrast to division of authority and working at cross purposes such as is so often found in labor-union-dominated enterprises. I believe labor unions serve a useful purpose in particular situations where employers are not fair-minded enough to voluntarily treat their employees fairly. And I believe that in such situations, where they will naturally grow, labor unions should freely be permitted to function. But I believe it is a mistake to tell every employer that his employees must be under the domination of some labor organizer apart from himself, per the present bill.

I do not believe the a business that has two masters can function as efficiently nor provide as high a standard of living for its employees as a business that is headed by a man who is not only a good business man but also fair-minded enough and capable enough to be his own labor leader. The methods of providing a fairer share in technological progress to labor, which I would prefer, to forcing labor unions onto every employer in the country, are as follows: (1) Eliminate unemployment, either by reducing wage and overhead costs or by financial reform as described in part 2, preferably the latter. (2) Encourage profit-sharing arrangements between employers and employees. (3) Automatically divert profits from employers to employees whenever business in general becomes abnormally profitable, by the financial means described in part 2.

The purpose of establishing minimum wages, either by legislation or by contract between employers' associations and labor unions, looks to me like another well-intentioned scheme that in practice may do more harm than good to labor. One illustration of this has recently come to my attention. Upon passage of a minimum wage law, two comparatively inefficient employees receiving less than the minimum wage were replaced with one efficient employee at more than the minimum wage. Human beings are not all alike and never will be. If the average worker at a certain occupation is worth $25 per week, there will always be some who are worth $50 per week and others who are not worth more than $10 per week. Passing a minimum wage law of say $15 per week merely forces out of employment the less experienced, the naturally inefficient, the aged, the infirm, the crippled, or the otherwise handicapped. Shall we add to the misery of these unfortunate people by setting up conditions that in practice result in denying them any employment whatever because they cannot produce up to a certain standard? In appraising the advantages and disadvantages of the minimum-wage principle to labor, this angle should not be overlooked.

The principle of coping with a depression by temporarily restricting hours of labor may be advantageous, on the whole as an emergency measure. It spreads the hardship around more, and leaves that many less totally unemployed people that have to be given public relief. But the assumption that shortening hours helps to restore prosperity is another delusion. To the extent that this increases wage and overhead costs, it actually retards rather than helps recovery, as already shown. We can have the same degree of prosperity or depression if we work 48 hours per week or 30 hours per week. The only difference will be that at 48 hours per week our standard of living would be some 50 percent higher than at 30 hours per week. I believe it is false economics to mix the question of prosperity and depression with the question of hours of labor as a permanent policy.

PART 2

In his address to the N.R.A. conference on March 5, President Roosevelt laid down the principle that he desired and welcomed honest criticism, provided the critic had something definite and constructive to submit in place of the course of action of which he disapproves. I therefore believe it is both relavent and necessary to supplement the above criticism of the N.R.A. and of the pending Wagner bill with an outline of how I believe the problem of depressions should be handled.

As already submitted, there are only two logical alternatives. One is the less desirable and un-American alternative of forcing wage and overhead costs down as rapidly as the general price level has dropped. The other is the more desirable and more practical alternative of forcing the general price level back to where it is in balance with existing wage and overhead costs, and then stabilizing it so that it will not again rapidly rise or fall as it has in the past.

On a number of occasions, President Roosevelt has committed himself to this latter principle of molding our financial policy to the end of restoring and then

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stabilizing the domestic general price level. But, thus far, the assistants to whom he has largely delegated the problem of devising methods of achieving this end have failed to devise efficient methods of achievement. These assistants have been busy men, preoccupied with a wide variety of things, and it is evident that as yet they have only partially understood the problem they are dealing with.

If carefully analyzed and understood, this problem of restoring and stabilizing the domestic general price level presents no particular difficulty of achievement.

When the domestic general price level declines, this is an indication that the national purchasing power is not keeping pace with production. Available statistics show that national purchasing power in circulation doubled between 1923 and 1929 and then contracted to about one third between 1929 and 1933. If we call 1923, 100; 1929 would be 200, and 1933 would be 67. The locgial corrective is to prevent this expansion and contraction of national purchasing power, the immediate problem being to restore the 67 figure to normal. What constitutes national purchasing power? Principally bank credit money in circulation plus Government credit money in circulation. Bank credit money in circulation consists principally of bank deposits in circulation plus Federal Reserve notes in circulation plus national-bank notes in circulation. Government credit money in circulation consists principally of United States notes, silver certificates, silver coins, and minor coins (also formerly, gold certificates and gold coins). Efforts have been made during the last 4 years to expand bank credit money in circulation by a number of methods. These have not proven efficient, for a number of reasons too complicated to go into in a statement of this kind. No serious effort has yet been made to directly expand Government credit money in circulation. (The belief that expanding outstanding interest-bearing obligations of the Government and then spending the proceeds constitutes expansion of Government credit money in circulation is an economic delusion. Interest-bearing obligations do not appreciably circulate and therefore do not appreciably influence the domestic general price level.) Government credit money in circulation can be efficiently and immediately expanded so as to restore the domestic general price level by a proper expansion of United States notes.

The best method of expansion is by buying already outstanding interest-bearing obligations of the Government, rather than by spending the credit money thus created. Such buying will be just as effective in raising the domestic general price level and, what is more important, it will provide means for reversing the process and efficiently preventing a runaway price level when bank credit money in circulation begins rapidly reexpanding (as it undoubtedly will some day). Furthermore, this expansion and contraction of United States notes could be made strictly automatic and impersonal, thus removing the temptations that have wrecked mere managed currencies in the past. Still further, this process could be carried out while maintaining, say, a 40 percent gold coverage for total outstanding currency. This would provide ample latitude for carrying out this purpose, and at the same time would safeguard those people who feel that they cannot trust a currency that doesn't have a substantial gold backing. A 40 percent backing is the same as has been required against Federal Reserve notes, and much more than has been required against national-bank notes.

Assuming this process to be put into practice, what would be the effect on labor?

In a condition such as existed between 1923 and 1929, when the profits of business were rising by leaps and bounds, thus creating a stock-market boom, the effect would be as follows: The rise in stock prices would be reflected in a rise in the domestic general price level. Correcting this rise would cause the prices of other things besides stocks to fall, which would reduce the profits of the owners of businesses who sell these things, at the same time increasing the purchasing power of wage earners (by enabling them to buy more goods with their week's pay). This corrective process would continue until the profitableness of business ownership had been reduced back to normal and therewith the level of stock prices.

In a condition such as existed between 1929 and 1934, when, because of the sudden collapse of prices, the profitableness of business in general disappeared altogether and wage-earners were in consequence thrown out of employment, its effect would be as follows: Profitableness of business would be restored by a restoration of prices, and businesses would be reopened and reexpanded until involuntary unemployment had disappeared.

It is submitted that this process would thus insure to labor a fair share in the profits of industry and at the same time insure to business a sufficient profit to permit remaining in operation so as to keep labor busy. The practical result

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would be to substantially eliminate booms and depressions and permit a healthy and normal growth of prosperity on the part of all of our people.

An incidental advantage of this process is that it would remove the present temptation to hamper and obstruct the free development of business. It would restore to every individual the liberty to go into any business in which he believes he can serve the public more efficiently than established enterprises, without the handicap of complicated and expensive code regulations that now threaten to smother all but the already entrenched large corporation. I believe one of the most previous heritages of labor in the United States has been this privilege of stepping freely into the employer class, in contrast to the many obstacles to this liberty in the European countries.

I believe that President Roosevelt has already been invested by Congress with sufficient powers to give a practical trial to this process. I continue to try to induce him to do so. If additional powers are deemed necessary or otherwise desirable, these could be provided by the passage of a simple bill. A suggestion of such a bill was sent to the President and to each Member of Congress on December 27.

Based upon many years of careful study of the problem of booms and depressions (particularly from the standpoint of labor), and based upon a consequent understanding of this problem that surpasses that of most professional economists, it is my opinion that putting into practice the principles laid down in this suggested bill (either under the discretionary powers already granted the President or by the enactment of such a bill) would restore prosperity to our country and substantially eliminate unemployment within about 60 days' time.

Following this immediate benefit would be the long-range benefits to labor and to the country as a whole that have been described.

BRIEF OF WM. E. TAYLOR, CHAIRMAN LEGISLATIVE COMMITTEE, DISTRICT BRANCH, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

To the Members of the Senate Committee on Education and Labor:

On behalf of the millions of colored workers in the United States, we object to the Labor Disputes Act in its present form. As the bill is for the benefit of labor (to which class the Negro race furnishes a greater proportion than any other race) we hesitate to oppose it. But, after many conferences and much thought, based upon extensive study, we are convinced that this bill conceals more danger to the future welfare of the colored citizens of this country than any bill seriously considered by Congress in the last 75 years.

Organized labor is hostile to colored people. Practically every labor organization in the country denies Negroes the right of membership therein. Those which admit colored people restrict their employment to the least desirable work, and, because of the race or color of the darker members of the union, deny them the right to the skilled and, in some instances, the semiskilled positions, regardless of their training, skill, or experience. When a factory or job is unionized, the members of the union refuse to work with the colored workers because they do not belong to the union, and refuse to admit the Negroes to the union because of their color. If colored people are permitted to remain in such factories or on such jobs, it is because the employer, grateful for long, loyal, and efficient service, insists that they be retained. Generally, however, no new Negroes are hired, and, when those remaining are severed from their positions by resignation, retirement, discharge, or death, the door of opportunity to that job or that shop is forever closed to colored workers.

In the absence of specific enactment on the subject, the law of supply and demand controls. The unorganized colored worker, in competition with his white organized coworkers, may succeed. Even if he is discharged, he may get protection in the courts, either at law or in equity. But, if the Labor Disputes Act is passed in its present form, the wronged colored worker will have no remedy. With the power that that act gives organized labor, labor unions will drive colored people from all types of private employment in which two or more persons are employed, and force millions of able-bodied colored men and women to seek a living from relief agencies.

The unemployment conditions in the District of Columbia illustrate the plight of the colored worker. Although the colored people are but 27.1 percent of the population of the District of Columbia, they furnish more than 80 percent

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of the persons on relief. Does the Congress of the United States, to which colored people all over the land have turned for relief, wish to add to their plight?

To remedy this condition and protect colored workers, we recommend the following amendments:

1. On page 5, in line 25, after the word "organization", add the following: "or on account of race, color, or creed".

2. On page 5, in line 11, after the word "employment", add the following: "*Provided*, That no employer shall by this act be required to recognize and/or deal with, or to make and/or maintain any agreements with the representatives of any labor organization which denies the right of membership therein to or discriminates against any person on account of race, color, or creed, or which refuses to admit members thereto for any reasons not applicable alike to all persons without regard to race, color, or creed".

3. On page 6, line 15, after the word "year", add the following: "*And provided further*, That no labor organization which denies the right of membership therein to or discriminates against any person on account of race, color, or creed, or which refuses to admit members thereto for any reasons not applicable alike to all persons without regard to race, color, or creed, shall be entitled to the benefits of the provisions of this act".

If we cannot get such protection as we have hereinbefore set forth, we desire to be heard in opposition to this act.

Respectfully submitted.

WILLIAM E. TAYLOR,
Chairman Legislative Committee, D.C. Branch,
National Association for the Advancement of Colored People.

BRIEF OF JOHN T. KELLY, REPRESENTING THE NATIONAL FEDERATION OF TECHNICIANS AND LABOR

The National Federation of Technicians and Labor stands for the advancement of social justice, industrial peace, economic security, the dignity of our homes, and the wholesome use of the abundant blessings of our natural resources and the opportunities with which our nation is endowed. We extend a membership eligibility to all technicians and laborers engaged in production and exchange of wealth. Our actions are in reverence to our heritage as American citizens.

It is true that we boast of a denial of recognition by the Board of Labor Review, as evidenced by the decision in Docket No. 32, a ruling signed by Lindsay Rogers, chairman, with reference to section 10 of Bulletin 51, issued by the Public Works Administration.

We are impelled to voice our protest to the enactment of S. 2926, the Wagner labor bill, because if the Board of Labor Review declares that we may not work for our Government, we fear a vast power bestowed upon an appointive agency of government which may with its greater and wider force rule with that destructive effect in the field of industry.

We have watched the burdens accepted by industry in behalf of working conditions, hours, and wages under the codes of fair competition. The lesson of wide purchasing power among the people has, in our opinion, been accepted by our fellow citizens. We maintain that supervised industries and trades under the agreement of the codes, coupled with assurance of cooperative effort on the part of the workers, is the way to industrial peace at the present.

The monstrosity of a conflicting tribunal with agencies of recovery now at hand invites fear, distrust, arrogant claims, and dealings as dishonest as issuing pay checks at one window and cashing them at another by a small percent of their face value, or levying fines of $1,000 by all-powerful labor organizations blessed by recognition of government to the exclusion of the other 35,000,000 workers.

We hold no brief for company owned and controlled unions, however meritorious they may be in some instances. We maintain that we are, as workers, a valuable factor in industry and trade, and that we must go along with the owners thereof, not pulling these elements of economic life asunder. And further, at all times both parties are due consideration under our form of government. We oppose 5-year grants of power, so generously endowed as those sent forth in S. 2926.

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BRIEF OF HERMAN FAKLER, MILLERS' NATIONAL FEDERATION

Mr. Chairman and gentlemen of the committee: My name is Herman Fakler. I am Washington representative of the Millers' National Federation, the national trade organization of the wheat-flour milling industry. The federation has in its membership over 600 mills producing approximately 85 percent of the total wheat-flour production in the United States. Its membership includes mills of all types and sizes, located in 37 States, and the District of Columbia.

I appear before you in behalf of the Millers' National Federation in opposition to the Wagner labor disputes bill, S. 2926.

This bill has for its avowed purpose the creation of a national labor board to equalize the bargaining power of employers and employees and to encourage the amicable settlement of disputes between employers and employees. In our judgment, the provisions of the bill, if they become law, could not be designed more perfectly to achieve exactly the opposite effect and to remove entirely the possibility of direct and friendly relationship between an employer and his employees

We are opposed to this legislation for the following specific reasons:

1. It would create a monopolistic control of labor by labor organizations, under Government sanction, without placing any responsibility upon such organizations for their actions.

2. It would compel an employer to make every effort to come to an agreement with any labor organization, regardless of its character or the unreasonableness of its demands, and make it an unfair labor practice for the employer to influence in any way the operation or policies of such organization.

3. It would prevent an employer from initiating or participating in the formation of any organization of his employees, or to contribute financial or other support to such an organization.

4. It provides that any member of the Labor Board, or any person designated by the board, has the right to summon an employer, who may be only suspected of engaging in an unfair labor practice, to appear at any place in the United States within 24 hours to answer the charge. It is not required that the full board even give consideration to a complaint before such summons is issued. The testimony taken at any such hearing need not be taken in accordance with the established legal rules of evidence. Additional evidence may be taken by the board after such hearing, which the person complained against may have no opportunity to answer, and the final action of the board may be taken on such evidence. No Federal court may review the findings of fact, if such facts have been sustained by what the board considers "evidence."

5. It legalizes the strike, and provides that a person who is out on strike is still an employee, and one who replaces such person is not an employee. It also legalizes the closed shop.

What would happen to the Nation's source of food in the form of flour and bread, for example, should any national labor organization under the terms of this bill secure control over the employees of the wheat-flour milling industry?

The milling industry is the wheat farmer's best customer. It buys approximately 70 percent of the normal wheat crop of the United States. During the present crop year the industry will use all the wheat that was raised in 1933, less that required for seed, etc., plus an amount from last year's carry-over. It mills this wheat into flour to supply bread, the "staff of life," to the consumer.

Any labor organization could compel the employers in this industry to deal with it on any terms, and if agreement could not be reached, because of unreasonable demands, the employer would be prevented from attempting to influence or change in any way the policy of such organization. The organization, on the other hand, would be permitted to call the employees out on strike in order to attempt to force its demands upon the industry, thus paralyzing not only the industry, but depriving the Nation of its source of food and the farmer of a market for his wheat.

The milling industry must operate on a continuous basis in order to supply the consuming demand for flour. It is not practical to mill large quantities of flour and store them for future demands. Stocks of flour in the hands of millers normally do not exceed an amount which represents approximately only 1 week's consumption in the country as a whole. It will be readily seen, therefore, that a shut-down of the industry for any length of time would have a disastrous effect on the flour supply of the country.

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There can be no justification for the enactment of legislation which would permit any labor organization, under the sanction of the Government, to dictate terms and conditions under which the Nation would be deprived of food and the farmer would be deprived of a market for his wheat. The enactment of the Wagner labor disputes bill would make such a situation possible.

Congress has already secured to employees the right to bargain collectively in the National Industrial Recovery Act. The President has demonstrated his ability to handle labor disputes under that act, notably in the case of the automobile industry, and there is no demonstrated need or demand for legislation of the type proposed in this bill.

There are other economic and constitutional objections to this proposed legislation, all of which have been brought to your attention. These objections, as well as the ones I have discussed here, have convinced us that the enactment of this legislation would serve no useful purpose and will only lead to strife, conflict, and dislocation of the factors which are now operating to bring about economic recovery.

BRIEF OF FRED BRENCKMAN, THE NATIONAL GRANGE

WASHINGTON, D.C., *April 9, 1934.*

Hon. DAVID I. WALSH,
Chairman Committee on Education and Labor,
United States Senate, Washington, D.C.

DEAR SENATOR. We are receiving protests from various parts of the country against the inclusion of farm labor in the Wagner bill, S. 2926, which is now pending before your committee.

The gross income of all the farmers in the United States from crops and livestock combined in 1932 was $5,200,000,000, according to the Department of Agriculture. There was little change in these figures for the year 1933.

Divided equally among the 6,288,648 farms of the country, this gives us an average of $827 per farm. It must be kept in mind that this figure represents gross value, as distinguished from the cash income of the farm. It represents the value of everything produced and consumed on the farm, as well as commodities sold. It represents the full return of what the farmer received during 1932, not only for his own labor and management, but for the labor of his family as well. If it were not for the fact that the farms of the country are being operated at a tremendous loss, it would also be proper to say that the $827 per farm, which has been mentioned, includes the farmer's interest on his investment. Out of this he must pay his interest, taxes, transportation charges, hired labor, equipment, seeds, fertilizer, and running expenses, besides maintaining himself and his family.

In the light of these facts, it would manifestly be absurd to place hired farm labor in the same category with the industrial labor, and to give the proposed national labor board jurisdiction over the farmer's hired help.

If farm labor is poorly paid in the United States today, then it can be said with emphasis that the farmer and his family are still more poorly paid. After we have restored the purchasing power of the farmer and converted agriculture from a losing to a gainful venture, it will be in plenty of time for the Government to talk about regulating the conditions of farm labor.

Uniform labor standards, declared in its preamble to be one of the objects of the Wagner bill, would not be applicable to farm conditions. These conditions vary widely from farm to farm and in different sections of the country. In numerous instances the farmer provides free house rent for his hired man, together with firewood, a cow, a garden, board, and other perquisities which it is not customary to evaluate in terms of cash.

Suffice it to say that while the farmer cannot boast of paying high wages to his hired help under prevailing conditions, he is doing his best to be guided by the spirit of the Golden Rule in his dealings with those whom he employs.

It is our conviction that the workability of the Wagner bill would be greatly improved if it were amended so as to exempt farm labor.

Sincerely yours,

THE NATIONAL GRANGE,
FRED BRENCKMAN,
Washington Representative.

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BRIEF OF H. GERRISH SMITH, PRESIDENT NATIONAL COUNCIL OF AMERICAN SHIPBUILDERS

I appear before you as the president of the National Council of American Shipbuilders, the representative organization of the shipbuilding and ship-repairing industry in the United States, in opposition to the labor-disputes bill. I speak also as a practical shipbuilder and ship-repairer who for 30 years has been identified with the construction and repair of vessels of all types—an experience that has brought me in close contact with the relations of employer and workmen.

The record of the shipbuilding and ship-repairing industry, considering the diversity of trades employed, has been one of comparative industrial peace and harmony, which prevailed before the enactment of the National Industrial Recovery Act and has continued, with few exceptions, since its enactment.

These amicable relations between management and workmen have been accomplished in plants representing the employment of a large majority of workmen in the industry through methods of collective bargaining which have been in effect for many years and which have afforded means for management and workmen to present problems arising out of their relations and to discuss and adjust them satisfactorily to both parties.

The shipbuilding and ship-repairing industry is operating under a code of fair competition and trade practice which contains section 7 A of the National Industrial Recovery Act, and the industry is complying with the provisions of this section in its relations with its workmen.

It has organized an industrial relations committee for the industry as a whole, composed of an impartial chairman and of an equal number of representatives of employers and of workmen for the adjustment of labor disputes. Insofar as the shipbuilding and ship-repairing industry is concerned, the organization of this committee makes unnecessary the organization of a national labor board provided by the labor disputes bill.

The industry is of the opinion that the enactment of the bill would impede the efforts of its industrial relations committee to adjust labor disputes that arise in the industry and that are peculiar to it and would tend to disturb, rather than promote, amicable relations between employers and employees.

The economic crisis presents a challenge to employer and workmen in each industry to create and maintain a better understanding of the complex economic and industrial problems with which it is confronted, and employers and workmen must maintain their position to solve these problems with the least interference possible from outside forces that are not intimately identified and familiar with them. This the shipbuilding and ship-repairing industry is endeavoring to accomplish through the organization of its industrial relations committee.

The labor disputes bill, through its proposed national labor board, would frustrate the efforts of the shipbuilding and ship-repairing industry to provide ways and means within the industry to deal intelligently and fairly with its labor problems.

Representatives of industries have presented their opposition to the enactment of the bill so ably and in such detail that I am relieved of much of the burden that otherwise would have been imposed upon me in urging your rejection of it. I shall therefore confine my remarks to a few brief observations that occur to me as a representative of the shipbuilding and ship-repairing industry and as a practical shipbuilder of many years of experience.

Upon examination of the preamble to the bill I fail to find that the desire for its enactment is prompted by the prevailing industrial emergency that constitutes the reason for much of the extraordinary legislation that Congress has found necessary to enact during the past year. I do find, however, on the contrary, that the expressed motive back of the bill is to overcome the alleged refusal in modern economic life to recognize the right of employees to bargain collectively through representatives of their own choosing.

Section 7 A of the National Recovery Act fully recognizes and adequately protects the rights of employees to bargain collectively through representatives of their own choosing, and these rights have been confirmed by the interpretation of the section by the President and by the National Recovery Administration and are enforceable through the organized machinery provided by the Administration. I see no ambiguity in the section nor any uncertainty as to its application and enforcement.

The bill proposes the organization of a national labor board composed of seven numbers, to deal with labor disputes of every kind and nature that may arise in any or all of the industries of the country. Keeping in mind the great

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number of industries and the diversity of their varying problems, the question arises, how is it possible to select seven men endowed physically and mentally with ability to consider and act intelligently on all of these problems? The mere statement of the organization of the proposed national labor board and of its functions is in itself, convincing argument of now impracticable and how impossible it would be for such a board to act intelligently on all of the diverse and varying labor problems that it would be called upon to solve, instead of permitting each industry to deal with its own labor problems.

The enactment of the bill would put each industry in a governmental controlled strait-jacket that would deprive its management and employees of autonomy to act on and deal with conditions that are peculiar to it, and would do more than any one other thing to impede the recovery of business, so universally desired and so essential for the prosperity of the Nation.

The statements made by witnesses before the committee are frequently conflicting and in general are not corroborated by facts.

I believe there is no need of the legislation embodied in the labor disputes bill. If, however, the committee disagrees with me, then any legislation of this character, that is of such vital importance to the industries of this country and of such far-reaching effect, should not be enacted until after Congress has made a thorough investigation and an intensive study of the relations now existing between employers and employees. It is only by such an investigation and study that facts might be disclosed that would warrant the necessity for the proposed legislation.

BRIEF OF WILLIAM WHITFIELD WOODS, PRESIDENT THE INSTITUTE OF AMERICAN MEAT PACKERS

The Institute of American Meat Packers is composed of some 300 companies operating throughout the United States, and representing over 85 percent of the business of the meat-packing industry. In filing this brief, covering the proposed Wagner labor disputes act, the industry wishes to emphasize the fact that it is in entire accord with the principle of collective bargaining with its employees. Its only desire, if additional measures are necessary, is to guarantee that such measures shall effect a cure, rather than merely destroy what has already been accomplished in this direction. The industry has very honest doubts whether the provisions of the bill, as now worded, will advance its purpose insofar as the meat-packing industry is concerned. The industry believes, further, that the methods of employee representation which have been in effect in most of its plants for the past 13 years have already accomplished collective bargaining between employees and employers.

Seventy-five percent of the wage earners of the industry are bargaining collectively under some form of employee-representation plan. Most of these have been doing so since 1921. During this period the industry has been singularly free from strikes and labor troubles.

Information recently received by the institute showed that the percentage of employees voting for representatives at elections held under such plans was quite high, averaging above 90 percent at the plants included in the reports. The employees evidenced great discrimination in their voting, in that they selected men of ability for places on the conference boards or assemblies.

In this connection the institute would like to refute, insofar as the meat-packing industry is concerned, two rather serious criticisms that have been made of employee representation plans: (1) That employees are prohibited from discussing their problems, except in the presence of management representatives; and (2) that these so-called "company unions" are management-dominated.

It is the practice for employee representatives to discuss their problems by themselves. Furthermore, the elections held by employees, at which they select their representatives to the conference boards or assemblies, are not and have not been influenced or dominated by the employers, but are entirely free from coercion or restraint.

The employee-representation plans in force in the industry in general empower the conference boards or assemblies to negotiate wages and hours of labor. Provision is made in these plans for careful review of any matters on which full agreement has not been reached. The practical effect of these provisions is to give employees the same right of reference of any dispute to agencies such as the Regional or National Labor Board as is the right of the employees in other forms

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of labor organization. The experience of the industry has been, however, that it has always been possible for labor and management to come to an agreement upon any matters in dispute. In other words, these provisions are like life preservers on a boat—present for an emergency, with every effort made to obviate the need for their use.

As a whole, workers in the meat-packing industry have fared well during the past 13 years, and particularly so during the depression. Wage rates have been at all times comparable with those paid in other industries. In fact, the United States Bureau of Labor Statistics shows that the average weekly earnings of packing-house workers were larger than the majority of other industries in the United States throughout the entire period of depression. Employment during the depression was maintained at approximately 85 percent of the 1926–29 levels up to the signing of the P.R.A., and since that time employment has been appreciably above the 1926–29 levels.

These benefits have been accomplished without any drain on the employee's income in the form of dues or assessments for the operation of the collective-bargaining plans.

In view of this record of industrial peace, the industry would regret the introduction of any disturbing element at this time, when a healthy recovery from the depression is so dependent upon uninterrupted employment of workers. It feels that some protection should be given in the bill to those industries which over a period of years have successfully worked out the principle of collective bargaining through representation plans.

It is sincerely of the opinion that the Wagner bill, as now written, will immediately tear down these plans which have been built up so carefully during the past 13 years, without at the same time giving the industry an opportunity to substitute anything which will be immediately as effective.

The bill, as drawn, would prohibit an employer from even furnishing a meeting room for a labor organization, or permitting the representatives of the employees (if themselves employees) from meeting representatives of the management during working hours without loss of working time and wages, or from doing any of the things which serve to create a better feeling between the employer and employees. The provision that any contract or agreement which conflicts with the provisions of this act are abrogated confirms the view that the present collective-bargaining agreements would have to be abandoned at once.

There is no question but what these methods of collective-bargaining serve to create a better employer-and-employee relationship. The questions brought up and ironed out in the conference board meetings are very numerous. As every employer of labor knows, it is frequently the little things which create friction in the ranks of the employees. Representatives of the employers, sitting around the conference table with representatives of the employees who actually work in the plants and are familiar with the cause of the complaint, are in a better position to devise a plan to correct such matters than anyone else.

The meat-packing industry has no desire to register a protest against any legislation which seeks to guarantee the free choice of employees in the selection of their representatives, provided, however, that the choice be wholly free and that the employee be protected against coercion from any source. While that seems to be the avowed purpose of the Wagner bill, in reality it falls short. Section 5 of the bill denominates various acts by employers as unfair labor practices. The commission of any such offenses can be made the basis of complaints before the National Labor Board, who may by order require the employer "to cease and desist from such unfair labor practices, or to perform any other acts that will achieve substantial justice under the circumstances."

The remarkable thing about the offenses created by section 5 is that they can only be committed by an employer, or someone acting in his interest. Unquestionably, employment creates mutual obligations and liabilities, and it seems very strange indeed that only one party to a relationship, or that party's representatives, can commit an offense arising out of that relationship; or, perhaps, even stranger that the bill provides no restraint for third parties who disturb that relationship.

The institute is, therefore, strongly opposed to any legislation worded like paragraph (1) of section 5 which does not make it an unfair labor practice for anyone to do any of the things mentioned in this paragraph.

Another example of this descrimination is the provision in section 5, paragraph (6), pronibiting an employer from engaging "in any discriminatory practice as to * * * condition of employment which encourages membership * * * in any labor organization", but at the same time requiring that a minority "be

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required as a condition of employment to join" a labor organization favored by a majority.

So far as is known, none of the members of the institute since the signing of the President's Re-employment Agreement have refused to deal with accredited representatives of their employees. They are opposed, however, to any legislation worded as in section 5, paragraph (2), which does not require representatives to be "duly accredited".

Attempts by employees to influence coemployees in favor of certain policies which they conceive to be to the best interests of their employer, as well as their own, could under the sweeping language of section 5 make the employer guilty of an unfair labor practice. The language is "an employer, or anyone acting in his interest, directly or indirectly".

No argument should be necessary to point out the anomaly of the provision in paragraph (3) of section 3 that the term "employee" means "any individual formerly so employed whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice", but shall not include "an individual who has replaced a striking employee." The institute concedes the unquestioned right of any employee to cease work, either as the result of a strike or because of some personal grievance, and certainly that individual is entitled to have a representative of his own choice act for him in his efforts to regain employment. But can anyone advance a logical reason why a person employed in his place should be denied the rights and privileges of an employee. The circumstances under which any person is employed should have no bearing on his or her legal status as an employee. The institute feels very sure that notwithstanding such provision in the proposed bill, any such person could sue and recover for wages earned or for benefits under the workmen's compensation laws should he or she sustain an accidental injury.

Under the procedure outlined in the second part of the bill the national labor board, as previously mentioned, can consider only the conduct of an employer. It is given no power whatsoever over employees, or those who claim to represent the employees, in any plant or factory. The only possible way in which it could prevent a strike in any plant or factory, so far as this bill is concerned, would be by forcing the employer, through findings of unfair labor practices, to accede to the demands of the employees. Interference, influence, restraint, coercion—none of the things constituting unfair labor practices under section 5—can give the board any jurisdiction, unless such offenses are committed by employers.

In the last analysis, the efforts of employers and employees should be cooperative and not antagonistic. The enactment of this bill would erect a barrier between employers and employees that is insurmountable. It would substitute the principle that the interests of employers and employees are opposed for the principle now behind employee representation plans in this industry, that the interests of employers and employees are mutual.

The meat-packing industry is satisfied that employee representation plans have done much to promote such a feeling of mutual interest and to create a better employer-employee relationship, and invites investigation as to the truth of the statement. It is confident that if the employee representatives on any of the conference boards or committees in the packing industry would appear before this committee they would give strong evidence in support of employee-representation plans. If employers were to request the attendance of any such representatives before this committee, or should defray the expense of such attendance, their motives might be impugned and coercion might be charged. The conference boards or assemblies have no funds which can be used for any such purpose.

BRIEF OF WALTER DREW, COUNSEL, NATIONAL ERECTORS' ASSOCIATION

It is not the purpose in this statement to examine at length the provisions of the bill before your committee. The right of workers to organize and bargain collectively is declared, but one form of collective bargaining, that is, with the company union, so-called, is so discredited and hampered by restrictions as to place it under an obvious ban. A list of unfair practices which become violations of the measure and of which only the employer may be guilty is set forth. A tribunal is set up which may mediate, conciliate, make inquiry, or complaint upon information from any source, conduct trials without any regard to the laws of evidence, and render decisions which may run against the property or the person of the employer, thus exercising the combined powers of law and equity courts.

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There is no penalty for the making of unfounded charges. An inefficient workman has only to claim that he was demoted or discharged because of union membership to set the wheels of the tribunal in motion against his employer. Workers called on strike by a business agent to aid a demand for graft or for some other unlawful purpose remain employees, and the employer must recognize and deal with the corrupt agent as their representative, or be subject to the action of the tribunal.

The powers of this tribunal in the matter of compelling attendance and the production of records at any point designated, and its access to confidential information in Government departments are further calculated to make its summons to an employer a matter of grave concern involving the possibility of great expense, embarrassment, and hardship. In short, the way of the employer who seeks to deal with a company union is made thorny and difficult; but in providing that a labor union may act as the representative of workers in collective bargaining and in further providing that membership in a labor union may be made a condition of employment, the bill sanctions the closed shop and opens the way to the closed-shop contract which is the cornerstone in the principles and policies of the American Federation of Labor and its member unions.

This acceptance of the closed-shop principle and the purpose to use the power of the Government to extend it in American industry constitutes the first great objection to the bill.

It cannot be too often stated that the closed shop is not in harmony with fundamental American principles. It does not represent that individual liberty and freedom of contract and of opportunity which our country was founded to maintain. It represents monopoly in a country which abhors monopolies. This monopoly is in the field of labor, which should be most abhorrent of all because it affects directly the lives of our millions of workers whose sole capital is their labor and whose chance of comfort and happiness rests upon the ability to sell it freely where it may be in demand.

It is well settled by the unanimous decisions of our courts in many States that a State has no right to legislate a closed-shop agreement either for itself or others. Such legislation would be discriminatory and the prohibition against it obviously rests upon fundamental moral as well as legal considerations. The measure before the committee goes to the extreme in the endeavor to accomplish by indirection what the Government may not do directly.

It is natural that there should be little voluntary acceptance of a labor monopoly. The closed shop, then, necessarily rests upon force. In it conflict of interest is emphasized. There is little recognition of the mutual interests of the parties and the importance of cooperation. A view of the business as an enterprise whose success is as important to the workers as to the employer is seldom entertained. Naturally the closed shop comes to represent lessened efficiency and higher costs. Restrictive rules which further hamper successful operation and increase costs are more and more insisted upon as the power of the union becomes more completely established. It is for these reasons largely that the closed shop once established in many of our major industries became discredited and will never again be voluntarily accepted.

The autocratic power of the unions in England is well known and this power has been accompanied by the policy of lowered efficiency and restriction of output which threatened defeat for England in the Great War. Lloyd George, Prime Minister, was compelled to make personal appeal to the English unions, and in one of these he said:

"If we had a suspension during the war of these customs which keep down the output, we could increase it some places by 30 percent, in other places by 200 percent, between 30 and 200 percent—well, you know that makes the difference between victory and defeat."

Again he said:

"Either we must tell the soldiers that we are sorry that we cannot get the guns to enable them to win throughout 1916 owing to the trade-union regulations, or we must tell them that if they manage to hold out for another year perhaps American workmen will help us get a sufficient supply for 1917."

Union restrictions were finally relaxed in England during the war, but were afterward reestablished. The output of the English worker under union rules and practices represents one half or one third of that of the American worker, and by the same token he receives one half or one third of the wage of the American workman. Distrust and conflict and restricted output are not the road to high wages.

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We have heard much of late of the right of workers to organize and bargain collectively. To many people, this means the right of a group of employees to organize of their own volition for the purpose of dealing with the employer. This simple, and it may be said naive, view is not at all what the phrase means to organized labor. The right to organize would, of course, if real and valid, embrace also the right not to organize. Otherwise, this so-called "right" would become not a right but a compulsion. In the union concept a shop or business is not "organized" until it has become subject to a closed-shop agreement. To the union the right to organize, therefore, means the right to use all its power to compel the acceptance of such an agreement. It embraces the right to direct a combined and concerted attack against a peaceful establishment with the frank and avowed purpose of employing such measures of coercion against the employer and the workers that the establishment will be forced to accept the closed shop and thus become "organized" in the union sense.

The right of workers to organize, properly interpreted, has long been established. In the leading case of *Pickett* v. *Walsh* (192 Mass. 572), "The right of laborers to organize unions" is said to be "an exercise of the common-law right of every citizen to pursue his calling, whether of labor or business, as he in his judgment thinks fit," such right being, however, limited "by the existence of the same right in all other citizens."

The idea that this is not really a right to be freely exercised by workers, but that it embraces the right of compulsion to bring about acceptance of the union form of organization is not new. As stated by Mr. John Mitchell in 1903:

"With the rapid extension of trade unions, the tendency is toward growth of compulsory membership in them, and the time will doubtless come when this inclusion will become as general and will become as little of a grievance as the compulsory attendance at school. The inalienable right of a man to work will then be on a par with the inalienable right of a child to play truant, and the compulsion exercised by the trade union will be likened to that of a State which in the interests of Society forces an education upon the child, even though the child and its parents are utterly and irreconcilably opposed to it."

"Organizing" to the union man includes all the forms of union coercion, such as intimidation, violence, the sympathetic strike and the boycott. The "organization fund" of the unions is a fund devoted to this purpose and for the expenditure of which the union officers do not have to report. What organized labor is really seeking is not the free exercise of the right of workers to form such unions as they choose, but rather to secure as great immunity as possible in the use of their organizing methods and to add to their own powers of compulsion the power and authority of the Government.

In discussing the right "to organize and bargain collectively" Mr. J. W. Sullivan of the Typographical Union, a nationally known spokesman and leader of organized labor, said in the Weekly News Letter of the American Federation of Labor, October 25, 1919:

"Once this foundation right is in good faith accepted by employers, they take upon themselves the obligation of modifying all alleged abstract rights of wage workers in general which are inconsistent with it as a basic and encompassing principle. In accepting this right, they concede to an association of wage workers the right of its self-preservation, and this includes the right, when necessary to that end, to refuse to work with persons whose acts would tend to destroy the association."

In other words, the right of workers to bargain as they choose either individually or collectively is a mere "alleged" or "abstract" affair which must yield to the right of the union to compel the acceptance of the closed union shop.

Given a monoply, unrestricted and unregulated and without legal responsibility, what kind of bargaining can there be with it on any fair and just basis? There has been much said about the inequality of the individual employee dealing with his employer. But consider the inequality of the dealing between the employer and an organization able to bring to bear upon him the combined power and mass attack of great national organizations entrenched in an established monopoly of his labor supply.

Too little has been said of that natural child of the closed shop, that is, the collusive agreement. Employers, especially in the building trades, having once yielded to the closed shop, are not slow to see the possibilities of its labor monopoly. The collusive agreement is the natural result. By this agreement groups of favored employers are protected against outside competition and enjoy a monopoly of the business. The union, in turn, gets unusual concessions, and its leaders have a fertile field of exploitation on their own account. The public pays the bill.

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These combinations are widespread in our cities and are made possible only by the monopoly of the closed shop.

Professor Raymond Moley, in an article entitled "The Racket" which appeared in the New York Times of Sunday, August 9, 1931, said:

"The complex interrelations of labor, business and politics in large cities, however, have made possible the development of vast elaborations of the same theme. These have technically been called collusive agreement rackets.

"The dramatic unity of such associated activity presents four types of characters: Business men, labor leaders, politicians, and professional criminals. Business men seek to create and maintain for themselves a favored position in their respective services or fields. Unscrupulous labor leaders seek a monopoly of control over the workmen engaged in a given trade by controlling the avenues of employment. The politicians participate in the action because they fill and control public offices that are concerned with the processes of business and trade. Serving at times all these interests are the unacknowledged but nevertheless real mercenaries, professional criminals, gun-men, muscle-men, 'gorillas' and 'sab-cats.'

"The collusive agreement racket thus involves the interactions of various groups, individuals and interests, all in a more or less definitely formulated plan of action and actuated by a generally recognized solidarity of interest. It may appear in almost any field of economic activity and in details may assume infinitely varied forms. * * *

"The racket, either in its simple form or developed into the labyrinthine proportions of the collusive agreement, takes its toll in nearly every field. At one time in one of our cities there were 163 rackets of the collusive-agreement character. This means that a large part of human endeavor in that city was, and probably is, carried on by and through illegal conspiracies."

But collusive agreements with their accompanying inner rings of labor profiteers are not new. The Report of the Lockwood Investigating Committee in 1921 disclosed their almost universal existence in the building trades of New York. The New York Times of December 30, 1921, in discussing proposed reforms, said editorially:

"The fact is that unions in the building trades have long fattened on monopoly and are fighting to preserve it. Our hope of a house permanently clean, moreover, is dimmed by the fact that employers also are experienced in the art of mulcting the public, the chief device of which is systematic collusion with the unions."

On March 7, 1922, the Times said editorially:

"The bills providing for continuous control of labor unions and employers' associations present difficulties. Since the eviction of Sam Parks, the need of control has been obvious. Yet nothing effective was done until, in an incredibly short time, the Lockwood committee procured the indictment of 416 individuals and 250 corporations, collected $550,000 in fines from 208 who pleaded guilty, and sent 29 men to jail, including Hettrick and Brindell. The committee's statement that lawless merchants and labor leaders have preyed upon the community 'throughout the length and breadth of the country' is a simple statement of fact."

Beyond the prosecutions mentioned nothing came of the investigation or of the legislative reforms proposed. Another legislative investigation 6 years later found the "system" still in operation.

One development in recent years has been the growing insistence of the thug and gunman upon a larger share of the spoils. The gangster, with the growth of organized methods in his own line, is no longer willing to take the pay of a hired mercenary. He insists upon a larger cut. He, also, as an active factor in the establishment and maintenance of the closed-shop control upon which rackets, as well as collusive agreements are founded, is not a newcomer. Mr. Luke Grant, himself a union man, in his official report to the United States Commission on Industrial Relations in 1915, said:

"In recent years there has been a marked change in the nature of the violence committed in the building trades and in the methods used. The ordinary workman who in former days was apt to use his fists on the head of a scab for the sake of the cause seldom does so now. His place has been taken by the professional thug and gunman. Violence has become commercialized and made more brutal. Assaults on nonunion workmen are seldom made openly as in former days when the strikers did the assaulting. The professional slugger lies in wait for his victim, assaults him with a bludgeon, or probably shoots him to death. * * * If the destruction of property seems more expedient than the slugging of non-

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union men, the professional will attend to that. * * * That such a system or organized thuggery obtains in many of the building trades is beyond dispute."

The occasional jailing of a few individuals will not meet the problem of the collusive agreement or other forms of racketeering: the "system" must be dealt with. Efforts to reform these abuses can have no real success until it is recognized that they rest upon and are the natural outgrowths of labor monopoly.

Incidental to the main purpose of the American Federation of Labor and its allied unions to secure a general closed-shop control of industry is its equally fixed determination to accept no responsibility, supervision, or regulation in the exercise of the vast power inherent in such control. These objectives are exemplified in the present measure and explain its one-sided character which has been noted and commented upon by many who have no direct connection with the general problem of employment relations.

The spokesmen of organized labor have been frank in stating its position. In July of 1920 and at a time when organized labor, with the friendly cooperation of the Government, felt itself very strong, Mr. Frank Morrison, secretary of the American Federation of Labor, published a statement in the New York Times entitled "Labor's ultimatum to the public." In it he said: "The workers will not concede that the community has any purpose or intention to render justice to the workers should it force itself into participation in industrial relations." He said also that the workers "will not submit their cause to adjudication by utopian schemes based on sentimentalism." After referring to the Army, the courts, and the legislature, he said: "The trade union should be permitted to function without interference by any of these agencies. * * * There is no question in modern industry which cannot be determined quickly and satisfactorily through the trade-union philosophy."

As voluntary associations the unions are practically immune from legal responsibility and damages for their conduct. They are excepted by express provision from the operation of the Anti-Trust Act which was enacted to curb monopoly. They have waged a long and determined fight against the injunction, which is the one remaining remedy against the use of different forms of unlawful coercion, and the passage of the Norris-La Guardia Act has secured the practical destruction of this remedy in the Federal courts.

In an editorial in the New York Times of December 30, 1921, in connection with the Lockwood report, entitled "Housecleaning unions," it is said:

"A long-suffering public is little likely to be impressed by the promise of workmen in the building trades that they will 'clean house.' Mr. Hugh Frayne admits that the union of self-limited membership, the system of charging exorbitant prices for 'permit cards' issued to outside workmen, the arbitrary exercise of power by walking delegates, are one and all iniquitous, but he is adamant against any reform that promises supervision and control of labor in the interest of the community. The idea that unions shall incorporate, accepting collective responsibility for collective action, is anathema. A court for hearing and determining industrial disputes would 'enslave the workers.' In brief, organized labor is to continue to exist without the law, seeking its own ends in its own way."

This insistence by organized labor upon power without responsibility is not in accordance with the advice of many of its best friends. Mr. Justice Brandeis, in his book entitled "Business a Profession," published in 1914, said:

"This practical immunity of the unions from legal liability is deemed by many labor leaders a great advantage. To me it appears to be just the reverse. It tends to make officers and members reckless and lawless, and thereby to alienate public sympathy and bring failure upon their efforts. It creates on the part of the employers, also, a bitter antagonism, not so much on account of lawless acts as from a deep-rooted sense of injustice, arising from the feeling that while the employer is subject to law, the union holds a position of legal irresponsibility. * * *

"I can conceive of no expenditure of money by a union which could bring so large a return as the payment of compensation for some wrong actually committed by it. Any such payment would go far in curbing the officers and members of the union from future transgression of the law, and it would, above all, establish the position of the union as a responsible agent in the community, ready to abide by the law. This would be of immense advantage to the union in all its operations. * * *

"The unions should take the position squarely that they are amenable to law, prepared to take the consequences if they transgress, and thus show that they are in full sympathy with the spirit of our people, whose political system rests upon the proposition that this is a Government of law, and not of men."

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An outstanding example of this lack of legal responsibility may be noted. After a strenuous campaign of slugging, maiming, and murder in the effort to reestablish the closed shop had failed, the international officers of the iron workers' union determined upon the use of dynamite. An "organization" fund, of which no reports were to be published, was created and used to bring about over 100 dynamitings upon the work of open-shop employers. One of the side incidents of this dynamiting campaign was the destruction of the Los Angeles Times Building, with the loss of 20 lives. To carry on this nefarious work, over 2,000 pounds of dynamite and between 300 and 400 quarts of nitroglycerin were transported from one end of the country to the other on passenger trains. All of these activities were directed by the international officers and paid for out of the union treasury. The McNamara's pleaded guilty to offenses in California, and for the minor Federal offense of unlawful transportation of explosives 38 members of the union, including its international officers and executive board and many local officers, were convicted. After serving comparatively brief terms ranging from 1 to 6 years, many of them were reelected to office in the union, and some of them are even now international officers of the organization. For all the immense property loss of these dynamitings, there was no legal redress and no way to make the union treasury respond in damages.

The possession of power without responsibility not only permits but invites exploitation and misuse. Some indication of the abuses which naturally grew up under an unregulated labor monopoly may be gathered from another editorial dealing with the findings of the Lockwood Committee, in the New York Times of December 21, 1921. It was said:

"The Lockwood Committee served a warning on upward of 1,000,000 members of labor unions in New York State yesterday that it would expect them to eliminate existing abuses and regulations that limit efficiency, retard production, and violate the law, and that if the reforms are not made voluntarily legislation will be enacted to remedy the abuses. * * *

"The communication embodies approximately fifty reforms and abuses that the committee hopes to have abolished. While specific suggestions are detailed at great length affecting the building trades, the committee also indicated a group of general reforms which it wishes to be instituted in all unions in this State. These abuses cover restriction of membership, high initiation fees, limitation on the number of apprentices, the issuance of permit cards to nonunion men, the auditing of books by independent chartered accountants and the assumption of power by unions to hale their employers before them and to impose fines on them for infraction of the union rules."

It is well known that the conservation of monopoly benefits is the chief consideration of the unions in determining such matters as admission of new members, amount of dues, limitation of apprentices, etc. The maintenance of a desirable scarcity of labor in the controlled trade is always kept in mind. Dues are low, or high, or prohibitive, and books are open or closed to new members in accordance with the requirements of this objective. A fruitful source of revenue has been found in the sale of "permits" to nonunion men, which allow them to work at times when the restricted union membership does not have an available supply of workers to meet the demand. Recently a group of such workers began proceedings against the motion picture operators' union in New York City, pointing out that over a period of a few years they had paid a million and a half dollars of their wages to the union for permits to work and asking that the union be forced to accept them as regular members.

An increasing power has been built up by inner rings of labor leaders in their exploitation of the rich and fertile field of labor monopoly. This power is secured by the use of "machine" methods in union politics, often aided by strong-arm tactics, and is strengthened by provisions in union constitutions and bylaws which place autocratic control in the hands of the officers and leave little to be done on the part of the rank and file except to obey orders.

One of the results of the increase in power on the part of the inner ring has been the oppression and exploitation of the union man himself. In the decision (March 1932) in the famous "*Card Index*" case in New Jersey, begun by union ironworkers against their officers and based upon the tyranny and oppression which had resulted from the use of the so-called "card-index" system of employment, the court said:

"Perhaps no cause has been heard in this court in recent years which has excited so much public interest or been the subject of as much comment in the press and on the platform as the present suit.

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"This was due to the exposure of the nefarious practices of the labor leaders acting in cooperation with contractors and employers, some willingly and others by coercion, resulting in the oppression of the workmen almost to the point of serfdom and the mulcting of the public of thousands upon thousands of dollars to pay the price of organized graft and extortion in the guise of fines, commissions and, what is probably a more correct term, tribute. The record is replete with testimony justifying this characterization. * * *

"I think it cannot be denied that construction costs on practically all major operations in the building trades, and on general construction work, in northern New Jersey have increased in the past decade beyond all reason as a direct result of the unlawful conspiracies and racketeering methods of unscrupulous labor leaders."

The principal defense offered was that the complainants had no right to resort to legal proceedings until they had exhausted all of their remedies within the union. On this point, the court said:

"It should be borne in mind that this is not a controversy between labor and capital. * * * It is a strife within the union, aligned on one side of which are the four complainants representing a considerable portion of the membership, and on the other certain members and officers of that union who are so-called 'labor leaders' and who have the active support of the international officers. * * * The particular section of the international constitution which is invoked is section 2a of article XVII, which reads as follows:

"'No officer or member of our international association or its local unions shall resort to court proceedings of any description in any matter pertaining to this organization, its local unions, or his membership until all remedies provided for within our international association and local laws have been fully exhausted. Violation of this section shall be sufficient cause for expulsion from membership in this international association and its local unions.'"

After a detailed review of the particular sections, the court continued:

"A careful reading of the international constitution shows that while broad powers are conferred upon international officers, the executive board, and executive council, few rights except the right to pay dues and obey the will of the international are given to the individual members. The primary design of the constitution of the international seems to have been to confer arbitrary and despotic power upon its officers, and to subjugate the locals and their members to the absolute will of its officers. True, the officers, board, or council may graciously listen to an appeal for justice from a member, but they might just as ungraciously refuse to listen so far as the provisions of the constitution are concerned and the suitor would have no alternative but to submit if he could not appeal to the courts. * * *

"In my judgment the international constitution provides no 'remedies of right' which the complainants are obliged to pursue before instituting action in this court."

The court further examined the remedies claimed to be provided in the constitutions of the local and of the district council, and said in summary:

"I am of the opinion, therefore, that the pursuit of these so-called 'remedies' within the order by these complainants would have been futile, illusory, and vain and that it was not, therefore, necessary for them to exhaust such remedies before appealing to this court."

This case was not at all unique. Many similar actions by union men against their officers have appeared in the public press during the past few years. Commenting editorially upon the New Jersey case, the New York World-Telegram of March 30, 1932, said:

"Here is another timely court warning for union czars.

"Here is further judicial support for oppressed minorities whose rights the World-Telegram has urged in the case of the Sam Kaplan dominated Motion-Picture Machine Operator's Union, Local 306, of this city.

"A few days ago we drew attention to similar current fights in local 3 of the International Brotherhood of Electrical Workers, local 125 of the Operating Engineers' Union, and 384 (Hudson County, N.J.) of the Theatrical Employés and Motion Picture Machine Operators' International. Today we print on another page an account of yet another court action based on alleged autocracy and intimidation in local 28 of the Sheet Metal Workers' International Association.

"Our contention that the higher-ups of organized labor fail in their duty to come to the rescue of oppressed groups in their local unions is borne out by Vice

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Chancellor Berry. He finds that appeals within the union are 'futile' and provide no remedies. * * *

"Again we ask:

"How much longer can President William Green of the American Federation of Labor and the presidents of the big internationals ignore the growing mass of evidence and court opinions pointing to unchecked despotism in local unions?"

It is not intended by implication to criticize Mr. Green. The fact is that neither the American Federation of Labor nor Mr. Green has any such control over the great international organizations as to bring about the correction of abuses. He cannot be held responsible, therefore, for the conditions inherent in the present system. On the other hand, his high character and that of many other of his fellow labor leaders should not obscure the issue. As said before, the issue is not to be settled by pursuit and punishment of individuals or even by a complete change in the personnel of the present union leadership. A system has grown up based upon the false concept of force instead of constructive service and allowed to develop without any responsibility corresponding to the growth of its power and influence. To point out the weaknesses and defects of this system is merely to point out the things which would inevitable develop in any system in which power and proper responsibility were not joined.

Certainly it must be clear that organized labor, with its present organization and leadership, is not justified on its record to claim the exclusive right to bargain collectively for the workers of the country.

BRIEF OF JEROME LEVY, NEW YORK CITY

NEW YORK, N. Y., *April 6, 1934.*

Senator DAVID A. WALSH,
Senate Committee on Education and Labor,
Washington, D. C.

DEAR SIR: Your telegram of April 5, reading as follows:

"Regarding telegram have completed schedule of assignment for hearings ending Saturday April 7. Will be pleased to have printed in record any short brief you may wish to submit."

To hand in response to my telegram of April 2:

"Purchasing power of worker cannot be increased by increasing wages. Profits and wages rise and fall together. A 20 percent increase in wages of the working class will result at most in a 3 percent increase in its purchasing power. Mathematics proving the above accepted by Dr. Robinson, president of New York City College, and others. Senator Wagner's bill will not secure desired purpose. Will harm working class. Would like opportunity to appear to explain."

As a result of years of research work in economics I have derived an equation expressing the mechanics of our existing economic system. The equation has been accepted by Dr. Frederick B. Robinson, president of the College of the City of New York; Mr. L. Seth Schnitman, chief statistician of the F. W. Dodge Corporation; Dr. W. H. Steiner, who, I understand, organized the statistical work for the Federal Reserve System, and others.

This equation shows that wages and profits, contrary to popular opinion, do not spring from a common fund, but from different sources. They tend to rise and fall together. Thus reducing wages reduces profits, and vice versa. The ratio between wages and profits is but slightly affected by change in the wage scale. It follows that you cannot appreciably increase the purchasing power of the working class by increasing wages. For example, a 20-percent increase in wages will result in about a 2-percent increase in purchasing power.

This will be obvious from the following illustration. Let us assume that there are 100 units of goods produced, and that there is $1,000 available to purchase these goods—$750 representing wages and $250 profits, rent, and interest. Under this assumption, the working class will be able to purchase 75 units of goods and the other economic classes 25 units.

Now let us assume that, in order to increase the purchasing power of the working class, wages are raised 20 percent: that is, to $900. If profits, rents, and interest remain constant there would now be $1,150 available to purchase the 100 units of goods, of which labor could buy 900/1,150, or 78 units. It is obvious from the above that a 20-percent increase in wages, assuming the income of the other economic classes remain constant, will only increase the purchasing power of the working class 4 percent. Under the present operation of our economic system, however, profits, rent, and interest usually increase proportionately to wages. As a result, the ratio of the purchasing power of the work-

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ing class to the other economic classes would tend to remain constant even though wages were increased. Thus, in the above example, a wage increase of 20 percent would result in an increase in the workers' purchasing power of less than 4 percent—2 percent would be a reasonable estimate.

Under the concept that profits and wages come from a common fund, the increase of $150 in wages would result in a $150 decrease in profits. We would then have in the above example wages $900, profits $100. Under this above concept an increase of 20 percent in wages would result in an increase of 20 percent in purchasing power.

If the present concept of our economic system is correct, the position of Senator Wagner is sound. If profits and wages come from a common fund, and the respective share of labor and capital is to be determined by bargaining, obviously each party should be placed upon an equal bargaining basis.

Inasmuch, however, as our present concept is incorrect, as can be mathematically demonstrated, the position of Senator Wagner is wrong. His bill, if passed, will not increase the purchasing power of the working class. It will give one group of workers the power to increase its purchasing power at the expense of the other workers of the country.

Fortunately it is possible under our economic system not alone to increase the purchasing power of every worker, but also to assure every man a position who is willing to work. This is done by assuring the members of every economic class a return that measures their economic contribution to society and nothing else.

You will be surprised to know how simple the solution is. The reason why our various economists have not been able to solve the problem has been due to their approach and not to their inability. Each economist has selected that phenomena which he considers the essential factor in our economic entity and has then developed measures to cure our economic ills based upon this phenomena, instead of trying to determine the conrtibutions of the various economic classes and developing the measures necessary to assure their members a return based upon their respective contributions.

In my telegram, I asked for the opportunity to explain this before your committee. I trust that despite your telegram you will find the opportunity to hear me.

Yours very truly,

JEROME LEVY.

BRIEF OF ISADORE POLIER, EXECUTIVE DIRECTOR INTERNATIONAL JURIDICAL ASSOCIATION

INTERNATIONAL JURIDICAL ASSOCIATION,
New York City, March 22, 1934.

SENATE COMMITTEE ON EDUCATION AND LABOR,
Senate Office Building, Washington, D.C.

GENTLEMEN: This is an association of almost 500 members, who are largely attorneys interested in the rights of labor. We ask to submit the enclosed memorandum on S. 2926, commonly known as the "Labor Disputes Act."

Unless amendments are made along the lines suggested in this memorandum to S. 2926, the act will, we believe, prove injurious to the best interests of labor.

Yours very truly,

ISADORE POLIER, *Executive Director.*

MEMORANDUM SUGGESTING CERTAIN AMENDMENTS PREPARED BY THE INTERNATIONAL JURIDICAL ASSOCIATION

I. Unless directly elected by employees and employers, respectively, all members of the national labor board should be designated as representatives of the Government and none of them designated as representing any other particular group.

II. The enforcement of the provisions of the act outlawing unfair labor practices should not rest entirely with the national labor board. Employees should be granted the right to secure injunctive relief against violations of the act and the right to appeal decisions of the board to the courts.

III. The right to strike and/or picket should be more explicitly protected from any abridgment by this act, the N.I.R.A., or any code, license, or agreement adopted thereunder.

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IV. The act now prohibits agreements whereby employment is conditioned upon membership in a labor organization of less than a majority of employees. It should also provide for the representation of substantial minorities by prohibiting closed-shop contracts where such minorities wish representation by another labor organization. In no case should such a contract be permitted between an employer and a labor organization which is or has been fostered by unfair labor practices. The act should not sanction discrimination as to wages and working conditions between different groups of employees.

V. Provision should be made for the representation of substantial minority groups.

VI. Existing labor agreements procured by unfair labor practices as well as agreements in conflict with the act should be abrogated.

VII. The unfair labor practices enumerated in the act should be expanded to include the use of espionage and blacklists.

VIII. A number of miscellaneous provisions should be made and amendments added to clarify the act and to conform it to the preceding points.

I. Unless directly elected by employees and employers respectively, all members of the National Labor Board should be designated as representatives of the Government and none of them designated as representing any other particular group.

Section 201 of the act provides that of the 7 members of the National Labor Board 2 shall be designated as representatives of employer, 2 as representatives of employees and 3 as representatives of the general public. The divergent views within both employer and employee groups make the democratic election of representatives essential to any sound representative plan. If the "representatives of employers or employees" are not to be chosen by the groups they are declared to represent, they should not be designated as representative. In these circumstances the Government should be held entirely responsible for the conduct of the Board

II. The enforcement of the provisions of the act outlawing unfair labor practices should not rest entirely with the National Labor Board. Employees should be granted the rights to secure injunctive relief against violations of the act and the right to appeal decisions of the Board to the courts.

Under section 6 direct court action to enjoin unfair labor practices is limited to suits instituted in the Federal courts by district attorneys whose duty it is to take action "solely at the request of the National Labor Board." In order tc create an effective legal sanction against unfair labor practices listed in the bill, the right to obtain injunctive relief in any court of competent jurisdiction, State or Federal, must be granted.

If the Labor Board proves to be an effective forum for the redress of employee grievances the creation of this additional sanction will not detract from the power, distinction, or effectiveness of the Board. Labor has learned to be wary of the courts. So long as the reputation of the Board is good, the existence of this alternate remedy will be advantageous to it; it will diminish the possibility of adverse criticism by supplying the ready answer, that dissatisfied groups have a direct judicial remedy. In the event that the Board should prove to be a disadvantageous forum—a more disadvantageous forum even than the courts—the justification for the provision is obvious. Moreover, in grave emergencies immediate action may be necessary of a type which only a local court has the power to take. The right to take direct court action should not be limited to the Federal courts since it requires extensive traveling to reach such a court in many parts of the country. The statute can create a Federal right to an injunction which State courts of general jurisdiction may enforce very much as the Federal Employers' Liability Act creates a right to damages enforceable in either State or Federal courts.

Provision is made in section 205 (e) for judicial review by "any person aggrieved by an order of the Board. While section 205 (e) may be intended to confer upon an employee group which files a complaint with the Board the right to obtain a review of any decision of the Board, we believe that subsection (e) will be interpreted to deny judicial review of negative orders of the Board; that is, all orders denying affirmative relief. This has been the interpretation of the Interstate Commerce Act (see *Piedmont & N. R. Co.* v. *United States*, 280 U.S. 469; *Procter & Gamble Co.* v. *United States*, 225 U.S. 282), and the considerations which led to that interpretation apply with equal force here. Thus employee groups will be required to resort to the Board to benefit from the provisions of section 5 and will have no method of securing review of a Board decision which refuses to

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act on their complaint. We believe the act should expressly confer upon aggrieved employees the right to judicial review of the Board's decision denying relief, such review to be limited to decisions of law or arbitrary determinations of fact.

Accordingly, we suggest that section 6 be amended to read as follows:

"(a) Any employee or labor organization aggrieved by an unfair labor practice enumerated in section 5 which burdens or affects commerce or obstructs the free flow of commerce or has led or tends to lead to a labor dispute that might affect or burden commerce or obstruct the free flow of commerce, shall have a right under this statute to enjoin its continuance in any court of competent jurisdiction, either State or Federal.

"(b) The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain any unfair labor practice that burdens or affects commerce or obstructs the free flow of commerce or had led or tends to lead to a labor dispute that might affect or burden commerce or obstruct the free flow of commerce.

"(c) It shall be the duty of the several district attorneys of the United States, but solely at the request of the National Labor Board, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain any such unfair labor practices. *Provided*, That nothing contained in this paragraph shall limit the right of any aggrieved employee or labor organization under section 6 (a) of this statute or under any other statute or under the common law to obtain relief against such unfair labor practices."

In order to provide for judicial review of orders of the Board denying relief, we think it sufficient to insert in section 205 (e) after the words "any person aggrieved by" the words "any order of the Board granting or denying in whole or in part the relief sought", and by inserting after the words "a written petition praying that the order of the Board be modified or be set aside in whole or in part", the sentence: "In the event that the court holds invalid an order of the Board denying relief in whole or in part, it shall remand the case to the Board for reconsideration."

The purpose of the last amendment suggested above is to avoid the objection that if the court is to review negative orders it will be required to perform the nonjudicial function of exercising the discretion vested in the Board. If the scope of review is limited to that of affirmative orders, namely, to ascertaining whether there was error of law or arbitrary finding of fact, the proceeding would seem to be equally "judicial" whether an affirmative or negative order is the subject of review.

III. The right to strike and/or picket should be more explicitly protected from any abridgment by this Act, the N.I.R.A. or any code, license, or agreement adopted thereunder

With our major criticism of section 303, we think the proponents of the bill will be in full accord. During the last 6 or 8 months the New Jersey courts, which are typical of those whose labor views are reactionary, have utilized the existence of the N.R.A. and the National Labor Board as a basis for declaring strikes illegal. Though not so well-known because they do not write opinions, most of the supreme court justices in the second judicial department in New York have implicitly adopted the same point of view. (See in general "Labor injunctions since the N.R.A.", Yale Law Journal, 625, Feb., 1934.)

Accordingly, we propose that:

1. Section 303 be amended so as to negative expressly the various reasons that have been adduced for invalidating otherwise lawful strikes.

2. The section should outlaw code provisions such as that in the bituminous coal industry requiring compulsory arbitration.

3. The section should expressly provide that not even a submission of the controversy to arbitration by the National Labor Board shall render unlawful any subsequent strike involving the same labor dispute. Where the submission to arbitration makes no provision renouncing the right to strike, the enforcement of the award should not entail an impairment of that right. We further believe that even an express renunciation of the right to strike at the time of submission to arbitration should not be enforceable under this act.

Accordingly, we propose the following amendment to section 303:

(a) The right of any employees or labor organizations to strike and/or picket shall not be held to be interferred with, impeded, diminished or affected in any way by (1) anything in this act or in the N.I.R.A. or in any code, agreement, or license approved or executive order adopted thereunder; or (2) compliance of an

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employer with the provisions of this act, the N. I. R. A., or any code, agreement, or license approved or executive order adopted thereunder; or by (3) the existence of any contract between an employer and employees and/or labor organizations authorized by section 5 (6) of this act or any other statute of the United States; or by (4) the willingness of an employer to submit the dispute to mediation, conciliation, or arbitration under the authority of this act or any other statute of the United States; or by (5) the failure of employees or labor organizations to avail themselves of or to exhaust the provisions for mediation, conciliation, or arbitration provided by this act or any other statute of the United States; or by (6) any order, finding, certification, or award of the National Labor Board or any other agency of the United States, notwithstanding anything in any agreement of the parties to the contrary.

The specific enumerations suggested should serve not only to avoid the judicial use of the bill to outlaw strikes, but also to make clear to the public that the use of the strike is entirely proper and "respectable." In order to eliminate the notion that strikes are in themselves "economic sabotage" with the resultant handicap which this places on labor, we believe that it is of considerable importance that the language in section 2 be changed so as to read:

In adequate recognition of the right of employees to bargain collectively through representatives of their own choosing has made it necessary for labor to strike in order to protect its interests and has been one of the causes of lock-outs and similar manifestations of industrial strife obstructing interstate commerce and imperiling the general welfare.

IV. The act now prohibits agreements whereby employment is conditioned upon membership in a labor organization of less than a majority of employees. It should also provide for the representation of substantial minorities by prohibiting closed shop contracts where such minorities wish representation by another labor organization. In no case should such a contract be permitted between an employer and a labor organization which is, or has been fostered by unfair labor practices. The act should not sanction discrimination as to wages and working conditions between different groups of employees.

We are in agreement with the prohibition by section 5 (6) of an agreement between an employer and a labor organization of less than a majority of employees whereby employment is conditioned upon membership in such an organization. Such contracts are intended to prevent the creation and growth of aggressive unions. They are enforced by injunctions granted by the courts in most States. By these injunctions the majority is prevented from securing recognition by striking, picketing, or by any other means. The injunctions are granted on two theories: First, the majority are seeking to induce the employer to breach his contract with the minority; second, the employer is threatening to breach his contract.[1] Emasculation of the rights of the majority through the execution of these contracts cannot be eliminated simply by outlawing company unions. Such agreements are not confined to "company unions" in the usually accepted meaning of the term. They represent a new "company unionism" purchased by the employer from corrupt and racketeering union officials. They serve no legitimate need of the employees. They should be banned.

Under section 5 (6) in its present form, an organization of a majority of employees may by contract with an employer require substantial minority groups to join it as a condition of employment. To this we are opposed. We believe that the protection of such minorities from labor bureaucracy, working together with employers, to crush aggressive trade unionism is essential to any acceptable bill. Monopoly control of the right to work vested by contract in a particular labor organization against the will of organized dissident groups is no less socially undesirable than a similar control vested in the employer. The employee must give forced allegiance, and must surrender to an officialdom his right to work. Expulsion means unemployment to him and the entrenchment of a bureaucracy no matter how corrupt.

We do not here advocate the creation of dual unions, but we do urge that employer-favored or otherwise entrenched unions should not be given the right to contract independent minorities of substantial size out of existence. That there are such minorities in the face of superior economic resources of the majorities is proof enough that all organized labor does not concede that the majority

[1] The New York Court of Appeals is one of the few courts which have rejected this first doctrine. The employers and minority union have therefore resorted to the second theory and have succeeded in the lower New York courts—the employer allowing judgment to go by default and the majority, subsequently intervening, unsuccessfully seeking to vacate the injunction.

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should be entrusted with the entire function of securing labor's rights. If and when the dominant labor organizations by their actions command the respect and trust of substantially all employees, the protection of minorities will become moot. Until such time, the interests of employees as distinguished from the interest of any particular labor organization require that minorities be protected.

We appreciate the desirability, once minority groups of employees are protected, of legalizing the closed shop so far as possible, and our suggested amendment was to accomplish this end. Such a declaration will be especially salutary in view of the large number of reactionary courts which have held it illegal to picket or strike for a closed-shop contract.

The present bill does not legalize closed shop contracts but merely states that it does not declare them illegal. Since there have been conflicting views as to whether section 7 (a) of the N.I.R.A. prohibited such contracts, the present act should also expressly declare that closed shop contracts, within the limitaitons suggested above, are not prohibited by the N.I.R.A. or by any code, agreement, or license adopted thereunder.

The bill recognizes that the continued existence of company unions is in violation of the basic rights of employees. Section 5 (6) should be amended so as to exclude company unions more completely from those organizations with which the employer may contract for a closed shop. Thus, such contracts between an employer and any labor organization, which in the past has been fostered by unfair labor practices, should be proscribed.

We are opposed to the first proviso of section 5 (6) exempting employers from the duty to maintain the same conditions for noncontracting as for contracting employees. It is not only socially desirable but makes for better working relations where all employees receive the same pay for the same work and work under the same conditions without regard to whether they belong to a particular union or to any union; in cases where the employer contracts with both majority and minority unions, we think it highly desirable that the terms of whichever contract is most favorable to employees apply ipso facto to all employees who desire to benefit from them. The experience of European unions shows that the legalization of discriminations against nonunion members is not necessary in order to induce employees to unionize; equal rights in the abstract do not secure the full enjoyment of those rights where they are not enforced by the union for its members.

If minorities are protected by the provisions suggested above, a limitation upon the duration of closed-shop contracts is unnecessary. A 1-year limitation needlessly conflicts with the long-prevailing custom in some industries of making trade agreements for a longer term.

In view of the foregoing considerations section 5 (6) should be amended to read:

"To engage in any discriminatory practice as to wage or hour differentials, advancement, demotion, hire, tenure of employment which encourages membership or nonmembership in any labor organization: *Provided*, That nothing in this act or in the N.I.R.A., or in any code, license, or agreement adopted thereunder, or in any other statute of the United States, shall preclude an employer and a labor organization, representing at least a majority of employees, from agreeing that a person seeking employment shall be required as a condition of employment to join such labor organization, if such agreement shall permit any employee to join any other labor organization of his own choice which represents at least 10 percent of employees, and if such agreement is not between an employer and a labor organization which is, or which has been, influenced by any unfair labor practice."

V. *Provision should be made for the representation of substantial minority groups*

Section 207 (a) confers upon the Board the power to decide whether eligibility to participate in the election of representatives shall be determined on the basis of employer unit, craft unit, plant unit, or other appropriate grouping. We believe that the power to determine the election unit should not, as has been suggested, be removed from the section. Undoubtedly, in various industries or even within a single industry, it may be necessary to choose one unit rather than another in order to secure the most adequate recognition of the wishes of the employees. Adequate protection against any gerrymandering will be afforded by the provision that substantial minorities shall be entitled to elect representatives. On the other hand, to delete from the bill the provision allowing the Board to determine the election unit, will result in dispute as to the power of the Board to select any particular unit. To delete that provision is to invite time-consuming and confusing litigation, the final outcome of which will be unpredictable.

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In the preceding paragraph and in connection with point IV we have expressed our opinion that substantial minority groups of employees should be entitled to choose their own representatives. To insure freedom to do so we have urged, under point III, an express declaration that even a certification by the Board that there is no substantial minority shall not abridge the right of those conceiving themselves to be such a minority to strike or picket. We believe further that the right of these minority groups to elect their representatives will not be adequately protected unless the act expressly accords such a right to any group of 10 percent of employees.

It is submitted, therefore, that section 207 (a) should be amended to read:

"In any dispute as to who are the representatives of employees, the Board, if the dispute might burden or affect commerce or obstruct the free flow of commerce, may investigate such dispute and certify to the parties in writing, the name or names of the individuals or labor organizations that have been designated and authorized *by any group of ten per centum of the employees to represent such employees.* In any such investigation, the Board shall be authorized to take a secret ballot of employees, or to utilize any other appropriate method to ascertain their representatives. The Board shall decide whether eligibility to participate in elections shall be determined on the basis of employer unit, craft unit, plant unit, or other appropriate grouping."

VI. Existing labor agreements procured by unfair labor practices as well as agreements in conflict with the act should be abrogated.

The elimination of company unions will be facilitated by abrogating not only any term of a contract or agreement which conflicts with the provisions of this act but also by abrogating any contract or agreement in the negotiation preceding which, or in the formation of which, or in the extension of which, unfair labor practices were employed.

Accordingly, section 304 (b) should be amended to provide:

"Any term of a contract or agreement of any kind which conflicts with the provisions of this Act and any contract or agreement of any kind, or any extension of such contract or agreement, in the negotiations preceding which or in the consummation of which unfair labor practices as defined by section 5 were employed, is hereby abrogated and every employer who is a party to such contract or agreement shall immediately so notify his employees by appropriate action."

VII. The unfair labor practices enumerated in the act should be expanded to include the use of espionage and blacklists.

We think both practices should be prohibited by section 5, and we therefore propose the insertion between present section 5 (5) and 5 (6) the following two new subsections:

"(5) To participate in, conduct, authorize or permit any investigation or report of, spying or espionage upon any employees or any labor organization in connection with the exercise or enjoyment of any right provided by section 4 of this act or section 7 (a) of the N.I.R.A. or any other statute or by the common law; or to hire or compensate any person, whether as employee or otherwise, or to make any expenditure or to provide any facility for such purpose or purposes.

"(6) To furnish or make available with or without compensation to any person any information concerning the activities of any employee in the exercise or enjoyment of any right provided by section 4 of this act or section 7 (a) of the N.I.R.A. or any other statute of the United States or existing under the common law."

VIII. A number of miscellaneous provisions should be made and amendments added to clarify the act and to conform it to the preceding points.

(1) We see no reason why the United States should be exempted from the employers covered by the act and, therefore, urge the amendment of section 3 (2) by deleting the United States from the exemption.

(2) We think it important that the Labor Board be required to publish regularly its findings in all cases where it acts as conciliator or mediator, or where it holds public hearings on a dispute. We, therefore, suggest the amendment of the second sentence of section 204 (a) to read:

"The board shall make public and regularly publish the findings and results in all cases in which it acts as conciliator or mediator. The findings and results shall not, however, constitute binding precedents in other cases."

We believe that section 204 (b) should be similarly amended so as to read:

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"The board shall make public and regularly publish its findings based thereon, but the findings shall not constitute binding precedents in other cases. The board shall also have power in any labor dispute to hold public hearings."

The requirements of publication will provide an important safeguard against careless work, and will serve to increase public and judicial confidence in the board and in its functioning. At the same time safeguard is made against the introduction of a system of precedent which will tend to formalize the proceedings of a body which should be ever ready to reinvestigate and reformulate the basic principles upon which it acts.

(3) We think sections 205 (d) and (e) should be amended so as to provide that where additional evidence is introduced before the court which there was reasonable ground for not adducing before the board, the court be required, upon request by the board, to order the additional evidence submitted to the board. The present language is "The court may order"; we think it should be changed to "The court upon request by the board shall order." Adequate room for judicial discretion is afforded in permitting the court to decide whether there was reasonable ground for not adducing evidence in the first instance.

We think also that the provisions of these subsections precluding contestants from raising objections to orders of the board which were not raised before the board should be relaxed to allow such objections in cases where they could not reasonably be urged before the board. Our purpose is to take care of the case where the board engages in some surprising activity which could not have been reasonably foreseen. A similar rule exists in the Supreme Court of the United States in reviewing decisions of State courts, and the exception appears to serve a useful purpose.

(4) We think section 5 (1) should be strengthened to read as follows:

"To attempt by interference, influence, restraint, favor, coercion, or lock-out to impair or interfere with the exercise of the right of employees guaranteed in section 4 of this act and section 7 of the N.I.R.A. as qualified by this act."

(5) We believe section 5 (2) should be strengthened so as to leave no doubt that the prohibition or refusal to recognize or deal with representatives applies equally to individual representatives and to representative labor organizations. This might be done by adding to the words "representatives of employees" the words "whether the representatives are individuals or labor organizations". Section 207 (a) expressly adverts to "individuals or labor organizations that have been designated and authorized to represent the employees", and we think it best to make a similar reference in section 5 (2).

(6) We think section 5 (3) should be strengthened so as to read as follows:

"To initiate, participate in, supervise, influence, counsel, encourage, facilitate or assist financially or otherwise in the formation, conduct, operations, policies, elections or in the determination of the constitution, bylaws, or other governing rules or in any other activities of any labor organizations."

(7) We believe section 5 (4) should be strengthened so as to read as follows:

"To make any donation, contribution, or payment, financial, or otherwise, to any labor organization, whether by compensating any one for services performed in behalf of any labor organization or by any other means whatsoever."

(8) There should be inserted in section 304 (a), after the words "Whenever the application of the provisions of section 7 (a) of the National Recovery Act", the words, "or any code, agreement, or license approved under the National Industrial Recovery Act." These words were in the draft of the bill published in the newspapers, but do not appear in the print.

BRIEF OF WALTER GORDON MERRITT

The act proceeds on the assumption that employee-representation plans or works councils, installed with the consent and approval of the employees but on the initiative of the employer and with the guidance and help of the employer, are necessarily objectionable and that agreements with the ordinary type of class unions must be encouraged and maintained by employers regardless of the conduct or integrity of such unions and regardless of the methods employed by them to secure members and to control their votes. Accordingly, the bill requires the employer to use every reasonable effort to make and maintain agreements with unions and to adhere to arbitration awards, but expressly reserves the right of unions to strike in violation of such awards and agreements. It also ties the employers' hands from using any influence to correct the mismanagement or wrongdoing of the union with which by law he is compelled to deal.

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It is not the purpose of this paper to deal with the constitutional questions, or the arbitrary procedural provisions of this bill, because these have already been effectively and convincingly stated by others. It is to the broader questions of social policy that these remarks are directed.

Employees do not ordinarily organize spontaneously. The inspiration of organization usually comes either from the employer or from labor leaders. Either source of guidance is legitimate if it is honest and fair, and guidance from two different sources, each of which tends to disclose and correct the frailties of the other, stimulates wholesome discussion and thinking which is educational in character. While neither group should be allowed to coerce, intimidate, or apply undue pressure, both groups should have full rights to engage in normal organizing activities of a somewhat corresponding character. This has been the procedure in this country for the last 2 decades, and it has resulted in a large number of strong unions and a large number of successful employee-representation plans.

The fact that there are two outstanding and competing types of organization has lead to the exercise of moderation and restraint on the part of each. Employee-representation plans have operated on a basis of fair play which would not have been so generally maintained were it not for the possibility that failure so to act might result in the employees joining another type of union. The nuisance value of labor unions in this respect has been a salutary social force. Labor unions, on the other hand, are being impelled to improve the service of their organizations in order to compete with employee representation. The Baltimore & Ohio Railroad machinist union plan may have been the result of the challenge of the Pennsylvania Railroad representation plan. If the labor union movement were crushed, employers would act with less self-restraint. If employee-representation plans were crushed, labor unions, having a monopoly of organization, would establish closed-shop arrangements in various industries and would multiply abuses. Such human trends are inevitable because human nature does not ordinarily put on its own bridle. For this resaon, competing forms of organization should be fostered, but neither should be fostered by unfair tactics. What society desires is the resultant of fair dealing.

These two forces of organization should be allowed to react upon each other with a view to self-improvement in respect to both, so that they will tend, more and more, to serve the public interests. Prior to the depression, it was generally recognized in this and other countries that never before had there been any such spirit of goodwill and cooperation as existed between management and men in the large industries in this country where employee representation existed. To condemn and attempt to smother these conspicuous successes in human cooperation by denying the employer freedom to influence the form or policy of organization which his employees may adopt, would be fraught with unfortunate consequences and would be a step in opposition to a form of industrial relationships which has been marked with extraordinary success. The company union, as it is unfortunately dubbed, should not be outlawed by class unions.

Dangers threatening and sometimes destroying sound collective bargaining, arise from exploitation, or unwise conduct, on the part of employers or labor leaders. Some employers repress freedom of employees to join a union of their own choosing, because they naturally fear abuses from independent self-asserting union organizations. Some labor leaders, in a desire selfishly to secure power and reward for themselves, misguide and coerce employees in matters of organization. Any attempt to correct this situation for the purpose of preventing the employees from becoming the victims of either of these exploiting forces, should proceed on a fair and impartial basis, and should establish standards of fairness and justice, to be respected by both labor leaders and employers. The weakness of the labor-disputes bill lies in the fact that it is not grounded on any broad social or moral basis, but aims only at one of the sources of danger which tend to undermine sound collective bargaining. The result of such a partisan approach is reflected in the partisan provisions which conspicuously appear in parts of the bill.

The employer has a deep interest in the policy and form of the labor organization with which he deals. To deny him the right to engage in normal activities in attempting to improve organizations, with which by law he is compelled to deal is to suppress free speech and normal cooperation, and to deprive employees of helpful education and guidance and protection against unfairness, such as some employers have furnished them in these matters in the past.

To summarize, the bill is primarily objectionable because it aims to correct exploitation of employees' associations only when it emanates from one class,

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because it fails to recognize the interest of the employers in the form and policy of any labor organization with which they are obliged to deal, and because by implication it condemns the better class of employee representation plans, which have behind them an outstanding record of fine achievement. Any attempt by legislation to protect employees and their organizations from the exploiter, or to shape public policy in such matters, should involve a definition of fair practices operating alike on employers and union leaders and should take the form of governmental supervision of all labor organizations and their sponsors and not merely one type of labor organization and its sponsors.

The partisanship purpose of the bill is also illustrated by other concrete provisions. It is declared to be an unfair labor practice, enjoinable by the Labor Board or by a court, for an employer "to fail to exert every reasonable effort to make and maintain agreements" with labor unions. In contrast, another part of the bill reserves the right of labor unions to call strikes in violation of agreements by expressly providing that, "Nothing in this act shall be construed so as to interfere with or impede or diminish in any way the right to strike."

The bill also provides for voluntary arbitration and declares that the award rendered may be affirmed by a court decree, which decree "may be enforced as if it had been rendered in a suit in the court in which it is entered." Again, the employer is bound by the award just as he would be bound by any other court order, but the employee is left free to organize and maintain strikes to overthrow such an arbitration award.

A truly constructive bill, if any bill is desirable, should undertake to define, protect, and establish such sound moral principles as these: Requirement of secret ballot and protection from fraud, corruption, or coercion of employees' elections or ballots of any kind; publicity and sound accounting methods as to all funds received and disbursed by employees' organizations; observance of collective bargaining contracts; observance of arbitration awards; complete liberty in the employee to determine what, if any, organization he may choose to join; the establishment of fair machinery for the peaceful adjustment of disputes and the requirement that it should be utilized before resorting to lockouts or strikes; the promotion of the sound principles of the four C's—contact, conference, confidence, and cooperation. A careful study of this problem would undoubtedly lead to a definition of other sound social practices to be safeguarded, but those enumerated illustrate the argument. If business is compelled by law to deal with labor unions, some minimum standards of honest business administration and fair dealing must be established by law for unions, so that business is not forced to recognize destructive or dishonest organizations. Otherwise, all incentive for good conduct is surrendered and the ordinary laws of reward and punishment are suspended.

It is unfortunate indeed that in these days of depression, when employers and employees should be united in an effort to improve conditions, that legislation like this labor-disputes bill, should be predicated on a partisanship which, in the end, can only increase bitterness and antagonism. If, instead of proposing special measures to promote special interests, legislation could be founded on a broader morality, the future development of industry would be more secure.

The wisdom or practicability of any such legislation is questionable, but if the proponents of legislative remedies and legal compulsion are to prevail, notwithstanding grave constitutional questions, the bill should be radically changed to meet the ordinary requirements of fairness, both as to procedure and substance.

BRIEF OF T. ARNOLD HILL, THE NATIONAL URBAN LEAGUE FOR SOCIAL SERVICE AMONG NEGROES

At the outset, we wish to express our unqualified approval of any measure that seeks to equalize the bargaining power of employers and employees, and encourage the amicable settlement of disputes involving these two groups. But, inequalities of bargaining power handicapping more than 5,000,000 Negro workers compel us to register this definite protest against the adoption of the Wagner bill in its present form. Our protest is based upon the following objections:

OBJECTIONS

In its present form the bill:

1. Permits labor organizations to exclude Negroes from membership in their bodies and from employment in occupations under their jurisdiction.

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2. Denies to Negro workers the status of "employees" when they are engaged as strike-breakers in occupational fields where they are prohibited from joining the striking union.

3. Fails to protect the Negro worker from practices of racial discrimination by labor unions, both as union and nonunion workers.

4. Permits the establishment of competitive unions on the basis of race, thereby weaking the bargaining power of all workers.

SUPPORTING EVIDENCE

In support of these objections we wish to submit the following:

(a) *Trade-union exclusion and discrimination.*—Despite the fact that the American Federation of Labor has uttered several pronouncements favoring the admission of Negro workers, it has failed to convince Negroes that it is rendering other than "lip service" to such expressed policies, for 10 of the 23 national unions excluding Negroes from their membership through provisions in their rituals or constitutions are members of that body.

In addition to the four major railroad transportation brotherhoods (engineers, conductors, firemen, and trainmen) the following unions affiliated with the American Federation of Labor exclude Negroes from membership: The International Brotherhood of Boilermakers; Iron Shipbuilders, and Helpers of America; the International Association of Machinists; the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express, and Station Employees; the Order of Sleeping Car Conductors; the National Organization of Masters, Mates, and Pilots of North America; the Switchmen's Union of North America; Railway Mail Association; the American Wire Weavers Protective Association; the Order of Railroad Telegraphers; and the Commercial Telegraphers Union of America.

Though some of these unions have jurisdiction over fields in which few or no Negroes are employed, as the Brotherhood of Dining Car Conductors, that exclusion serves to prevent Negro employment in that occupation.

The problem of the Negro worker neither begins nor ends with his admission to or exclusion from organized labor groups. In many instances where membership is granted Negroes, the possibilities for obtaining work under union jurisdiction remain problematical. Thus one finds in various sections of the country that the bricklayers will refuse to honor the card of a Negro journeyman; that the plasterers will not permit a Negro plasterer to operate in certain communities; that Negro lathers must organize their own union in another community, and bargain at a rate lower than that prevailing for the existing white local; that Negro plumbers who are not admitted to the Journeyman Plumbers Union cannot have their work approved by municipal building authorities; that the electrical workers "do not want the Negro" in their brotherhood; and that the American Federation of Labor, realizing that situation, created a dual system of federation by permitting Negro workers thus discriminated against to organize into local and Federal unions under the direct supervision of the American Federation of Labor, with the result that these locals tend to create for the Negro worker bargaining power weaker than that of the white worker.

(b) *Strike-breaking.*—Under the provisions of the Wagner bill, should Negro workers secure an opportunity to work in the jurisdictions of the aforementioned unions during a period of labor difficulty, they would immediately lose their status as employees, despite the fact that they are barred from normal employment.

While we deplore the necessity for strike-breaking, we hold that it is the one weapon left to the Negro worker whereby he may break the stranglehold that certain organized labor groups have utilized in preventing his complete absorption in the American labor market.

RECOMMENDATIONS FOR AMENDING THE BILL

Because these situations are so common to the policy and practice of American labor, it is our opinion that no bill should be passed that gives to any group an additional weapon whereby it may continue to exploit this section of the American working population.

We suggest that:

(1) Section III, paragraph 3, page 3, beginning with line 17, be revised to read: "The term 'employee' shall not include an individual who has replaced a striking employee, except when the labor organization either by direct constitutional or ritualistic regulation and/or by practices traceable to discriminatory policies bars an individual from joining such labor organization or restricts rights, privileges, and practices usually accorded members of such labor organizations."

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(2) There be added to section III, paragraph 5, page 4, at line 6, the following: "provided no employee otherwise eligible is denied membership or restricted or interfered with because of race, color, or creed."

(3) Section V, page 5, be revised to include the following labor practice: "It shall be an unfair labor practice for a labor union to deny the right of membership and/or in any way to interfere with full participation of any employee otherwise eligible on account of race, color, or creed."

The practices of labor unions have frequently included the organization of Negro workers into separate unions merely to placate them. Such unions when set up, do not give to the Negro worker the bargaining power that exists for the white worker. It is for this reason that we believe that the setting up of dual unions of this nature shall not be regarded as fulfilling any of the provisions of this Act, unless such unions have the same bargaining power, and the same collective agreements as are inherent within the organization and techniques of regularly constituted locals of the parent organization.

Respectfully submitted.

NATIONAL URBAN LEAGUE,
T. ARNOLD HILL, *Acting Executive Secretary.*

BRIEF OF MEMBERS OF THE AMALGAMATED ASSOCIATION OF IRON, STEEL, AND TIN WORKERS OF NORTH AMERICA

Hon. Senator WALSH, APRIL 11, 1934.
Chairman Committee of Education and Labor,
United States Senate.

DEAR SENATOR WALSH: We have this date presented to the N.R.A. Administrator, Gen. Hugh Johnson, the following protest:

We, the undersigned employees of the McKeesport district steel and tin plate companies, being members of and representing Lodges no. 162, 163, and 181 of the Amalgamated Association of Iron, Steel, and Tin Workers of North America, do know and affirm, that section 7 (a) of the National Recovery Act are being flagrantly violated by various steel and tin-plate companies of the McKeesport district; therefore, we protest and demand the immediate enforcement of the provisions of section 7 (a) of the National Recovery Act and that steel and tin-plate companies be compelled to comply with all provisions contained therein.

Senator Walsh, we desire immediate enforcement of section 7 (a) of the National Recovery Act and if this is not done and done immediately, we predict labor strikes, demonstrations, holidays, and troublesome future in industry throughout the country.

We believe the agencies of the Government of the United States are big enough and have power enough to demand immediate compliance with all the provisions of section 7 (a) of the National Recovery Act.

If enforcement legislation is necessary to make industry comply with certain provisions of section 7 (a) of the National Recovery Act, we demand that such measures be drawn and enacted without further delay.

We are here to complain of injustices inflicted upon us and our membership due to the inactivities of enforcement agencies of the National Recovery Act.

May we receive your cooperation and the consideration of your committee?

DAVID W. TOMS,
President Sterling Lodge 181, Pennsylvania.
GEORGE LESKO,
President Tube Co. Lodge 163, Pennsylvania.
CLYDE C. BALES,
President Versailles Lodge 162, Pennsylvania.
JOHN CLARK,
CLAUDE M. TEETS,
EMMETT A. LANG,
CHARLES SABO, JR.,
ANTONIO DANGELO.

NATIONAL TUBE CO.,
NATIONAL WORKS,
McKeesport, Pa.

The plan of employee representation has been in operation at this plant since June 1933, and during this time several changes in the plan have been proposed by the employees' representatives, with the result that a revised plan has been

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drawn up, embodying the suggested changes, together with changes deemed desirable by the recent interpretations of the National Recovery Act.

The proposed changes tend to broaden the plan and make it more favorable to the employees.

The plan as revised has been discussed and mutually agreed upon by your representatives and the management. A copy of the revised plan is attached, for your consideration and approval.

We, the undersigned employees' representatives of National Works recommend the adoption of the plan as revised and attached hereto.

All eligible employees are hereby requested to vote their approval and adoption of this revised plan.

Alfred A. Griffith, chairman; Otto Nystrom, vice chairman; A. J. Flynn, Jr., secretary; Fred H. Tolavinia, Waitman Billeter, Robert Maxwell, Nicholas Gwosden, Daniel K. Shipley, Wm. Voelker, Robt. G. Lewis, Norman C. Scheidemantel, Chas. J. Schmidt, M. R. Moore, C. R. Beal, Joseph K. Koeval, Harry C. Heverly.

REVISED PLAN OF EMPLOYEES' REPRESENTATION—NATIONAL TUBE CO., McKEESPORT, PA.

I. REPRESENTATION

1. Representative shall range from 1 representative for each 100 employees in the small plants to 1 representative for each 300 employees in the larger plants. Minimum number of representatives, 5; maximum number of representatives, 30; such adjustments as may be necessary to meet special cases shall be made.

2. For the purpose of applying the unit of representation, the plants should be subdivided according to departments and natural subdivisions. Wherever it is necessary to group a number of small departments in order to complete a unit of representation, regard shall be had to logical groupings and location.

3. Adjustments in units of representation shall be made in accordance with the recommendations of the committee on rules.

II. TERMS OF REPRESENTATIVES

1. Representatives shall be elected for a term of 1 year, and shall be eligible for reelection.

2. A representative may be recalled by a two thirds majority vote by secret ballot of the voters in his department or unit. Such election for recall shall be called by the committee on rules not sooner than 15 days nor later than 30 days following its approval of a petition signed by two thirds of the voters in the unit of representation of the representatives; said petition to state reasons for recall.

3. A representative shall be deemed to have vacated office upon his appointment to such a regular position as would bring him within the meaning of paragraph 3, section III, entitled "Qualifications of representatives and voters."

4. Vacancies on the office of representative may be filled, in the discretion of the committee on rules, by special elections conducted in the same manner as the general elections.

III. QUALIFICATIONS OF REPRESENTATIVES AND VOTERS

1. There shall be no restriction or limitation in the choice of representatives (except as provided in par. 3, sec. III).

2. All employees who are enrolled on the company's payrolls shall be entitled to vote (except as provided in par. 3, sec. III).

3. Company officials and all foremen who are authorized to deal with representatives shall not be eligible as representatives or qualified to vote for representatives.

4. This plan shall in no way discriminate against any employee because of race, sex, or creed, or abridge or conflict with his or her right to belong or not to belong to any lawful society, fraternity, union, or other organization.

IV. NOMINATIONS AND ELECTIONS

1. Nominations and elections shall be held annually.

2. Nominations shall be held on the second Monday and elections on the following Friday of the month selected. In the event of either of these days being a holiday, another day shall be selected by the committee on rules.

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3. The total number of employee-representatives shall be chosen at each annual election.

4. The nominations and elections shall be conducted by the employees themselves, in accordance with these rules and regulations.

5. Nominations and elections shall be by secret ballot, and so conducted as to avoid undue influence or interference with voters in any manner whatsoever, and to prevent any fraud in the casting or counting of ballots.

6. On the day of nominations, each duly qualified voter shall be furnished with a ballot stating the number of persons for whom he is entitled to vote, on which he shall write the name of the person or persons whom he desires to nominate as representative or representatives of his department or unit.

7. A voter may place in nomination not more than the number of representatives to which his department, or unit, is entitled.

8. If on any ballot the same name is placed in nomination more than once, it shall be counted but once.

9. Should the number of persons nominated on any ballot exceed the permitted number as stated on the ballot, the ballot shall be void.

10. There shall be two persons nominated for every person to be elected.

11. Those who have received the largest number of votes up to twice the number of representatives to be elected in the department or district shall be declared nominated and shall be candidates for election.

12. On the day of elections each duly qualified voter shall be furnished by the committee on rules with a ballot on which the names of the candidates shall be printed in the order of number of votes received at nominations. The voter shall indicate his preference by placing a cross (X) opposite the names of the candidates of his choice.

13. Candidates to the number of representatives to which a department or unit is entitled may be voted for, and this number shall be stated on the ballot. If this number is exceeded, the ballot shall be void.

14. Each voter shall deposit his own ballots in a box provided for the purpose by the committee on rules, and the ballots shall be counted under the direction and supervision of said committee. The candidates receiving the highest number of votes shall be declared elected.

15. In the event of a tie or a controversy arising concerning any nomination or election, it shall be referred to and decided by the committee on rules.

16. The committee on rules may make such provision as they may consider necessary for assisting any voter who may so request in properly marking his ballot.

V. MANAGEMENT'S REPRESENTATIVE

1. The company shall appoint a management's representative.

The management's representatives shall keep the management in touch with the representatives and represent the management in negotiations with the representatives, their officers and committees. He shall respond promptly to any request from representatives, and shall interview all of them, from time to time, with reference to matters of concern to employees.

2. The management of the works and the direction of the working forces, including the right to hire, suspend, or discharge for proper cause, or transfer, and the right to relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the management; and, except as expressly provided herein, these rights shall not be abridged by anything contained herein.

VI. COMMITTEES

1. After each annual election the representatives shall immediately meet for the purpose of electing a chairman, vice chairman, secretary, assistant secretary, and treasurer, who shall constitute the executive committee and elect a committee on rules, and for selecting members of such other committees as are found necessary by the committee on rules for the consideration of the following subjects: Rules, ways and means, safety and prevention of accidents, economy and waste prevention, wages, piecework, and tonnage rates, hours of employment and working conditions, housing and living conditions, health and works sanitation, education and publications, athletics and recreation, continuity of employment and condition of industry.

2. The executive committee shall consider all matters not falling within the scope of any other committees provided for herein.

3. Each committee shall be composed of five members, and shall appoint its own chairman and secretary.

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4. Vacancies on committees shall be filled at a regular meeting of the representatives.

5. Joint committees shall consist of the committees of the employees' representatives with the addition of representatives named by the management, who may equal but shall not exceed in number the employees' representatives.

6. The executive committee of employees' representatives together with the committee of management's representatives shall constitute the joint committee on appeals.

7. The joint committee shall select their own officers and arrange their own procedure, subject to appeal, in case of controversy to the joint committee on rules.

8. Wherever the word "committee" is used throughout this instrument, it shall mean the committee of employees' representatives unless a "joint committee" is specified.

VII. COMMITTEE MEETINGS

1. Regular meetings of committees shall be held once a month.

2. On alternate months, the committees shall meet as joint committees.

3. Committees shall meet between the hours of 3 and 5 in the afternoon, unless otherwise arranged for on joint approval of the chairman of the employees' representatives and the management's representative.

4. Special meetings of committees and of joint committees may be held as occasion may require. on approval of the chairman of the employees' representatives and the management's representative.

5. For time necessarily lost by employees in actual attendance at regular meetings, or at special meetings of conferences jointly approved, representatives shall receive from the company payment commensurate with their average earnings.

6. Representatives shall have the right to appear before and be heard by a committee considering matters of concern to the employees of the department or unit they represent.

7. A committee, when concerned with matters of special interest to any particular department or class of employees, shall have the right of inviting into conference the representatives of the employees and of the management likely to be especially interested in such matters.

8. Any matter may be referred by the management through the management's representative to any committee or joint committee for consideration and report, and any matter may be presented by a committee or joint committee to the management through the management's representative.

9. The joint committee on rules shall arrange a suitable place for meetings of the representatives and of the several committees and joint committtees.

VIII. CONFERENCES

A conference of employees' representatives of the plant or a conference of such employees' representatives and of representatives of management of the plant may be held from time to time as determined by the committee on rules or the joint committee on rules, as the case may be. At such conferences, negotiations may be carried on between the representatives of the employees and the representatives of the management on the subjects specified in section VI, paragraph 1.

IX. PROCEDURE FOR ADJUSTMENTS

1. Any matter which, in the opinion of any employee, or group of employees, requires adjustment, and which such employee, or group of employees, has been unable to adjust, either directly or through his or their representatives with the foreman of the work on which he or they are engaged, may be taken up by such employee, or group of employees, either in person or through any representatives of his or their department in writing.

First: With the superintendent concerned.

Second: With the management's representative.

Third: With the management, who shall endeavor to effect a settlement, or who may with the approval of all the parties refer the matter to proper joint committee.

2. Unless a satisfactory disposition of any such matter has been effected within a reasonable time any employee through its representative, or the management through the management's representative, may require such matter to be referred to the joint committee on appeals by request in writing addressed to said committee, specifying in detail the matter requiring adjustments and reasons which warrants its consideration by said committee.

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The joint committee on appeals shall consider any such matter with reasonable promptness, at a regular or special meeting, and may adopt such means as are necessary to ascertain the facts and effect a settlement.

3. If the joint committee on appeals shall fail to effect a settlement, the matter shall be referred to the president of the company and the employees' representatives on the joint committee on appeals for settlement. If the president of the company and the majority of the employees' representatives on the joint committee on appeals shall fail to effect a satisfactory settlement, they may refer the matter to arbitration.

X. GUARANTEEING THE INDEPENDENCE OF EMPLOYEES AND REPRESENTATIVES

It is understood and agreed that no employees will in any way be discriminated against for exercising any of his rights under this plan.

It is understood and agreed that each representative shall be free to discharge his duties in an independent manner, without fear that his individual relations with the company may be affected in the least degree by any action taken by him in good faith in his representative capacity.

To insure to each representative his right to such independent action, he shall have the right to take the question of an alleged personal discrimination against him, on account of his acts in his representative capacity, to any of the superior officers, to the joint committee, and to the president of the company.

Having exercised this right in the consecutive order indicated and failing a satisfactory remedy within 30 days, a representative shall have the further right to appeal to the State department of labor or the Secretary of Labor of the United States. The company shall furnish the said State department of labor or the said Secretary with every facility for the determination of the facts, and the findings and recommendations of the said State department of labor or the said Secretary shall be final and binding.

XI. AMENDMENTS

Any method of procedure hereunder may be amended at any time by two-thirds vote of the entire membership of the joint committee on rules, or by concurrent majority vote of the employees' representatives and of the representative of the management at a meeting duly called and held for such purpose.

XII. RIGHT OF TERMINATION

This plan shall be and remain in full force and effect unless and until terminated by a vote of the majority of the employees at any annual election.

EMPLOYEE REPRESENTATIVES OF NATIONAL TUBE CO. NATIONAL WORKS,
McKEESPORT, PA.

To all employees:

The rules committee and the management have selected Friday, February 23, 1934, as the date on which balloting will be held on the proposed revised plan of employee representation.

ALFRED A. GRIFFITHS, *Chairman.*
A. J. FLYNN, Jr., *Secretary.*

February 20, 1934.

RESOLUTIONS OF EMPLOYEE REPRESENTATIVES OF THE BETHLEHEM STEEL CO., LACKAWANNA

LACKAWANNA, N.Y., *March 27, 1934.*

SENATE COMMITTEE ON EDUCATION AND LABOR,
Hon. DAVID I. WALSH, *Chairman:*

At a regular meeting of employee representatives of the Bethlehem Steel Co., Lackawanna plant, held March 26, the following appears in their minutes:

The following resolutions were adopted:

"A. That as elected representatives of the employees of Lackawanna plant they desire to continue the Bethlehem plan of employees' representation.

"B. To refute the statement often made that employee representatives are chosen by the employer, that insofar as our immediate plant is concerned our nominations and elections are conducted 100 percent by a committee of employee representatives elected by the general body of employee representatives and whose duty it is to conduct such elections."

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REPRESENTATIVES OF THE BETHLEHEM STEEL CO.

This committee is not coerced or influenced in any manner whatsoever by the employer.

The result at our recent election, in which 5,273 employees voted or 96.64 percent, speaks for itself.

EVAN B. EVANS,
Chairman Employee Representatives.
WILLIAM COUHIG,
Vice Chairman Employee Representatives.
THOS. J. KINSELLA,
Secretary Employee Representatives.

NATIONAL CATHOLIC WELFARE CONFERENCE,
April 13, 1934.

The Honorable DAVID I. WALSH,
Chairman Committee on Education and Labor, United States Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: In view of the fact that the text of the Quadragesimo Anno or portions thereof have been placed in evidence in the hearing on S. 2926 before the Senate Committee on Education and Labor, the administrative committee of bishops, National Catholic Welfare Conference, judge it in order to send you the following statement and ask that it be filed with your committee in the hearings on this bill:

Congress is considering legislation providing for the protection of the worker's right to self-organization and the establishment of an industrial tribunal for the adjudication of industrial controversies. Both purposes are in complete accord with and are required by the Catholic social program enunciated by Pope Leo XIII in 1891 and by the present Holy Father, Pope Pious XI, in 1931.

The statement issued in 1933 by the bishops of the administrative committee, National Catholic Welfare Conference, declares: "His (the workingman's) right to organize must not be interfered with * * * Labor and trades unions offer one means of obtaining justice in wages and salaries. The normal working of such organizations, whether singly or as a federation of unions, should be to promote the general welfare and to insure for all workers, whether skilled or unskilled, maximum employment, adequate remuneration, the protection of their rights as men and as citizens, and security against accident and indigence * * * Capital and labor should work for the common welfare and for their mutual interest should encourage all workers to organize. Unions, embracing all groups of workers, should be governed by good sense. They should endeavor to distribute opportunity to the workers of every class. They should always seek competent and disinterested advisers, that their organizations may ever be characterized by sanity."

The worker's right to form labor unions and to bargain collectively is as much his right as his right to participate through delegated representatives in the making of laws which regulate his civic conduct. Both are inherent rights.

The worker can exercise his God-given faculty of freedom and properly order his life in preparation for eternity only through a system wnich permits him freely to choose his representatives in industry. From a practical standpoint, the worker's free choice of representatives must be safeguarded in order to secure for him equality of contractual power in the wage contract. Undue interference with this choice is an unfair labor practice, unjust alike to worker and the general public.

To determine the rights of both worker and management and to resolve the conflicting claims of both parties, an industrial tribunal, with mediation and arbitration powers, is necessary. This procedure is dictated by the plainest requirements of reason and public order. The opposite is chaos and anarchy.

Thanking you for your favor in filing this for the record of the hearing on the bill in question, we remain

Most respectfully yours,

JOHN J. BURKE, C.P.S.,
General Secretary.

THE AMERICAN ROLLING MILL CO.,
Middletown, Ohio, April 11, 1934.

Hon. DAVID I. WALSH,
United States Senate, Washington, D.C.

HONORABLE SIR: At Mr. Hook's suggestion, I am forwarding to you a corrected copy of the tabulation on the current earnings of employees as compared with

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1929. While the final result is exactly the same, the percentage reduction in average weekly earnings should have been 19 percent instead of 12 percent.

We would appreciate it if you would substitute this copy for the one which Mr. Hook handed you personally.

Very truly yours,

C. H. MURRAY,
Assistant to President.

APRIL 4, 1934.

Mr. CHARLES R. HOOK,
Mayflower Hotel, Washington, D.C.

DEAR MR. HOOK: In an attempt to determine just what the status of our organization is today, as compared with 1929, insofar as earnings are concerned, we have made the following tabulation which shows our average rate per hour, our average hours worked per week, and our average actual weekly earnings in 1929 as compared with those for April 1934, which include the recent 10 percent increase:

Comparison of average earnings of hourly paid employees, 1929, and April 1934, all divisions except Sheffield

	1929	5 months September 1933 through January 1934	April 1934 [1]	Percent change April over 1929
Average rate per hour	$0.655	$0.694	$0.762	+16.33
Average hours per week	47.0	32.7	32.7	−30.40
Average actual weekly earnings	$30.80	$22.70	$24.92	−19.10
Average weekly earnings at 40 hours		27.76	30.48	−1.04
Cost of living index (base 1923)	100.0	77.3	78.3	−21.70
Average real weekly earnings	$30.80	$29.40	$31.83	+3.30

[1] Allowing for savings resulting from reestablishment of zone 0 the percent of increase to the total pay roll is computed to be 9.86 percent

This shows that our average hourly rate has increased 16.33 percent over 1929. Bonus is included in figures for both 1929 and 1934.

Our average hours per week have decreased from 47 in 1929 to 32.7 for the first 5 months on which we have made reports to the institute, which is a decrease in hours of 30.4 percent, while our average weekly earnings have decreased 19.1 percent.

If we could average 40 hours, which is the present established maximum working week for the industry, at our present rates, our average weekly earnings would be within 1 percent of our average weekly earnings in 1929. As these are average figures it will be understood that a part of our men exceed the 32.7 average, while others are below this average number of hours, so that in all those instances where men are actually working 40 hours they are now receiving practically as much money as the average man received in 1929.

The tabulation further shows that when cost-of-living indexes for the two periods are taken into account, the average real weekly earnings of our employees are 3.3 percent greater than they were in 1929. In 1929 the cost-of-living index was at the same level as in 1923, the year for which the base was established.

———— ————,
Director of Personal Service.

The CHAIRMAN. The committee will stand adjourned sine die. Unless some emergency arises that will call us together to hear additional testimony, the committee stands adjourned.

(Whereupon, at 11:15 a.m., April 9, 1934, the committee adjourned sine die.)

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CONGRESSIONAL RECORD, SENATE—MARCH 26, 1934

(78 Cong. Rec. 5384)

TERMS OF AUTOMOBILE-LABOR SETTLEMENT—STATEMENT BY PRESIDENT ROOSEVELT

Mr. VANDENBERG. Mr. President, I ask unanimous consent to have printed in the RECORD the full text of President Roosevelt's statement announcing the terms of the automobile-labor settlement. I also ask that the statement be referred to the Senate Committee on Education and Labor, with the prayerful hope that it will have some effect on the consideration of the so-called "Wagner bill."

There being no objection, the statement was referred to the Committee on Education and Labor and ordered to be printed in the RECORD, as follows:

[From the Washington Post, Monday, Mar. 26, 1934]

PROVISIONS OF AUTO SETTLEMENT

(Following is the text of President Roosevelt's statement announcing terms of the automobile-labor settlement and outlining the policies of the administration in the Government's relationship to labor:)

"After many days of conferring in regard to the principles of employment in the automobile industry, the following statement covers the fundamentals:

"1. Reduced to plain language, section 7a of N. I. R. A. means—

"(a) Employees have the right to organize into a group or groups.

"(b) When such group or groups are organized they can choose representatives by free choice, and such representatives must be received collectively and thereby seek to straighten out disputes and improve conditions of employment.

"(c) Discrimination against employees because of their labor affiliations, or for any other unfair or unjust reason, is barred.

"A settlement and statement of procedure and principles is appended hereto.

"It has been offered by me to, and has been accepted by, the representatives of the employees and employers. It lives up to the principles of collective bargaining. I hope and believe that it opens up a chance for a square deal and fair treatment. It gives promise of sound industrial relations. It provides further for a board of three, of which the chairman will, as a neutral, represent the Government.

"In actual practice details and machinery will, of course, have to be worked out on the basis of common sense and justice, but the big point is that this broad purpose can develop with a tribunal which can handle practically every problem in an equitable way.

"PRINCIPLES OF SETTLEMENT

"Settlement of the threatened automobile strike is based on the following principles:

"1. The employers agree to bargain collectively with the freely chosen representatives of groups and not to discriminate in any way against any employee on the ground of his union-labor affiliations.

"2. If there be more than one group, each bargaining committee shall have total membership pro rata to the number of men each member represents.

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"3. N. R. A. to set up within 24 hours a board, responsible to the President of the United States, to sit in Detroit to pass on all questions of representation, discharge, and discrimination. Decision of the board shall be final and binding on the employer and employees. Such a board to have access to all pay rolls and to all lists of claimed employee representation, and such board will be composed of (a) a labor representative; (b) an industry representative; (c) a neutral.

"In cases where no lists of employees claiming to be represented have been disclosed to the employer, there shall be no basis for a claim of discrimination. No such disclosure in a particular case shall be made without specific direction of the President.

"4. The Government makes it clear that it favors no particular union or particular form of employee organization or representation. The Government's only duty is to secure absolute and uninfluenced freedom of choice without coercion, restraint, or intimidation from any source.

"5. The industry understands that in reduction or increases of force such human relationships as married men with families shall come first, and then seniority, individual skill, and efficient service. After these factors have been considered, no greater proportion of outside union employees similarly situated shall be laid off than of other employees. By outside union employees is understood a laid-up member in good standing, or anyone legally obligated to pay up. An appeal shall lie in case of dispute on principles of paragraph 5 to the board of three.

"PRAISES COOPERATION

"In all the hectic experience of N. R. A., I have not seen more earnest and patriotic devotion than has been shown by both employers and employees in the automotive industry. They sat night and day for nearly 2 weeks without a single faltering or impatience. The result is one of the most encouraging incidents of the recovery program. It is a complete answer to those critics who have asserted that managers and employees cannot cooperate for the public good without domination by selfish interest.

"In the settlement there is a framework for a new structure of industrial relations—a new basis of understanding between em-**[5385]**ployers and employees. I should like you to know that in the settlement just reached in the automobile industry we have charted a new course in social engineering in the United States. It is my hope that out of this will come a new realization of the opportunities of capital and labor not only to compose their differences at the conference table and to recognize their respective rights and responsibilities but also to establish a foundation on which they can cooperate in bettering the human relationships involved in any large industrial enterprise.

"It is particularly fitting that this great step forward should be taken in an industry whose employers and employees have contributed so consistently and so substantially to the industrial and economic development of this country in the last quarter century. Having pioneered in mechanical invention to a point where the whole world marvels at the perfection and economy of American motor cars and their widespread ownership by our citizens in every walk of life, this industry has indicated now its willingness to undertake a pioneer effort in human engineering on a basis never before attempted.

"STRESSES ADVANCES

"In the settlement just accomplished two outstanding advances have been achieved. In the first place, we have set forth a basis on which, for the first time in any large industry, a more comprehensive, a more adequate, and a more equitable system of industrial relations may be built than ever before. It is my

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hope that this system may develop into a kind of works council in industry in which all groups of employees, whatever may be their choice of organization or form of representation, may participate in joint conferences with their employers, and I am assured by the industry that such is also their goal and wish.

"In the second place, we have for the first time written into an industrial settlement a definite rule for the equitable handling of reductions and increases of forces. It would be ideal if employment in all occupations could be more generally stabilized, but in the absence of that much-desired situation, if we can establish a formula which gives weight to the human factors as well as the economic, social, and organizational factors in relieving the hardship of seasonal lay-off, we shall have accomplished a great deal. My view, and that of both employees and employers, is that we have measurably done so in this settlement.

"This is not a one-sided statute, and organization of employees seeking to exercise their representative rights cannot at the same time be unmindful of their responsibilities.

"Industry's obligations are clearly set forth and its responsibilities are established. It is not too much to expect organizations of employees to observe the same ethical and moral responsibilities, even though they are not specifically prescribed by the statute. Only in this way can industry and its works go forward with a united front in their assault on depression and gain for both the desired benefits of continually better times."

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Calendar No. 1260

73D CONGRESS
2D SESSION

S. 2926

[Report No. 1184]

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28 (calendar day, MARCH 1), 1934

Mr. WAGNER introduced the following bill; which was read twice and referred to the Committee on Education and Labor

MAY 10 (calendar day, MAY 26), 1934

Reported by Mr. WALSH, with amendments

[Strike out all after the enacting clause and insert the part printed in italic.

A BILL

To equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

~~TITLE I~~

~~SECTION 1. This Act may be cited as the "Labor Disputes Act,"~~

~~SEC. 2. The tendency of modern economic life toward integration and centralized control has long since destroyed the balance of bargaining power between the individual employer and the individual employee, and has rendered the~~

~~individual, unorganized worker helpless to exercise actual liberty of contract, to secure a just reward for his services, and to preserve a decent standard of living, with consequent detriment to the general welfare and the free flow of commerce. Inadequate recognition of the right of employees~~

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to bargain collectively through representatives of their own choosing has been one of the causes of strikes, lockouts, and similar manifestations of economic strife, obstructing commerce and imperiling the general welfare. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of commerce, to encourage the establishment of uniform labor standards, and to provide for the general welfare, by removing the obstacles which prevent the organization of labor for the purpose of cooperative action in maintaining its standards of living, by encouraging the equalization of the bargaining power of employers and employees, and by providing agencies for the peaceful settlement of disputes.

SEC. 3. When used in this Act—

(1) The term "person" includes individual, partnership, association, corporation, and the legal representative, trustee in bankruptcy, receiver, or trustee thereof, or the legal representative of a deceased person.

(2) The term "employer" means a person who has one or more employees, except that the term "employer"

shall not include the United States, or any State, municipal corporation, or other governmental instrumentality, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization, or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" means any individual employed by an employer under any contract of hire, oral or written, express or implied (including any contract entered into by any helper or assistant of any such individual, whether paid by him or his employer, if such assistant or helper is employed with the knowledge, actual or constructive, of the employer), or any individual formerly so employed whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice: *Provided*, That the term "employee" shall not include an individual who has replaced a striking employee. Wherever the term "employee" is used, it shall not be limited to mean the employee of a particular employer, but shall embrace any employee, unless the Act explicity states otherwise.

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~~(4) The term "representatives" includes any individual or labor organization.~~

~~(5) The term "labor organization" means any organization, labor union, association, corporation, or society of any kind in which employees participate to any degree~~

4

~~whatsoever, which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, or hours of employment.~~

~~(6) The term "commerce" means trade or commerce, or any transportation or communication relating thereto, among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.~~

~~(7) The term "unfair labor practice" means any unfair labor practice listed in section 5.~~

~~(8) The term "National Labor Board" means the National Labor Board created by section 201 of this Act.~~

~~SEC. 4. Employees shall have the right to organize and join labor organizations, and to engage in concerted activities, either in labor organizations or otherwise, for the purposes of organizing and bargaining collectively through representatives of their own choosing or for other purposes of mutual aid or protection.~~

~~SEC. 5. It shall be an unfair labor practice for an employer, or anyone acting in his interest, directly or indirectly—~~

5

~~(1) To attempt by interference, influence, restraint, favor, coercion, or lockout, or by any other means, to impair the right of employees guaranteed in section 4.~~

~~(2) To refuse to recognize and/or deal with representatives of his employees, or to fail to exert every reasonable effort to make and maintain agreements with such representatives concerning wages, hours, and other conditions of employment.~~

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~~(3) To initiate, participate in, supervise, or influence the formation, constitution, bylaws, other governing rules, operations, policies, or elections of any labor organization.~~

~~(4) To contribute financial or other material support to any labor organization, by compensating anyone for services performed in behalf of any labor organization, or by any other means whatsoever.~~

~~(5) To fail to notify employees in accordance with the provisions of section 304 (b).~~

~~(6) To engage in any discriminatory practice as to wage or hour differentials, advancement, demotion, hire, tenure of employment, reinstatement, or any other condition of employment, which encourages membership or nonmembership in any labor organization: *Provided*, That where a contract or agreement of any kind is or shall be in force between an employer and a group of employees, the~~

~~provisions of such contract or agreement regarding conditions of employment shall not, because of anything contained in this paragraph, compel an employer to observe similar conditions of employment in his relations with all his employees: *Provided further*, That nothing in this Act shall preclude an employer and a labor organization from agreeing that a person seeking employment shall be required, as a condition of employment, to join such labor organization, if no attempt is made to influence such labor organization by any unfair labor practice, if such labor organization is composed of at least a majority of such employers' employees, and if the said agreement does not cover a period in excess of one year.~~

~~SEC. 6. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain any unfair labor practice that burdens or affects commerce or obstructs the free flow of commerce, or has led or tends to lead to a labor dispute that might affect or burden commerce or obstruct the free flow of commerce, and it shall be the duty of the several district attorneys of the United States, but solely at the request of the National Labor Board, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain any such unfair labor practices.~~

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7

TITLE II

SECTION 201. There is hereby created a Board, to be known as the "National Labor Board" (hereinafter referred to as the "Board"), which shall be composed of seven members, to be appointed by the President, by and with the advice and consent of the Senate. Two of such members shall, at the time of nomination, be designated as representatives of employers, two as representatives of employees, and three as representatives of the general public. The members representing the general public shall be appointed for terms of five years each, and the other members shall be appointed for terms of one year each, and all members shall be eligible for reappointment. Any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one of the members representing the general public as chairman of the Board. No member representing the general public shall engage in any other business, vocation, or employment. A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board. The Board shall have an official seal, which shall be judicially noticed.

SEC. 202. (a) Each member representing the general public shall receive a salary of $10,000 a year. The other

8

members shall each receive $25 per diem and necessary traveling and subsistence expenses when attending meetings of the Board. The Board shall appoint and fix the compensation of an executive secretary, and it shall have authority to appoint and fix the compensation of such attorneys, special experts, examiners, mediators, clerks, and other employees, and to establish such regional or local boards, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may make such appointments without regard to the civil service laws or the Classification Act of 1923, as amended. The Board is directed to retain the officers and employees of the Na-

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tional Labor Board created by the President on August 5, 1933, to the fullest extent consistent with the efficient functioning of the Board.

(b) All the expenses of the Board, including all necessary traveling expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 203. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise all its powers at any other place. The Board may, by one or

more of its members or by such employees as it may designate, prosecute any inquiry necessary to its duties in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 204. The Board may, either by itself or through its agents, offer its services to the parties to any labor dispute as conciliator or mediator in such dispute, and may act as conciliator or mediator for the parties who accept such offer.

SEC. 250. (a) The Board is empowered to prevent any person from engaging in any unfair labor practice that burdens or affects commerce or obstructs the free flow of commerce, or has led or tends to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

(b) Whenever any member of the Board, or the executive secretary, or any person designated for such purpose by the Board, shall have reason to believe, from information acquired from any source whatsoever, that any person has engaged in or is engaging in any such unfair labor practice, he shall in his discretion issue and cause to be served upon such person a complaint stating the general nature of the charges in that respect, and containing a notice of hearing before either an examiner or the Board

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10

at a place therein fixed, not lesst han twenty-four hours after the service of said complaint, but the examiner or the Board shall have discretion to continue or adjourn such hearing from time to time. Any such complaint may be amended by any member of the Board or by any person designated for that purpose by the Board at any time prior to the issuance of an order based thereon; and the original complaint shall not be regarded as limiting the scope of the inquiry. The person so complained of shall have the right to file an answer, to appear and give testimony at the place and time fixed in the complaint, and to avail himself of the compulsory process of the Board in summoning witnesses in his behalf. In the discretion of the examiner or the Board, any other person shall be allowed to appear in the said proceeding by counsel or in person to present testimony. In any such proceeding, the examiner or the Board shall not be bound by the rules of evidence prevailing in courts of law or equity.

(c) The testimony taken by an examiner or the Board shall be reduced to writing and filed in the office of the executive secretary. Thereafter, in its discretion, the Board may itself take further testimony and/or hear argument. If upon all the testimony taken, the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice,

11

then the Board shall state its findings of fact and shall issue an appropriate order directed to such person. The order may require such person to cease and desist from such unfair labor practice, or to take affirmative action, or to pay damages, or to reinstate employees, or to perform any other acts that will achieve substantial justice under the circumstances. Such order may further require such person to make a report from time to time showing the extent to which he has complied with the order. Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon such notice and in such manner as it shall deem proper,

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~~modify or set aside, in whole or in part, any finding or order made or issued by it.~~

~~(d) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any district court of the United States within any district wherein the labor practice in question was engaged in or wherein such person resides or carriers on business, or the Supreme Court of the District of Columbia, for the enforcement of the order of the Board, and shall certify and file in the court a transcript of the record upon which such order was entered, together with a copy of the findings and the order of the Board. Upon such filing of the petition and transcript, the court shall place such petition~~

12

~~upon its motion or equity calendar and shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside in whole or in part the order of the Board. No objection to the order of the Board shall be considered by the court unless such objection shall have been urged before the Board. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, the court may order such additional evidence to be taken before the Board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be~~

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13

exclusive and its judgment and decree, affirming, modifying, or setting aside, in whole or in part, any order of the Board, shall be final, except that the same shall be subject to review by the appropriate Circuit Court of Appeals or the Court of Appeals of the District of Columbia, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 402 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347). The commencement of proceedings under this subsection shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(c) Any person aggrieved by an order of the Board may obtain a review of such order in any district court of the United States in the district wherein the unfair labor practice in question was engaged in or wherein such person resides or carries on business, or in the Supreme Court of the District of Columbia, by filing in such court, within ten days after the entry of such order, a written petition praying that the order of the Board be modified or be set aside in whole or in part. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the record, certified by the Board, upon which the order complained of was entered, together with a copy of the findings and order of the Board. No objection to the order

14

of the Board shall be considered by the court unless such objections shall have been urged before the Board. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, the court may order such additional evidence to be taken before the Board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Board may modify its findings as to the facts, or make new findings, by reason

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of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree, affirming, modifying, or setting aside, in whole or in part, any order of the Board, shall be final, except that the same shall be subject to review by the appropriate Circuit Court of Appeals or the Court of Appeals of the District of Columbia, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the

15

Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347). The commencement of proceedings under this subsection shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(f) No court shall have any jurisdiction to enjoin the Board or an examiner from taking action or holding hearings under a complaint.

(g) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

(h) Complaints, orders, and other process of the Board and its agents may be served by anyone duly authorized by the Board, either (1) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer, or a director of the corporation to be served; or (2) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (3) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business; or (4) by sending a telegraphic copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process

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16

setting forth the manner of said service shall be proof of the same, and the return post office receipt or telegraph receipt for said complaint, order, or other process registered and mailed or telegraphed as aforesaid shall be proof of the service of the same.

SEC. 206. (a) The Board shall have power to act as arbitrator in labor disputes. When any of the parties to a labor dispute agree to submit the whole or any part thereof to the arbitration of the Board, and the Board accepts such submission, the agreement shall be valid, irrevocable, and enforceable as to the submitting parties save upon such grounds as exist at law or in equity for the revocation of any contract. In any case accepted by it for arbitration the Board shall have power to issue an award applicable to the submitting parties.

(b) Unless a party to the arbitration has otherwise stipulated at the time of the submission of the case to the Board, any party to the arbitration, or the Board itself, may within one month after the award is made, apply to the Supreme Court of the District of Columbia for an order confirming the award, and thereupon the court shall grant such an order unless the award is vacated, modified, or corrected as hereinafter prescribed. Notice of the application shall be served upon the other parties to the arbitration by the marshal of any district within which they may be

17

found, in like manner as any other process of such court, and thereupon such court shall have jurisdiction of such parties as though they had appeared generally in the proceeding.

(c) The court may make an order vacating the award upon the application of any party to the arbitration if the Board exceeded its powers or executed them so imperfectly that a mutual and definite award upon the subject matter was not made. The court may make an order modifying or correcting the award upon the application of any party to the arbitration if (1) the award covers a matter not submitted to the Board (unless the award upon such matter does not affect the merits of the decision upon the matter

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submitted) or (2) the award is imperfect in matter of form not affecting the merits of the controversy. The order may modify or correct the award so as to effect the intention thereof and promote justice between the parties. A party to the arbitration, claiming to be aggrieved by the award, may apply to the court, within one week after the award is made, for an order vacating, modifying, or correcting the award. Notice of such application shall be served upon all other parties to the arbitration proceeding or their attorneys, by the marshals of the respective districts within which such parties may be found. For the purposes of the application, any judge who might make an order to

stay the proceedings in any action brought in the same court may make an order, to be served with the notice of the application, staying the enforcement of the award.

(d) The party applying for an order confirming, modifying, or correcting an award shall, at the time the application is filed, also file the following papers with the clerk of the court: (1) An agreement to arbitrate; (2) the award of the Board; and (3) each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon any such application. The order shall be docketed as if it were rendered in a suit in equity and shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a decree in a suit in the court in which it is entered; and it may be enforced as if it had been rendered in a suit in the court in which it is entered.

SEC. 207. (a) In any dispute as to who are the representatives of employees, the Board, if the dispute might burden or affect commerce or obstruct the free flow of commerce, may investigate such dispute and certify to the parties, in writing, the name or names of the individuals or labor organizations that have been designated and authorized to represent employees. In any such investiga-

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19

tion, the Board shall be authorized to take a secret ballot of employees, or to utilize any other appropriate method to ascertain their representatives. The Board shall decide whether eligibility to participate in elections shall be determined on the basis of employer unit, craft unit, plant unit, or other appropriate grouping.

(b) In any dispute not of the character described in subsection (a), as to who are the representatives of employees, the Board may offer its services to aid in determining who are employees' representatives.

SEC. 208. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by sections 205 and 207 (a)—

(1) Any member of the Board, or any agent designated by it for such purposes, is empowered to administer oaths and affirmations, take depositions, subpena witnesses, take evidence, and require the production of any books, papers, or other documents which the Board deems relevant or material to the inquiry. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

20

(2) In case of contumacy or refusal to obey a subpena issued to any person, any district court of the United States, the United States courts of any Territory or possession, and the Supreme Court of the District of Columbia, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides, upon application by the Board, shall issue to such person an order requiring such person to appear before the Board, or an examiner designated by it, there to produce documentary evidence if so ordered, or there to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and other documents before the Board, or in obedi-

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ence to the subpena of the Board or any member thereof or any agent designated by it, or in any cause, proceeding, or investigation instituted by the Board, on the ground that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence,

21

documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(1) Witnesses summoned before the Board or any of its examiners shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 209. The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

SEC. 210. Any person who shall willfully assault, resist, prevent, impede, or interfere with any member of the Board or any of its agents in the performance of his duties pursuant to section 205 or section 207(a), shall be punished by a fine of not more than $5,000, or by imprisonment for not more than one year, or both.

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22

TITLE III

SECTION 301. There is hereby created in the Department of Labor the United States Conciliation Service, under the direction of a Director of Conciliation. The Secretary of Labor shall appoint and fix the compensation of such Director, and shall have authority to appoint and fix the compensation of such commissioners of conciliation, clerks, and other officers and employees as he may from time to time find necessary for the proper performance of the duties of the Service, and as may from time to time be appropriated for by Congress. The Secretary of Labor may make such appointments without regard to the provisions of the civil-service laws or the Classification Act of 1923, as amended.

SEC. 302. It shall be the duty of the United States Conciliation Service, whenever the Director deems it desirable, to offer its services to the parties to any labor dispute, and to attempt to adjust such dispute by conciliation or mediation, or by arranging for voluntary arbitration. Nothing in this title shall limit the power given to the Secretary of Labor under section 8 of the Act of March 4, 1913 (U.S.C., title 5, sec. 610).

SEC. 303. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

23

SEC. 304 (a) Wherever the application of the provisions of section 7(a) of the National Industrial Recovery Act and/or of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U.S.C., title 29, secs. 101-115), conflicts with the application of the provisions of this Act, the provisions of this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of section 7(a) of the National Industrial Recovery Act and/or of such Act of March 23, 1932, shall apply.

(b) Any term of a contract or agreement of any kind which conflicts with the provisions of this Act is hereby abrogated, and every employer who is a party to such

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~~contract or agreement shall immediately so notify his employees by appropriate action.~~

~~SEC. 305. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.~~

24

DECLARATION OF POLICY

SECTION 1. It is hereby declared to be the policy of the United States to remove unnecessary obstructions to the free flow of commerce, to encourage the establishment of uniform labor standards, and to provide for the general welfare, by establishing agencies for the peaceful settlement of labor disputes, and by protecting the exercise by the worker of complete freedom of association, self-organization, and designation of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes an individual, partnership, association, corporation, labor organizations, legal representative, trustee in bankruptcy, or receiver.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State, municipal corporation, or other governmental instrumentality, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization, or any person employing less than ten employees.

25

(3) The term "employees" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor

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dispute connected with any unfair labor practice, and who has not obtained any other regular employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his father, mother, or spouse.

(4) The term "representatives" includes any individual or labor organization designated by employees to act for them or any individual or employer organization designated by an employer to act for him.

(5) The term "labor organization" means any organization or any agency or employee representation committee, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning hours of labor, wages or working conditions.

(6) The term "employer organization" means any organization or any agency or employers representation committee which exists for the purpose, in whole or in part, of

dealing with employees concerning hours of labor, wages or working conditions.

(7) The term "commerce" means trade or commerce, or any transportation or communication relating thereto, among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 3.

(9) The term "National Industrial Adjustment Board" means the National Industrial Adjustment Board created by section 4 of this Act.

(10) The term "old Board" means the National Labor Board established by the President in August 1933.

(11) As used in this Act the term the "Circuit Court of Appeals" includes the Court of Appeals of the District of Columbia.

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22 *UNFAIR LABOR PRACTICES*

23 *SEC. 3. It shall be an unfair labor practice—*
24 *(1) For an employer to attempt, by interference or*
25 *coercion, to impair the exercise by employees of the right to*

27

1 *form or join labor organizations, to designate representatives*
2 *of their own choosing, and to engage in concerted activities*
3 *for the purpose of collective bargaining or other mutual*
4 *aid or protection.*
5 *(2) For employees to attempt, by interference or co-*
6 *ercion, to impair the exercise by employers of the right to*
7 *join or form employer organizations and to designate repre-*
8 *sentatives of their own choosing for the purpose of collective*
9 *bargaining.*
10 *(3) For an employer to interfere with or dominate the*
11 *administration of any labor organization or contribute finan-*
12 *cial support to it: Provided, That, subject to rules and regu-*
13 *lations prescribed by the Secretary of Labor, an employer*
14 *shall not be prohibited from permitting an employee, individ-*
15 *ually, or local representatives of employees, from conferring*
16 *among themselves or with management during working hours*
17 *without loss of time while engaged in the business of a labor*
18 *organization.*
19 *(4) For an employer, by discrimination in regard to*
20 *hire or tenure of employment or any term or condition of*
21 *employment, or by contract or agreement, to encourage or*
22 *discourage membership in any labor organization: Provided,*
23 *That nothing in this Act, or in the National Industrial*
24 *Recovery Act, or in any code or agreement approved there-*
25 *under, or in any other statute of the United States, shall*

28

1 *preclude an employer from making an agreement with a*
2 *labor organication (not established, maintained, or con-*
3 *trolled by any unfair labor practice) to the effect that a person*
4 *seeking employment shall be required, as a condition of em-*
5 *ployment, to join such labor organization, if the agreement is*
6 *sought by the majority of employees in the unit covered by*
7 *it when made. Nothing in this proviso shall be construed by*
8 *the Board to indicate that any employer is bound to enter*
9 *into an agreement conditioning employment upon member-*
10 *ship in any labor organization.*

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NATIONAL INDUSTRIAL ADJUSTMENT BOARD

SEC. 4. (a) There is hereby created in the Department of Labor a board, to be known as the "National Industrial Adjustment Board" (hereinafter referred to as the "Board"), which shall be composed of five members, appointed as hereinafter provided.

(b) The President, by and with the advice and consent of the Senate, shall appoint three members to represent the general public, and shall designate one of such members as chairman of the Board. One of these members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member

whom he shall succeed. Each member representing the general public shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment.

(c) The President, by and with the advice and consent of the Senate, shall appoint for terms of one year each six individuals as a panel to represent employers and six individuals as a panel to represent employees. In making such appointments the President may consult organized representatives of employers and employees. The chairman of the Board shall from time to time select individuals from these panels to serve as members of the Board, and shall fix and rotate their periods of service in such manner that (1) there shall always be one representative of employers and one representative of employees upon the Board, and (2) all the individuals on the panels shall, insofar as practicable, serve as members of the Board for approximately the same length of time. Members of the Board who are selected from the panels shall each receive $20 per diem and necessary traveling and subsistence expenses when engaged in the performance of their duties.

(d) Three members of the Board, including one member representing the general public, shall constitute a quorum. A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board.

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30

The Board shall have an official seal which shall be judicially noticed.

SEC. 5. (a) The members representing the general public shall appoint such employees, and, without regard for the provisions of the civil-service laws, appoint such attorneys and examiners as may be from time to time appropriated for by Congress. The Board may utilize such voluntary and uncompensated services, and establish such voluntary and uncompensated regional, or local boards, as it may from time to time find necessary.

(b) Upon the organization of the Board and the designation of its chairman, the old Board shall cease to exist; and all pending investigations and proceedings of the old Board relating to the unfair practices defined in this Act shall be within the jurisdiction of the Board. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board, shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees

31

of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it duly designates for that purpose.

(d) The Board may request and the Secretary of Labor may direct from time to time the officers and employees of the Department of Labor to render services and furnish information and otherwise to aid the Board in the performance of its duties, insofar as such assistance can be made available under the appropriations and other legal obligations of the Department of Labor.

SEC. 6. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise all its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions

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in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SE . 7. The Board shall have authority from time to time to make, amend, and rescind such reasonable rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective

upon publication in the manner which the Board shall prescribe.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 8. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice defined in section 3 that has led or threatens to lead to a labor dispute that might affect commerce or obstruct the free flow of commerce.

(b) Whenever the Secretary of Labor shall notify the Board that there is reasonable cause to believe that any person has engaged in or is engaging in any such unfair labor practice, the Board shall issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or before a designated agent or agency, at a place therein fixed, at a time to be designated by the Board. Any such complaint may be amended by the Board in its discretion at any time prior to the conclusion of the taking of the evidence. The person so complained of shall have the right to file an answer to the original or amended complaint and appear in person or by counsel and give testimony at the place and time fixed in the complaint, and to invoke the compulsory process of the Board in summoning witnesses in its behalf.

(c) The testimony taken by such agent or agency of the Board shall be reduced to writing and filed with the

Board. Thereafter, in its discretion, the Board may itself take further testimony and/or hear argument. If upon all the testimony taken, the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to

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be served on such person an order requiring such person to cease and desist from such unfair labor practice, or to take affirmative action or to perform any other acts that will achieve substantial justice under the circumstances. Such order may further require such person to make a report from time to time showing the extent to which it has complied with the order.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any circuit court of appeals of the United States within any circuit wherein the labor practice in question occurred or wherein such person resides or carries on business, for the enforcement of such order, and shall certify and file in the court a transcript of the entire record in the proceeding, in-

cluding the testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person. and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, the court may order such additional evidence to be taken before the Board and to be adduced upon the hearing. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification

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35

or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347). The commencement of proceedings under this subsection shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(f) Any person aggrieved by an order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any Circuit Court of Appeals of the United States in the circuit wherein the unfair labor practice in question was engaged in or wherein such person resides or carries on business, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, and including the testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall have the same jurisdiction to affirm, set aside, or modify the order of the Board, and shall proceed in the

36

same manner, as in the case of an application by the Board for an enforcement of its order, and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) When making and entering a decree affirming, modifying, or setting aside in whole or in part an order of the Board as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled, "An Act to amend the Juridicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes"; approved March 23, 1932 (U. S. C., title 29, secs. 101–115).

(h) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

(i) Complaints, orders, and other process and papers of the Board and its agents may be served either personally

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or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post-office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same.

37

ARBITRATION

SEC. 9. (a) The Board shall have power to act, and to appoint any agent or agency to act, as arbitrator in labor disputes, when parties agree to submit the whole or any part of a labor dispute to the arbitration of the Board or its appointees. When the Board accepts such submission, the agreement shall be valid, irrevocable, and enforceable as to the submitting parties save upon such grounds as exist at law or in equity for the revocation of any contract. In any such arbitration the Board shall have power to issue an award applicable to the submitting parties.

(b) In any dispute in which an award has been made, the Board shall file the award in the clerk's office of the United States district court that has been agreed upon by the parties or, in default of such agreement, that of the Supreme Court of the District of Columbia. Notice of the filing shall be personally served or sent by registered mail to each submitting party. Unless a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter final judgment confirming the award.

(c) A petition for the impeachment of any award may be filed only in the court where the award has been filed and not more than ten days after the communication of notice of the filing of the award to the submitting parties.

38

Notice of the filing of such a petition shall be served personally or sent by registered mail to each submitting party. This petition shall be sustained by the court only on one or more of the following grounds:

1. That the proceedings were not substantially in conformity with this Act;

2. That the award does not conform nor confine itself to the stipulations of the agreement to arbitrate; or

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3. That an arbitrator or member of the Board participating in the award was guilty of fraud or corruption; or that a party to the award practiced fraud or corruption which affected the result.

(d) The court shall not set aside an award on the ground that it is invalid for uncertainty; in such case the court shall suspend action pending a resubmission of such award to the Board for interpretation. It shall not set aside an award for irregularity or clerical error, going only to form and not to substance; in such case the court shall correct the form of the award in its judgment. If the award has ceased to be operative because it has been carried out or superseded, the court shall enter judgment accordingly. The court shall construe every award with a view to favoring its validity. But if the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but that a part of the award is

valid, the court shall set aside the entire award; unless all interested parties shall agree that the valid part is severable. If the petition is not sustained, the court shall enter judgment confirming the award.

(e) Within ten days from the entry of judgment upon the petition, confirming or otherwise disposing of the award, any party may appeal to the circuit court of appeals. Only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law to be decided. The determination of the circuit court of appeals upon these questions shall be final, and judgment pursuant thereto shall thereupon be entered by the district court.

(f) If at any time before final judgment all interested parties agree upon a settlement in lieu of the award, judgment may be entered upon such settlement.

(g) The judgment shall be entered and docketed as if it were rendered in a suit in equity and shall have the same force and effect as, and be subject to all the provisions of law relating to, a decree in a suit in the court in which it is entered.

(h) The several United States courts are hereby vested with jurisdiction to entertain proceedings and to enforce all judgments entered pursuant to this section, without respect to the amount in controversy.

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REPRESENTATION OF EMPLOYEES

SEC. 10. (a) In any dispute as to who are the representatives of employees, the Board, if the dispute might burden or affect commerce or obstruct the free flow of commerce, may investigate such dispute and certify to the parties, in writing, the name or names of the individuals or labor organizations that have been designated and authorized to represent employees. In any such investigation, the Board shall hold an appropriate hearing, and the Board shall be authorized to take a secret ballot of employees, or to utilize any other suitable method to ascertain by whom or by what labor organization they desire to be represented. The Board shall decide whether eligibility to participate in a choice of representatives shall be determined on the basis of employer unit, craft unit, plant unit, or other appropriate unit. Each unit may be given representation in proportion to its membership. The Board may determine that representatives agreed upon by the majority of employees in an appropriate unit shall represent the entire unit for the purpose of negotiating agreements concerning terms and conditions of employment. Provided, That nothing in this Act shall be construed to prohibit an employer from discussing grievances with an employee or groups of employers at any time.

41

(b) In any dispute not of the character described in subsection (a), as to who are the representatives of employees, the Board may offer its services to aid in determining who are such representatives.

INVESTIGATORY POWERS

Sec. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 8 and section 10 (a)—

(1) Any member of the Board representing the general public shall have power to require by subpena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under a complaint. Any member of the Board, or any agent designated by

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the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States, the United States Courts of any Territory or possession, and the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides, upon application by the Board, shall issue to such person an order requiring such

42

person to appear before the Board, or an agent designated by it, there to produce documentary evidence if so ordered, or there to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and other documents germane to the matter under investigation before the Board, or in obedience to the subpena of the Board, on the ground that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise germane to the matter under investigation except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Witnesses summoned before the Board or any of its agents shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and

43

witnesses whose depositions are taken and the persons taking the same, other than employees of the Board, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) The several departments and agencies of the Government, when directed by the President, shall furnish

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the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board unless such records, papers, or information, relate to trade secrets or have been received by the Government under an assurance of nondisclosure.

SEC 12. Any person who shall willfully assault, resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to section 9, or section 10 (a), shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

REPORTS

SEC. 13. The Board shall at the close of each fiscal year make a report in writing to Congress stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

LIMITATIONS

SEC. 14. Nothing in this Act shall be construed to require any employee to render labor or service without his consent, or to authorize the issuance of any order or injunction requiring such service, or to make illegal the failure or refusal of any employee individually, or any number of employees collectively, to render labor or service.

SEC. 15. Wherever the application, by means of code, agreement, or otherwise, of the provisions of section 7 (a) of the National Industrial Recovery Act conflicts with the application of the provisions of this Act, the provisions of this Act shall prevail: Provided, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of section 7 (a) of the National Industrial Recovery Act shall apply.

SEC. 16. If any provision of this Act or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

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SEC. 17. This Act may be cited as the "National Industrial Adjustment Act."

Amend the title so as to read: "A bill to equalize the bargaining power of employers and employees, to promote the amicable settlement of labor disputes, to create a National Industrial Adjustment Board, and for other purposes."

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Calendar No. 1260

73TH CONGRESS } SENATE { REPORT
2d Session } { No. 1184

TO CREATE A NATIONAL INDUSTRIAL ADJUSTMENT BOARD

MAY 10 (calendar day, MAY 26), 1934.—Ordered to be printed

Mr. WALSH, from the Committee on Education and Labor, submitted the following

REPORT

[To accompany S. 2926]

The Committee on Education and Labor, to whom was referred the bill (S. 2926) to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Industrial Adjustment Board, and for other purposes, after holding hearings and giving consideration to the bill, report the same with amendments in the nature of a substitute and recommend the passage of the bill, as amended.

WHAT THE BILL DOES NOT DO

There has been such propaganda over the country in relation to this bill and in much of the material sent out there are so many misstatements, that many people have an erroneous idea as to what it sought to be accomplished by the bill. It seems, therefore, advisable to state at the outset what the bill does not do or try to do.

Nothing in the bill allows the National Industrial Adjustment Board or any other branch or agency of the Government to fix wages, to regulate rates of pay, to limit hours of work, or to affect or govern sanitary or similar working conditions in any establishment or place of employment. In such matters the Board (like any nongovernmental group of persons) is available for voluntary arbitration if and only if all the parties invoke its aid.

As now drafted, the bill does not relate to employment as a domestic servant or as an agricultural laborer. It does not affect establishments in which less than 10 persons are employed, and it does not relate to individuals employed by their parents or spouses.

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There is nothing in the bill which requires any employee to join any form of labor organization.

If employees choose to organize, nothing in the bill will prevent them from organizing a shop committee or a union for a particular

plant or company, free and independent of any national or international organization as well as of any employer.

In cases in which employees choose to belong to an organization, there is nothing in the bill to compel an employer to make a closed-shop agreement with that organization or to consent to a deduction of pay to meet the dues of that organization (i. e., the check-off). These matters are left to the parties to settle by the orderly process of collective bargaining, and free from suggestion, much less direction, from the Government.

There is nothing in the bill which makes it impossible for grievances or disputes to be settled locally or through the aid of appropriate machinery in the several States; and every effort has been made to avoid the embarrassment and inconvenience to both employers and employees of being called to settle in Washington a dispute which might be adjusted locally.

The Board is not going to be empowered to settle all labor grievances.

The quasi-judicial power of the Board is restricted to four unfair labor practices and to cases in which the choice of representatives is doubtful. And even then the Board's compulsory action is limited to cases that have led or threaten to lead to labor disputes that might affect commerce or obstruct the free flow of commerce. The bill makes it impossible for the Board to exercise any compulsory power in a purely local and intrastate dispute. Employers and employees engaging in a local or intrastate business are not within the jurisdiction of this bill.

The Board is not given any unusual powers to hear evidence summon witnesses, or require testimony. Every power granted to the Board with respect to the taking of testimony, summoning of witnesses, and like matters, is duplicated in at least a majority, if not all, of the Federal administrative tribunals such as the Federal Trade Commission, the Interstate Commerce Commission, the United States Employees' Compensation Commission, and the proposed communications commission.

OBJECTS OF THE BILL

The bill aims primarily to clarify rather than to extend the existing law governing relations between employers and employees and to provide for a means of enforcement. Language of earlier statutes,

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particularly section 7 (a) of the National Industrial Recovery Act, has been considered ambiguous, and that ambiguity has misled both employers and employees as to their rights under the law. Section 7 (a) of the National Industrial Recovery Act is as follows:

> Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President.

3

The interests of democratic government require that the policy of the United States should be clearly and briefly stated in authoritative form.

A second important objective of the bill is to establish some orderly method by which cases involving supposed violations of the law may be heard. At the present time there exist many different Federal (not to mention State) agencies that deal with labor questions—the Department of Labor has a conciliation service; the National Recovery Administration has a compliance board; a National Labor Board, set up by Executive order, exists in Washington and 20 regional boards have been established throughout the country subordinate to that National Labor Board, and recently the NRA has been establishing in various industries industrial boards. It is important that these agencies should not be multiplied, lest parties fail to know either the proper tribunal to which to resort or the proper construction of law to follow. Three essentials of justice are that it shall be administered promptly, clearly, and with finality. By establishing a quasi judicial board, this bill definitely establishes the agency that shall give the final administrative interpretation of the law.

Of course, court review remains available, as it always does under our system of government. But the officers of the executive branch of the Government, as well as private persons, will recognize and be bound by decisions of the Board until and unless they are reversed in the courts. Moreover, the existence of such an agency will relieve overburdened executives of what is in essence a quasi judicial function.

Another important aspect of the bill, as amended, is the emphasis it places on the strictly judicial aspect of the work of the Board. It is

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not primarily a prosecuting agency to ferret out offenders. So far as possible all disputes will continue to be adjusted by conciliatory methods, such as those used in the Division of Conciliation of the Department of Labor. When a case cannot be adjusted because of the continuance of an unfair labor practice or because of disputes over representation, it can be referred to the Industrial Adjustment Board which can then judicially consider it. This makes two things plain: (1) The Board is to enforce the law as written by Congress; and (2) the Board acts only when enforcement is necessary and adjustment has failed.

ANALYSIS OF THE BILL

Section 1 is a self-explanatory declaration of policy.

Section 2 defines the terms used in the act. The most important of these definitions are those of "employer" and "employee." These words are so defined as to exclude from the operation of the act domestic servants, agricultural laborers, individuals employed by their parents or spouses, persons subject to the Railway Labor Act, and persons employing less than 10 employees. One of the important reasons or this exclusion is to make it clear that the Industrial Adjustment Board is to have jurisdiction over only those disputes which are of a certain magnitude and which affect commerce.

The definitions also make it clear that a person who has been discharged as a result of an employer's violation of this statute, if he has not obtained any other regular employment, may be considered by the Board as an employee. This does not mean that he will

necessarily be so considered, but the Board may decide that he is entitled to be reinstated or to vote in a choice of representatives. Without this provision it is possible that an employer might contend that a worker be had unlawfully discharged had no remedy.

The reason for stating that "employer" excludes "any labor organization, other than when acting as an employer" is this: In one sense every labor organization is an employer, it hires clerks, secretaries, and the like. In its relations with its own employees, a labor organization ought to be treated as an employer, and the bill so provides. But in relation to other employees it ought not to be treated as an employer, and ought to have the right to use lawful means to induce employees to join the organization.

"Representatives" is defined in a manner to make it clear that it includes any organization or any individual. Without such a statement it could be contented that the workers could only choose one of their fellow workers as a representative.

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The term "labor organization" is explained so that no one can be under a misapprehension in regard to the effect of the bill upon company schemes of unemployment insurance, participation in bonuses, stock ownership, etc. So long as an organization does not deal with employers concerning hours of labor, wages, or working conditions, the employer may freely participate in and contribute to its success.

Section 3 lists what the bill calls unfair labor practices. This method of approach has been borrowed from the Federal Trade Commission Act, which speaks of unfair trade practices, and is designed to establish this bill upon a sound constitutional basis and in accordance with decisions of the Supreme Court. There are four separate unfair labor practices listed; and only those practices which are listed are, for the purposes of this bill, to be regarded as unfair. That is made explicit by the preceding section defining "unfair labor practices."

The first unfair labor practice restates the familiar law already enacted by Congress in section 2 of the Norris-La Guardia Act (47 Stat. 70; U.S.C., title 29, sec. 102), in section 77 (p) and (q) of the 1933 amendments to the Bankruptcy Act (47 Stat. 1481; U.S.C., title, 11, sec. 205 (p) and(q)), in section 7 (e) of the act creating the office of Federal Coordinator of Transportation (48 Stat. 214; U.S.C., title 49, sec. 257 (e)), in section 2 of the Railway Labor Act of 1926 (44 Stat. 577, U.S.C., title 45, sec. 152) and in section 7 (a) of the National Industrial Recovery Act (48 Stat. 198; U.S.C., title 15, sec. 706 (a)). The language restrains employers from attempting by interference or coercion to impair the exercise by employees of rights which are admitted everywhere to be the basis of industrial no less than political democracy. A worker in the field of industry, like a citizen in the field of government, ought to be free to form or join organizations, to designate representatives, and to engage in concerted activities. And in *Texas & New Orleans Railroad Co.* v. *Brotherhood of Railway Clerks* (281 U.S. 548 (1930)) the Supreme Court of the United States (in a decision from which there was no dissent) upheld a Federal statute recognizing these rights. Indeed the statute upheld by the Supreme Court was in terms broader than this bill, for it forbade an employer not merely to interfere with or coerce his employees, but even to "influence" them.

5

The second unfair labor practice is directed at employees. So far as other laws (such as the Sherman and Clayton Acts) allow, employers should be free to join organizations, to designate representatives, and bargain collectively. No employee or group of employees ought to be permitted to interfere with the cooperative effort of employers to

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present a united front, and (in the words of the declaration of policy) "to encourage the establishment of uniform labor standards."

The third unfair labor practice is one that the committee has considered with great care. There was presented to the committee much testimony from Government officers, workers, and representatives of labor to the effect that a few employers had dominated labor organizations of their own employees by dictating the terms of their constitutions and bylaws, by refusing to let these labor organizations amend their constitutions without the consent of the employer, by dictating to the organization officials the procedure or agenda for meetings, by indulging in unusual favors prior to or contemporaneously with an election of representatives by the workers, and by making financial contributions to one of several rival labor organizations with the intent of inducing the workers to join the subsidized organization. These practices and others of the same character are clearly abusive and should not be allowed to continue in the few instances where they have existed.

Yet these abuses do not seem to the committee so general that the Government should forbid employers to indulge in the normal relations and innocent communications which are part of all friendly relations between employer and employee. The policy of the Government is founded upon the theory of democratic collective bargaining, not upon the theory of class war, a conception foreign to industrial conditions in this country. And democratic collective bargaining means the exchange of ideas no less than the exchange of services, goods, or money. The object of the third unfair labor practice is to remove from the industrial scene unfair pressure, not fair discussion.

Nor is the committee persuaded that in all cases an employer should be forbidden to pay the representatives of employees their regular wages if they confer together or with employees or employers during working hours. Under certain definite restrictions this practice should be allowed to continue. In making this decision the committee recognizes that it is not going so far as the Bankruptcy Act and the act establishing the Federal Coordinator of Transportation, both of which make it unlawful "to use the funds of (a) railroad * * * in maintaining so-called 'company unions' " (47 Stat. 1481; U. S. C., title 11, sec. 205 (q); 48 Stat. 214; U. S. C., title 49, sec. 257 (e)), or the proposed bill to amend the Railway Labor Act, S. 3266, introduced by Senator Dill on April 2, 1934, which provides in section 2 (4) (p. 6, lines 4–7) that it shall be unlawful to "use the funds of the carrier in maintaining or assisting or contributing to any labor organization, or in performing any work therefor."

These prohibitions may be better adapted to a specialized field in which for many years there has been a history of successful labor

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organization than to industries generally, particularly since in some industries there appears to be no desire on the part of workers to organize, and a prohibition in sweeping terms would introduce an

element of confusion in what we have called "normal relations and innocent communications."

The fourth unfair labor practice is a corollary of the first unfair labor practice. An employer, of course, need not hire an incompetent man and is free to discharge an employee who lacks skill or ability. But if the right to join or not to join a labor organization is to have any real meaning for an employee, the employer ought not to be free to discharge an employee merely because he joins an organization or to refuse to hire him merely because of his membership in an organization. Nor should an employer be free to pay a man a higher or lower wage solely because of his membership or nonmembership in a labor organization. The language of the bill creates safeguards against these possible dangers.

The proviso that follows the fourth unfair labor practice (but which governs the whole act as well as other statutes) is not intended to require any employer to enter into an agreement conditioning employment upon membership in any labor organization. Indeed neither here nor elsewhere in the act is there a duty imposed upon an employer to make any particular contract. An employer will presumably make a reasonable effort to reach an agreement with his workers or their representatives when and if they seek to negotiate with him; but the terms of that agreement are for the parties to settle by collective bargaining. This proviso is not a mandate, but is a permissive exception made necessary by other provisions of the law. If this proviso were not in the bill, a willing employer and willing employees could not of their own accord agree that thereafter a person seeking employment should be required, as a condition of employment, to join the employees' organization.

The reason is that an employer is elsewhere in the bill (sec. 3 (4), p. 5, lines 7–10) forbidden to indulge in "discrimination in regard to hire * * * to encourage * * * membership in any labor organization" or "to attempt, by interference or coercion, to impair the exercise by employees of the right to form or join labor organizations" (sec. 3 (1), p. 4, lines 14–19). The committee is of opinion that if employers and employees of their own accord, in a voluntary spirit of cooperation, want to require persons thereafter seeking employment to belong to an organization, they ought generally to be allowed to do so. This always has been the law, and in many industries and plants it has worked remarkably well. But the committee,

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recognizing the danger of abuse, has inserted two restrictions. First, such an agreement can be made only as to "a person seeking employment." If a worker already has a position, the employer cannot agree with a majority of his employees that the worker will be discharged unless he joins an organization. A second restriction is that an employer cannot make a contract conditioning employment upon membership in a labor organization, unless that organization is one that was established without the employer's interference or coercion, has been maintained without his dominance or financial support, and is not controlled by him. Unless this restriction were written into the bill, it would be possible for an employer to defeat one of its primary objectives.

Section 4 creates in the Department of Labor a National Industrial Adjustment Board, whose decisions are not subject to review by the Secretary of Labor. Three members representing the general public

appointed by the President with the advice and consent of the Senate for terms of 5 years at a salary of $10,000 each, form the nucleus of the Board and are always eligible to sit on cases. In addition there are two panels representing employers and employees. These persons are likewise appointed by the President with the advice and consent of the Senate, but they serve only for 1-year terms, and receive $20 per diem only when engaged in the performance of their duties. It is intended that the persons representing employers and employees shall serve in rotation, at the designation of the chairman of the Board, but in such a way that there shall always be 1 representative of employers and 1 representative of employees upon the Board.

Section 5 allows attorneys and examiners to be appointed by the Board without regard to the civil-service laws, but other employees are subject to those laws. This section also allows the Board to establish voluntary regional or local boards, but it is not intended to have the Board create numerous paid tribunals throughout the country subordinate to it. Indeed section 5 (d), by giving the Secretary of Labor power to put at the disposal of the Board the personnel, services, and information of the Department of Labor, emphasizes the importance of utilizing existing agencies of government, and of curtailing expenses. The Secretary of Labor should retain the control of services, such as conciliation and statistical bureaus, for which the Department of Labor was specifically established, and duplication should be avoided.

Section 6 is designed to allow the Board or one of its members, agents, or agencies to come to the scene of a dispute rather than always to require the parties to come to Washington.

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Section 7 follows the customary practice of giving an administrative body power to make, amend, and rescind reasonable rules and regulations.

Section 8 is an important procedural section. When a person is supposed to have engaged in one of the four unfair labor practices defined in section 3, and the practice has led or threatens to lead to a labor dispute that might affect commerce or obstruct the free flow of commerce, the Board is given power to prevent the practice and take appropriate steps to correct the injustice. Usually the Board will act only when a case is drawn to its attention by the Secretary of Labor (who through the Conciliation Service of the Department of Labor will presumably first utilize every appropriate means for a voluntary adjustment of the matter); but in exceptional cases, the Board by a vote of a majority, may on its own motion decide to hear the case. Hearings can be conducted by the Board, or by an agent or agency designated by it, but decisions must be by the Board. As in the case of other administrative tribunals, the Board upon the basis of evidence may issue an order, and this order may be brought either by the Board or by an aggrieved person before the Circuit Courts of Appeal (or if the practice occurred in the District of Columbia, or the person resides or carries on business in the District of Columbia, before the Court of Appeals of the District of Columbia). That court can then affirm, set aside or modify the order; and from that decision appropriate steps for review by the Supreme Court can be taken.

Section 9 provides for voluntary arbitration by the Board "when parties agree to submit the whole or any part of a labor dispute to the

arbitration of the Board." This is in no sense a compulsory power, but merely gives the Board the right to act in a way already tested under the Railway Labor Act.

Section 10 relates to the power of the Board in a dispute as to who are the representatives of employees. The Board is authorized to take a secret ballot or to use other suitable methods. Since the dispute may relate only to a single craft or a single plant the Board is given the power to determine the appropriate unit for the election. In some cases it may decide that the appropriate unit is the whole plant; in other cases a particular craft. In cases in which a poll is taken of several different units, it is provided that each unit may be given representation in proportion to its membership. Of course, if an election is held in only a single unit, no matter how large, then there is no occasion for "representation in proportion to its member-

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ship", since its membership bears no mathematical relation to any other group.

Within any single unit the Board may, but need not, determine that representatives agreed upon by the majority of employees shall represent the entire unit for the purpose of negotiating agreements. The existing National Labor Board under specific authority from the President (Executive Order 6580, Feb. 1, 1934), has adopted this rule (see Decisions of the National Labor Board, August 1933–March 1934, published at Washington May 1934), but the new Board is free to adopt or reject it in particular cases, with one qualification. Although the representatives of the majority may make the agreement for that unit, the minority have a right through representatives or otherwise to present grievances to their employer.

Section 11 gives to the Board in connection with those issues in which it has compulsory power (that is, the prevention of unfair labor practices and the choice of representatives, whenever such practices or such choices affect interstate commerce) the usual powers to take testimony germane to the matter under investigation.

Section 12 provides a criminal penalty for assaulting or interfering with a member or agent of the Board in the performance of his duties. Neither this nor any other section of the act provides a criminal penalty (other than the usual penalty for contempt) for engaging in an unfair labor practice, even after a court has ordered its cessation.

Section 13 requires an unusually detailed report to the Congress of the work of the Board so that the Congress may be adequately informed in determining the value and success of the work performed.

Section 14 is a restatement of section 9 (8) of the Railway Labor Act (44 Stat. 585, U. S. C., title 45, sec. 159 (8)) and an application of it to industrial labor and to this act.

Section 15 guards against any possible conflict with the National Industrial Recovery Act.

Section 16 is the usual provision for separability to avoid doubt in case part of the act is held invalid.

HISTORICAL PRECEDENTS FOR THE BILL

The substantive features of the bill are not new, but merely codify and clarify the policy already declared by Congress in different fields of industry, trade, and transportation. This is shown by reference to the following excerpts from statutes now on the books:

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(1) Section 2 of the Railway Labor Act of 1926 (44 Stat. 577; U. S. C., title 45, sec. 152) provides that:

First. It shall be the duty of all carriers, their officers, agents, and employees, to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier and its employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other.

Fourth. In case of a dispute between a carrier and its employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided*, (1) That the place so specified shall be situated upon the railroad line of the carrier involved unless otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further*, That nothing in this paragraph shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties. * * *

(2) Section 2 of the Norris-LaGuardia Act—"An act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes" (47 Stat. 70, U. S. C. title 29, sec. 102), states that:

* * * under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. * * *

(3) Section 77, paragraphs (p) and (q) of the act approved March 3, 1933, entitled "An act to amend an 'Act to establish a uniform

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system of bankruptcy throughout the United States,' approved July 1, 1898, and acts amendatory thereof and supplementary thereto" (47 Stat. 1481; U. S. C. title 11, sec. 205 (p) and (q)) provides that:

No judge or trustee acting under this Act shall deny or in any way question the right of employees on the property under his jurisdiction to join the labor organization of their choice, and it shall be unlawful for any judge, trustee, or receiver to interfere in any way with the organizations of employees, or to use the funds of the railroad under his jurisdiction, in maintaining so-called "company unions", or to influence or coerce employees in an effort to induce them to join or remain members of such company unions.

No judge, trustee, or receiver acting under this Act shall require any person seeking employment on the property under his jurisdiction to sign any contract

or agreement promising to join or to refuse to join a labor organization; and if such contract has been enforced on the property prior to the property coming under the jurisdiction of said judge trustee, or receiver, then the said judge, trustee, or receiver, as soon as the matter is called to his attention, shall notify the employees by an appropriate order that said contract has been discarded and is no longer binding on them in any way.

(4) Section 7 (e) of the act establishing a Federal Coordinator of Transportation ("An Act to relieve the existing national emergency in relation to interstate railroad transportation, and to amend sections 5, 15a and 19a of the Interstate Commerce Act, as amended" (48 Stat. 214, U. S. C. title 49, sec. 257 (e)) provides that:

Carriers, whether under control of a judge, trustee, receiver, or private management, shall be required to comply with the provisions of the Railway Labor Act and with the provisions of section 77, paragraphs (o), (p), and (q), of the Act approved March 3, 1933, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto."

(5) Section 7 (a) of the National Industrial Recovery Act (48 Stat. 198, U. S. C., title 15, sec. 707 (a)) provides that—

Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

Not only the substantive features of this bill are familiar, but the procedural features are well known and tested. Without considering

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the close analogy of the Federal Trade Commission in the field of trade practices, or the Railway Labor Act (with its boards of mediation and adjustment), it is enough to refer to the National War Labor Board established by proclamation of President Wilson on April 8, 1918, under the joint chairmanship of Hon. William H. Taft and Hon. Frank P. Walsh (see U. S. Department of Labor, Bureau of Labor Statistics Bulletin No. 287, p. 34) and to the existing National Labor Board created by President Roosevelt on August 5, 1933, and supplemented by Executive Order No. 6511 of December 16, 1933, Executive Order No. 6580 of February 1, 1934, and Executive Order No. 6612–A of February 23, 1934.

It is from this wealth of precedent that the features of the present bill have been drawn.

CONSTITUTIONAL BASIS OF THE BILL

In conclusion, it seems desirable to make it clear why the committee feels that the general subject matter of the bill is appropriate for consideration by the Congress and for Federal legislation.

There was presented to the committee a wealth of evidence (which it is not necessary to recite or even to summarize) indicating that there has been an ever-increasing stoppage of the free flow of commerce

between the several States and between this and other countries as a result of disturbances in some of our larger industrial enterprises. Dramatic examples were drawn to the attention of the committee, and indeed during the very weeks when the committee was holding public hearings a serious stoppage of work in the automobile plants throughout the Nation was narrowly averted by the prompt and generous intervention of the President, who was for the time forced to lay aside many of the other duties of his office.

A large number of the witnesses who testified (particularly those from Government agencies most familiar with labor questions), were of opinion that a majority of these strikes or threatened strikes were caused by interference with the right of individuals to organize for the purpose of collective bargaining and to select representatives. The impression of these witnesses is in accord with the official statistics on the causes of strikes published from time to time by the Division of Conciliation of the United States Department of Labor in the Department's Monthly Labor Review, and also is in accord with data supplied by the National Labor Board. Moreover, these witnesses have stated that if the Government clearly declared the rights of the parties in these purely procedural questions, the parties themselves would often be able to reach an amicable adjustment of the substantive issues, such as wages, hours, and similar working conditions.

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The committee feels that under these circumstances it is the duty of the Government clearly to declare the law, to give every opportunity (by conciliation and otherwise), to the parties to follow this declaration voluntarily, but, as a last resort, to provide an orderly, effective method for eliminating those undemocratic practices that have threatened and actually stopped the free flow of commerce.

Some witnesses, while conceding the necessity of governmental elimination of certain abuses, have urged that the proper governmental authorities are the several States rather than the National Government. However, the committee found that many of the disputes not only had indirect effect on industries in several States but also themselves extended into more than one State. The disputes in the automobile, bituminous coal, and steel industries, whatever may have been the merits of the disputes (as to which the committee has no opinion), clearly involved identical issues simultaneously in several States and could not easily have been settled without Federal intervention.

The committee is of opinion that the evidence presented to it furnishes a constitutional basis for congressional legislation of the general character proposed in this bill. Without attempting to discuss the matter exhaustively, the committee refers in passing to two different groups of cases decided by the Supreme Court. That court has held that Congress has power to pass laws forbidding activities of labor organizations that involve restraints of and interference with interstate commerce. (*Duplex Printing Press Co.* v. *Deering*, 254 U.S. 443; *Bedford Cut Stone Co.* v. *Journeyman Stone Cutters*, 274 U.S. 37.) Such cases indicate that labor practices may have so direct a relation to commerce as to come within the ambit of Federal jurisdiction. Another line of decisions of the Supreme Court holds that Congress may declare unlawful and may prohibit "unfair methods of competition in commerce." (*Federal Trade Commission* v. *Klesner*, 274 U.S. 145; *Federal Trade Commission* v. *Raladam Co.*, 283 U.S. 643.)

From this it seems to follow that Congress may declare and prohibit unfair labor practices in commerce, since these practices are not merely analogies to unfair methods of competition, but are themselves instances of such unfair competition (since in our modern interdependent economic society the break-down of labor standards in one plant affects the competitive position and eventually the labor standards in other plants even in remote areas).

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PROPOSED AMENDMENTS TO S. 2926

73d CONGRESS
2d SESSION

S. 2926

IN THE SENATE OF THE UNITED STATES

MAY 28 (calendar day, MAY 30), 1934

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. Robinson of Arkansas to the bill (S. 2926) to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes, viz:

On page 33, line 20 (section 8, subsection (e)), after the comma insert the following: "the Attorney General, at the request of".

73d CONGRESS
2d SESSION

S. 2926

IN THE SENATE OF THE UNITED STATES

MAY 28 (calendar day, MAY 31), 1934

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. Wagner to the bill (S. 2926) to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board and for other purposes, viz:

On page 24, line 15, strike out "organizations" and insert "organization."

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73d CONGRESS
2d SESSION

S. 2926

IN THE SENATE OF THE UNITED STATES

MAY 28 (calendar day, MAY 31), 1934

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. Wagner to the bill (S. 2926) to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board and for other purposes, viz:

On page 30, line 6, before the word "and" insert ", specialexperts,".

On page 30, strike out lines 14 and 15 and insert "the old Board shall be continued by the Board. All ".

At the bottom of page 39, insert a new section as follows:

CONCILIATION AND MEDIATION

SEC. 10. The Board shall have the power to use and to create agencies for the mediation or conciliation of labor

disputes: *Provided*, That the Board may decline to take cognizance of any labor dispute where there is another means of settlement provided for by agreement, industrial code or law which has not been utilized.

On page 40, line 2, strike out "10" and insert "11."

On page 41, line 6, strike out "11" and insert "12."

On page 41, line 9, strike out "10" and insert "11."

On page 43, line 12, strike out "12" and insert "13."

On page 43, strike out all of line 15 and insert in lieu thereof "pursuant to section 8, section 10 (in the case of a labor dispute which tends to burden or affect commerce), or section 11 (a), shall be punished".

On page 43, line 19, strike out "13" and insert "14."

On page 44, line 2, strike out "14" and insert "15."

On page 44, line 8, strike out "15" and insert "16."

On page 44, line 16, strike out "16" and insert "17."

On page 44, line 22, strike out "17" and insert "18."

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73D CONGRESS
2d SESSION

S. 2926

IN THE SENATE OF THE UNITED STATES

MAY 29 (calendar day, MAY 31, 1934)

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. Wagner to the bill (S. 2926) to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board and for other purposes, viz:

On page 30, line 22, after the word "Act." insert an additional sentence as follows: "All employees of the old Board shall be transferred to and become employees of the Board at their present grades and salaries."

(Same caption as above)

On page 40, strike out all of line 16 and the first three words of line 17.

(Same caption as above)

On page 27, line 13, strike out "Secretary of Labor" and insert "National Industrial Adjustment Board".

On page 32, strike out lines 9 and 10 and substitute "(b) Whenever the Board shall have reason to believe that any".

(Same caption as above)

On page 27, line 17, strike out "time" and insert "pay".

(Same caption as above)

On page 41, line 12, strike out "such".

On page 41, lines 13 and 14, strike out "a complaint" and substitute "investigation".

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(Same caption as above)

On page 32, line 24, strike out "of" and insert "or".

(Same caption as above)

On page 25, line 6, strike out "connected with" and insert "or because of".

(Same caption as above)

On page 32 strike out all of lines 4 through 8, and insert in lieu thereof the following:

SEC. 8 (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice defined in section 3 that burdens or affects commerce, or obstructs the free flow of commerce, or has led or tends to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

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CONGRESSIONAL RECORD, SENATE—JUNE 4, 1934
(78 Cong. Rec. 10351)

THE STRIKE CRISIS—ARTICLE BY SENATOR WALSH

Mr. MURPHY. Mr. President, in the New York Times of yesterday appeared an interesting article written by the senior Senator from Massachusetts [Mr. WALSH], Chairman of the Senate Committee on Education and Labor, entitled "To Combat the Strike Crisis, Walsh Urges the Wagner Bill." I ask unanimous consent that the article may be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[10352] [From the New York Times, Sunday, June 3, 1934]

TO COMBAT THE STRIKE CRISIS, WALSH URGES THE WAGNER BILL—THE MASSACHUSETTS SENATOR SAYS THE MEASURE, WHILE DEFINING UNFAIR PRACTICES, WOULD LEAVE EMPLOYERS AND EMPLOYEES FREE

(By DAVID I. WALSH, Chairman of the Senate Committee on Education and Labor)

A rising tide of labor unrest is plainly manifest. Strikes and threats of strikes are increasing in number and magnitude. We are witnessing riots and bloodshed and many fear we may witness more. Indeed, signs on the horizon seem to point to more strikes rather than less during the coming months. Industrial peace—an indispensable element of industrial recovery—is in serious jeopardy.

Whence come these labor difficulties? What are their causes? Can the causes be eliminated? And if that be impossible, how ought the resulting situation be dealt with? These paramount questions admit of no short and easy answer.

The causes of labor disputes are various, and some of them are inherent in a society where men are free to work or not, according to their will, and employers are free to employ whom they will. And I am moved to add that America wants no other sort of society.

THE RIGHT TO STRIKE

Labor, with a capital "L", regards the right to strike as one that cannot be alienated and of which it cannot be deprived except in circumstances where public safety is jeopardized. The public necessity of the operation of our railroads as paramount to the right of rail employees to strike has been upheld by our courts. Strikes by these employees and by public employees are exceptions to the rule. As matters stand today it is neither lawfully possible, nor, in my judgment, socially expedient to attempt under the guise of public necessity and public safety to outlaw all strikes by legislative fiat.

If we accept the foregoing premise, then it is obvious that we cannot by statute make arbitration of all labor disputes mandatory, for compulsory arbitration, if it is to be effective, must carry with it compulsory obedience, and that destroys the right to strike.

Disputes between employer and employee resulting in strikes and lockouts have been said to be a usual accompaniment of a period of increasing production and rising prices. That has been the record in the past. Labor disputes at the height of a boom or at the bottom of a depression have been less common. At the bottom, the worker has been willing to work on any terms. At the top the

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employer has been willing to employ on any terms. These are broad generalizations, but sufficient for the present discussion.

INACCURATE DIAGNOSIS

The present labor unrest and the rising tide of strikes are being pointed to as indubitable proof that industrial recovery is in progress, and as a usual and indispensable concomitant of recovery. This seems to me to be a superficial and inaccurate diagnosis.

There is a highly important and significant distinction between the predominating causes of the present labor troubles and those in prior periods of labor unrest. Wages and hours of labor have been the predominating causes of a majority of our strikes and lock-outs in the past. Wages and hours of labor are not the predominating causes today.

The more prolific and the more deep-seated cause of the present strikes and threats of strike is with respect to the right of collective bargaining and the efforts of labor to organize and to be organized. It is important to keep in mind that prior to the passage of the National Industrial Recovery Act only a small percentage of industrial laborers were members of labor unions. Certain large industries were highly organized. There have been few strikes, if any, in these industries. But taking on the one hand the total number of the men and women employed in industry, or potentially to be employed in industry, and on the other hand the total roster of all of the trade unions affiliated with national labor organizations, it is apparent that by a large majority labor was nonunion.

SECTION 7A

Congress, in setting up a new deal for industry in N. R. A., likewise provided a new deal for labor. No section of the recovery act was more intensely disputed than section 7a, both in the framing of the bill and in its subsequent operation. Section 7a provided "that employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor or their agents in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." That is not all of section 7a, but it is the crux of it.

Collective bargaining presupposes some kind of organization of employees. Existing national labor organizations quite naturally sought to organize employees and to bring them within their folds. Labor organizations independent of the American Federation of Labor, in some plants and in some industries sought to preempt the field for themselves. Such employers as viewed with reluctance, if not with hostility, the organization of their employees into the regular trade union sought covertly or openly to discourage such organization or to encourage the maintenance or formation of the employees-representation plan, usually, but not always accurately, described as the "company union."

This drive for the spread of employees' organizations as a vehicle of collective bargaining is, in my opinion, at the root of a great deal of our present labor troubles. It was largely inevitable. The relations between employer and employee are in a transition stage. Many employers are resisting the onsweep of the closed shop. Some of them openly declare that they will never under any circumstances bargain collectively with a labor union.

READJUSTMENTS AHEAD

Congress has laid down the principle of a collective bargaining. That principle, in my judgment, is here to stay, irrespective of the future or the permanence of the N. R. A. That means that we are in for a long period, and how long no man can

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say, of readjustments of the relationships between the employer and the employee. And these readjustments are bound to be attended by disputes and by strikes. I see no escape from it.

The best that we can hope for is for some degree of reasonable restraint and tolerance and fairness on both sides, and, as far as the Government itself is concerned, for the setting up of such appropriate agencies for conciliation and mediation, for voluntary arbitration and for the enforcement of fair play as may be possible and feasible under our form of government.

Neither the present National Labor Board nor the proposed National Industrial Adjustment Board can be an enforcer of industrial peace. It cannot settle strikes. It can harmonize and it can conciliate, but if the two sides insist on fighting, it can be little more than an umpire, little more than a referee who shall insist that both sides observe the rules of the game, with authority to call a foul or to disqualify if the rules are violated. And the rules are the unfair labor practices which it is proposed to define by statute.

The National Labor Board, created last year by Presidential Executive order and headed by Senator ROBERT F. WAGNER, of New York, has valiantly attempted to compose labor disputes, to interpret the collective-bargaining provision of the N. R. A., and to ascertain and inhibit unfair labor practices. The jurisdiction of this Board and its authority have been challenged in various instances, and there has been very general recognition of the desirability, if not, indeed, the necessity of some statutory enactment defining the Board's powers and procedure if it is to be an effective and permanent instrumentality for the adjustment of labor disputes.

THE WAGNER BILL

It was the apparent need for legislation along this line which was the genesis of the Wagner labor disputes bill, introduced in Congress early in the present session. This bill, in the form introduced, provoked a vast deal of controversy, and the subject was fully aired in extensive hearings before the Senate Committee on Education and Labor.

The committee has now favorably reported to the Senate a substitute bill which it is proposed to entitle the "National Industrial Adjustment Act" and which proposes to create a national industrial adjustment board to supersede the present National Labor Board. The substitute bill seeks to meet many of the objections raised to the original bill, objections which in the judgment of our committee appeared to have considerable validity.

Nothing in the bill allows the National Adjustment Board or any other branch or agency of the Government to fix wages, to regulate rates of pay, to limit hours of work, or to affect or govern sanitary or similar working conditions in any establishment or place of employment. In such matters the Board (like any non-governmental group of persons) is available for voluntary arbitration if, and only if, all the parties invoke its aid.

As now drafted, the bill does not apply to domestic servants or agricultural laborers. It does not affect establishments in which less than 10 persons are employed, and it does not relate to individuals employed by their parents or spouses. There is nothing in the bill which requires any employee to join any form of labor organization or any employees in any industry to form a labor organization. If employees choose to organize, nothing in the bill will prevent them from organizing a shop committee or a union for a particular plant or company, free and independent of any national or international organization as well as of any employer.

In cases in which employees choose to belong to an organization there is nothing in the bill to compel an employer to make a closed-shop agreement with that organization or to consent to a deduction of pay to meet the dues of that organiza-

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tion (that is, the check-off). These matters are left to the parties to settle by the orderly process of collective bargaining, and free from suggestion, much less direction, from the Government.

LOCAL MACHINERY

There is nothing in the bill which makes it impossible for grievances or disputes to be settled locally or through the aid of appropriate machinery in the several States; and every effort has been made to avoid the embarrassment and inconvenience to both employers and employees of being called to settle in Washington a dispute which might be adjusted locally.

The Board is not going to be empowered to settle all labor grievances. The quasi-judicial power of the board is restricted to four unfair labor practices and to cases in which the choice of representatives is doubtful, and even the Board's compulsory action is limited to cases that have led or threaten to lead to labor disputes that might affect commerce or obstruct the free flow of commerce. Employers and employees engaging in a local or intra-state business are not within the jurisdiction of this bill.

The Board is not given any unusual powers to hear evidence, summon witnesses, or require testimony. Every power granted to **[10353]** the Board with respect to the taking of testimony, summoning of witnesses, and like matters, is duplicated in at least a majority, if not all, of the Federal administrative tribunals, such as the Federal Trade Commission, the Interstate Commerce Commission, the United States Employees' Compensation Commission, and the proposed communications commission.

The bill is designed primarily to clarify rather than to extend the existing law governing relations between employers and employees and to provide for a means of enforcement. Briefly stated, the measure defines merely those acts by an employer that interfere with the right of employees to engage in collective bargaining.

ORDERLY HEARINGS

A second important objective is to establish some orderly method by which cases involving supposed violations of the law may be heard. At the present time there exist many different Federal (not to mention State) agencies that deal with labor questions. The Department of Labor has a conciliation service; the National Recovery Administration has a compliance board; the National Labor Board, set up by Executive order, exists in Washington and 20 regional boards have been established throughout the country subordinate to that National Labor Board; and recently the N. R. A. has been establishing in various industries industrial boards.

It is important that these agencies should not be multiplied, lest parties fail to know either the proper tribunal to which to resort or the proper construction of law to follow. Three essentials of justice are that it shall be administered promptly, clearly, and with finality. By establishing a quasi-judical board this bill definitely establishes the agency that shall give the final administrative interpretation of the law. Of course, court review remains available, as it always does under our system of Government.

Another important aspect of the bill, as amended, is the emphasis it places on the strictly judicial aspect of the work of the Board. It is not primarily a prosecuting agency to ferret out offenders. So far as possible all disputes will continue to be adjusted by conciliatory methods, such as those used in the Division of Conciliation of the Department of Labor. When a case cannot be adjusted because of the continuance of unfair labor practice or because of disputes over representation, it can be referred to the National Industrial Adjustment Board,

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which can then judicially consider it. This makes two things plain: First, the Board is to enforce the law as written by Congress; and, second, the Board acts only when enforcement is necessary and adjustment has failed.

UNFAIR PRACTICES

The bill declares that it shall be an unfair labor practice (the conduct of an employer that abridges his employees' rights) "for an employer to attempt, by interference or coercion, to impair the exercise by employees of the right to form or join labor organizations, to designate representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection."

It shall be an unfair labor practice "for an employer to interfere with or dominate the administration of any labor organization or contribute financial support to it," with a proviso that employees may be permitted to carry on negotiations with one another or their employers on company time—that is, during working hours—without loss of pay.

It shall be an unfair labor practice "for an employer, by discrimination in regard to hire or tenure of employment or any term or condition of employment, or by contract or agreement, to encourage or discourage membership in any labor organization." A proviso permits the closed shop, that is, labor-union membership as a requirement of employment, when employer and employee so agree; but "nothing in this proviso shall be construed by the Board to indicate that any employer is bound to enter into an agreement conditioning employment upon membership in any labor organization."

The National Industrial Adjustment Board may ascertain and determine whether such an unfair labor practice is being indulged in, and, if the decision is in the affirmative, may make application to the courts for an appropriate restraining order.

EMPLOYEE REPRESENTATIVES

The Board has another important function. When a dispute arises, as is now so frequent, as to who are the representatives of the employees with whom the employer is required to deal for the purpose of collective bargaining, the Board may undertake to determine this question and to certify to the employer the names of individuals or labor organizations that have been designated and authorized to represent employees by not less than a majority.

This new bill doubtless will have critics who will complain that it does not go far enough and that it will not insure industrial peace. It will be for the Congress and the country to say whether half a loaf is preferred to no bread. The whole loaf, namely, the creation of a governmental instrumentality which would be able to insure and guarantee and enforce industrial peace by outlawing all strikes and by arbitrary determination of every sort and kind of labor dispute, is the dream of the idealist but utterly impossible of actual attainment under a democratic form of government. Neither employers nor employees are willing to accept the principle of involuntary arbitration. No employee can be compelled to render labor or service, and the employer has corresponding rights that are inalienable.

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CONGRESSIONAL RECORD, SENATE—JUNE 6, 1934

(78 Cong. Rec. 10559)

NATIONAL INDUSTRIAL ADJUSTMENT ACT—ADDRESS BY SENATOR WALSH

Mr. WAGNER. Mr. President, I ask unanimous consent to have printed in the RECORD a very able and instructive address by the distinguished senior Senator from Massachusetts [Mr. WALSH], delivered over the radio on June 5, on the subject of the National Industrial Adjustment Act.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

That labor disputes leading to strikes and lockouts are occurring altogether too frequently cannot be denied. That they are likely to continue in increasing number and intensity during coming months is feared.

What, if anything, can the Government do to check this economic waste—these conflicts between employers and employees that invariably disturb the tranquillity of a community, impede industrial recovery, and frequently result in violence and loss of life? There is ample law to punish all acts of violence to person and property whenever they occur. But cannot some law be enacted that will force a peaceful solution of labor differences before a strike is declared, or at least before the punishable acts of violence occur? The answer to this question has not yet been completely found.

And what is the reason? Two words—"freedom" and "democracy." The solutions, invariably proposed, substitute servitude and autocracy.

It is a generally accepted right in all democracies that no law should require any person to render labor or services for another without his consent. This is the inalienable right of freemen. Consent to work includes, of course, consent not to work. A strike is a refusal (by employees collectively) to render labor or services.

SOCIAL JUSTICE

Again I press the question, How can we prevent strikes? The application by employees and their labor leaders and employers and their representatives of the Christian principles of social justice would solve this problem, but this seems impossible under existing conditions of selfishness and greed, of distrust and suspicion, of irreligion and materialism.

But can a statutory enactment compel the execution by employees and employers of the principle of social justice? Certainly not, the law cannot attune men's consciences to the natural laws of justice. The law, however, can point out what acts are in conflict with justice, forbid them, and punish those who commit them. This is exactly what the bill pending before Congress, which we are now to analyze, proposed to do.

When introduced by Senator WAGNER, whose keen interest in social welfare and labor legislation is nationally recognized, the bill was called the "Labor Disputes Act." The bill, after extensive hearings and study by the Senate Committee on Education and Labor, has been reported favorably to the Senate for its action as a substitute bill and is now called because of the necessity of distinguishing this proposed legislation from the Department of Labor and the National Adjustment Act dealing with railroad labor problems, "The National Industrial Adjustment Act." The general philosophy and most of the fundamental purposes of the original Wagner bill have been retained. As stated, this

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bill defines just what acts in our industrial life are in conflict with the rights that I believe all concede should be enjoyed by employees, by those who work and toil for wages in our industrial life.

You inquire, Why is there need of specifying acts that impair the rights of workers? Are not employers' and employees' rights self-evident? But it must be recognized that a declaration or a statute that merely asserts that the press shall be free, that religion shall be free, is not effective unless and until those acts which deny freedom to the press and deny religious freedom are defined, forbidden, and punished.

NATIONAL INDUSTRIAL RECOVERY ACT

When last year the Congress passed, at the suggestion of President Roosevelt, as one of the important objectives in his recovery program, the National Industrial Recovery Act, certain rights or, rather privileges (because these rights had been heretofore denied), were granted to the owners and operators in industry and commerce. They were granted the right to organize and engage in certain practices relating to management and operation of their businesses, relating to the prices which they might charge the public, and the elimination of competition—all of which they were estopped from doing in ordinary times.

In the same law, the National Industrial Recovery Act, and in that part of it known as "section 7a", certain rights were declared in favor of employees. These rights, briefly stated, relate to freedom on the part of employees to organize and bargain collectively. A provision was made for the incorporation of these rights in the various codes. The President later established a Labor Board by Executive order which was entrusted with the duty of trying to adjust labor disputes arising out of and as a result of the enactment of the National Industrial Recovery Act. This Board soon discovered that the rights, stated more or less in general terms, were ambiguous and misleading, both to employers and employees, as to their exact rights under law.

At times different groups of employees representing different labor organizations in the same industry claimed the right to represent the employees in their particular plant in dealing with their employers.

Some employers discriminated in favor of one group against another, or one organization against another.

Some employers assume a hostile attitude against all attempts to organize their employees. These differences and, in some cases, rivalries between employees (and a confused and suspicious state of mind on the part of some employers) have resulted in strikes and in numerous labor disputes we have been experiencing.

THE PRESIDENT'S LABOR BOARD

All the members of the President's Labor Board, including those representing labor and those representing the employers, reached the conclusion that the general declaration in section 7A of the National Industrial Recovery Act tend to make for misunderstandings. They found that absence of a clear and unmistakable definition of the rights of employers and employees, handicapped **[10560]** the Board's activities to promote peace and maintain the rights of the parties to these disputes. The absence of defined power and authority in the Board itself, and of proper enforcement provisions has added to the confusion. Mark you, the Board has no statutory existence, but is merely a temporary organization created by the President. Whatever authority the Board possesses will end next July when the National Industrial Recovery Act expires.

Employers, standing strictly on their legal rights, have questioned and, in some cases, defied the authority of this Board.

With this background we can well understand why practically all the members of this Board, representing employees and employers (most of the employers,

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however, being of the liberal-minded school) have requested some legislation. The original Wagner labor disputes bill was the consequence of these experiences.

WHAT THE BILL DOES NOT DO

Let us now analyze the bill as revamped and which is now before the Senate and which is entitled "A bill to create a National Industrial Adjustment Board." Let me add, the bill is greatly misunderstood and much misrepresented.

The board created in the bill is not going to be empowered to settle all labor disputes. Indeed, we can perhaps best understand the limited but important provisions of this bill by reciting, first, what aspects of the employers' relationship with employees the bill does not deal with.

Nothing in this bill allows the Federal Government or any agency to fix wages, to regulate rates of pay, to limit hours of work, or to effect or govern any working condition in any establishment or place of employment.

Nothing in this bill requires any employee to join any form of labor organization.

Nothing in this bill requires the employees in any industry to organize.

Nothing in this bill requires an employer to compel his employees to organize. All employees are free to choose to organize or not to organize, to join any or whatever labor organization or union they choose. If employees choose to organize a shop committee or a union for a particular plant or company, they may do so. If employees choose to form a union affiliated with any national or international organization, they may do so. There is nothing in this bill that compels any employer to make any agreement about wages, hours of employment, or working conditions with his employees.

WHAT THE BILL DOES

The bill does provide the means and manner in which employees may approach their employers to discuss grievances and permit the board to ascertain and certify the persons or organization favored by a majority of the employees to represent them in collective bargaining, when the question of that representation is in doubt or dispute. Beyond this the bill does not go.

A crude illustration is this: The bill indicates the method and manner in which employees may organize, the method and manner of selecting their representatives or spokesmen, and leads them to the office door of their employer with the legal authority to negotiate for their fellow employees. The bill does not go beyond the office door It leaves the discussion between the employer and the employee, and the agreements which they may or may not make, voluntary and with that sacredness and solemnity to a voluntary agreement with which both parties to an agreement should be enshrouded.

UNFAIR PRACTICES LISTED

Having, I hope, removed some of the misconceptions of the bill, let me state in more detail just what the bill does. It lists certain practices in which some employers (I regret to say) are prone to indulge, and which are specifically declared to be unfair. These unfair labor practices are as follows:

The first unfair labor practices is for an employer to interfere or coerce the exercise by employees of certain rights which are admitted everywhere to be the basis of industrial no less than political democracy, namely the right to be free to form or join organizations, to designate representatives, and to engage in concerted activities for their mutual welfare. Up to the present time I have never met any reputable employer or anyone else who is willing to deny publicly this right to employees.

As defined in the original Wagner bill, the employer was to be restrained from influencing, as well as interfering or coercing, his employees with respect to form-

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ing or joining a labor organization. Our Senate committee, in redrafting the bill, eliminates the word "influencing," for we believed that both employees and employers ought to enjoy the right of peaceful persuasion with respect to joining or not joining a labor organization. This unfair practice, therefore, does restrain an employer from interfering or coercing in this matter.

The second unfair labor practice is directed against the employees. It is the only one relating to restriction on employees. It prevents employees from interfering or coercing employers in the exercise of the latter's right to join or to form organizations and to designate representatives of their own choosing for the purpose of collective bargaining. Employers are inclined to make light of this restraint upon employees, for they assert that this is not of any benefit to them and there is no necessity of such inhibition. Evidence before our committee was, however, that on occasions labor organizations have attempted to coerce employers from joining trade organizations that were in disfavor with labor organizations.

The third unfair labor practice that is prohibited prevents an employer from interfering with or dominating the administration of any labor organization or contributing financial support to it. All employers unhesitatingly approved of this clause if the words "or contribute financial support to it" were eliminated. The reason that employers urge the elimination of these words is because it has been and is the practice of employers to render financial assistance to so-called "company union" or the "individual shop union" that is organized independently of the national trade unions.

The committee considered this question with much care. We found that the claim made by the leaders of the national labor organizations was to the effect that many company unions, because of the financial contributions by employers, were subsidized organizations; that in many instances the employer dictated the text of the constitution and bylaws to these organizations, paid the expense of holding meetings and elections of the organizations, extended special benefits that attracted their employees to membership in the company unions and sometimes made financial contributions to one or several rival labor organizations. We reached the conclusion that financial support in some instances was an abuse and did deny that freedom and independence which the employees in organizing for their mutual welfare should enjoy. We reached the conclusion that we ought not to prevent or deny the right of employees, if they chose to do so, to organize a company union, but we believed that it was important that they should not be subsidized organizations.

The result was that we added a provision which, while forbidding general financial support to any organization, trade union, or company organization, permitted the employer to compensate the representatives of his employees who conferred together, or with the management, during working hours with reference to grievances, and not only permitted the employees to use working hours for this purpose, but also permitted them to do so without loss of time; that is, by paying him what he would earn during those hours at his regular work. We subjected this privilege by prescribing rules and regulations with respect to it tending to prevent domination. In a word, this third unfair labor practice seeks to remove from the industrial scene unfair pressure by the employer upon any labor organization that his workers may choose, yet leaves fair discussion unhampered.

It should be stated at this point that the Railway Labor Act now pending before the Senate and which deals with the labor problems of employees in the railway service contains a similar provision restricting financial support by the employers. National trade unions do not seek financial support from employers. They rely upon the dues paid by their own members to maintain their organizations and cover the expenses of administration, and this is one of their reasons for opposing financial aid from employers.

The fourth unfair labor practice is a corollary of the first unfair labor practice.

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The employer is forbidden to discharge or refuse to employ or promote merely because the employee joins a labor organization. In brief, it makes it illegal for an employer to discriminate against employees by encouraging or by discouraging an employee from membership in any labor organization. We must not misunderstand this fourth unfair labor practice. An employer is not prevented from discharging any employee who lacks skill or ability, nor is he required to hire any incompetent man. The employer is merely prevented from using his right of nonemploying or discharging, or promoting or discriminating against an employee merely because he joins an organization or refuses to join a labor organization. Neither does the fourth unfair labor practice prevent an employer, if he chooses to do so, from negotiating a voluntary agreement with the representatives of his employees which conditions employment on membership in any particular labor organization, if his employees or their representatives desire it, and he consents.

ADMINISTRATION AND ENFORCEMENT

Having considered the unfair labor practices that are forbidden, the next question that naturally arises is how are these provisions of law to be administered and what is the procedure of enforcement where the claim is made that unfair labor practices exist. For this purpose the board creates the National Industrial Adjustment Board, consisting of 3 persons representing the general public and 1 person representing employers and 1 person representing employees. There term of office is 5 years. The salary $10,000.

This board is given the power to prevent any unfair labor practices and to take proper steps to enforce its findings. Complaints may be made to the board, hearings held, and a decision rendered. But is is assumed these alleged unfair practices may often be peacefully adjudicated, for the board is empowered to take jurisdiction over alleged unfair labor practices only when these practices have led or threatened to lead to a labor dispute that might affect commerce or obstruct the free flow of commerce. The decision of the board may be appealed by any aggrieved party and reviewed by the circuit court of appeals in the district where the unfair practice is continuing.

These constitute the major provisions of the revised bill.

ELECTION OF EMPLOYEE'S REPRESENTATIVES

One other important provision is that where a dispute takes place among employees as to who are the representatives to negotiate collective bargaining with their employer the board is authorized to take a secret ballot or use other suitable methods of determining what kind of an organization the majority of the employees desire and just who the majority of the employees desire to choose as their representatives.

[10561] There is nothing in this provision, or any other provision of the act, which prohibits an employer from discussing grievances with any employee or groups of employees at any time, irrespective of the duly chosen representatives of the majority. Thus an employer before agreeing or in agreeing to any settlement of grievances presented by the duly chosen representatives of a majority of his employees may receive the views of these representatives of the minority.

ARBITRATION FOR DISPUTES

Another aspect of the bill which we need not specially consider is that provision is made for parties to a dispute invoking the board to arbitrate voluntarily any and all differences which may arise in reference to labor disputes outside the scope of these defined unfair practices. It is to be noted that this is a provision that is entirely voluntary.

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COERCION BY EMPLOYEES

Many employers have urged that the bill should contain a provision to the effect that it constituted an unfair labor practice for an employee or a group of employees to interfere or coerce an employee to join any particular labor organization.

They have indicated that the bill would be acceptable to them if such a provision was included in the bill, because they stated it would put both employees and employers in a like status so far as interference or coercion by employee or employer with respect to joining or refraining from joining a labor organization is concerned.

The committee carefully considered this proposal and reached the conclusion that such an adoption would be unwise and that this principle was founded upon a misconception of the bill.

An employee, like an employer, of course, has the right to discuss the merits of any organization. Indeed, Congress could not constitutionally pass a law abridging the freedom of speech.

On the other hand, an employee, like an employer, cannot lawfully use threats of physical violence, or inflict physical damage upon persons or tangible property. If he does so, the civil and in many cases the criminal laws of the several States could be invoked, and he could be fined or sent to jail.

The bill now under consideration does not enter into these realms of free speech or physical violence. It does not establish a police court. It does not deal with physical coercion, but with economic coercion. And economic coercion is a weapon that could be exercised by the man who hires and discharges, and not by a fellow employee. Only an employer has it within his power to use economic pressure.

The use of the clause suggested has another danger that is not immediately apparent, but against which it is necessary to guard. The Supreme Court of the United States in the Hitchman case and State courts in other cases have construed the word "coercion" to embrace strikes and picketing. Strikes and picketing are in many cases unjustifiable and unwise, but the purpose of this bill is not to outlaw all strikes and all pickets. Yet if Congress were to make it an unfair practice for an employee to coerce his fellow employees to join or to refrain from joining an organization, some court, relying on earlier decisions, and not adequately informed of the purpose of this bill, might conclude that strikes and pickets had been made unlawful.

CONCLUSION

I hope I have removed some of the prevailing misgivings and misrepresentations concerning this bill and retained respect for the purposes of this legislation. The bill is intended to provide a medium and method of peaceful settlement of disputes arising over employees' rights to organize and to assure employees protection against interference and coercion by their employers.

This is not intended to be a reflection upon the employers of this country. For most of them no such legislation is needed. For most people no statute is needed to prevent larceny; but because there is a statute forbidding larceny, there is no intention to reflect upon the honesty and law-abiding spirit of our people. This bill is intended to restrain that class of employers who have failed to realize the thing we call "social justice" as between employer and employee.

If employers accept the law in a friendly and cooperative way, and if employees realize that these rights are granted not for the purpose of arousing hostilities or misunderstandings between them and their employees but for the purpose of paving the way for cooperation and mutual progress, it should instill and promote better relations between all classes and groups in industry.

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73D CONGRESS
2D SESSION

H. R. 8423

IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 1934

Mr. CONNERY introduced the following bill; which was referred to the Committee on Labor and ordered to be printed

A BILL

To equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

SECTION 1. This Act may be cited as the "*Labor Disputes Act.*"

SEC. 2. The tendency of modern economic life toward integration and centralized control has long since destroyed the balance of bargaining power between the individual employer and the individual employee, and has rendered the

individual, unorganized worker helpless to exercise actual liberty of contract, to secure a just reward for his services, and to preserve a decent standard of living, with consequent detriment to the general welfare and the free flow of commerce. Inadequate recognition of the right of employees to bargain collectively through representatives of their own choosing has been one of the causes of strikes, lockouts, and similar manifestations of industrial strife, obstructing commerce and imperiling the general welfare. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of commerce, to encourage the establishment of uniform labor standards, and to provide for the general welfare, by removing the obstacles which prevent the organization of labor for the purpose of cooperative action in maintaining its standards of living, by encouraging the

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equalization of the bargaining power of employers and employees, and by providing agencies for the peaceful settlement of disputes.

SEC. 3. When used in this Act—

(1) The term "person" includes any individual, partnership, association, corporation, and the legal representative, trustee in bankruptcy, receiver, or trustee thereof, or the legal representative of a deceased person, employing one or more workers.

3

(2) The term "employer" means a person who has one or more employees, except that the term "employer" shall not include the United States, or any State, municipal corporation, or other governmental instrumentality, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization, or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" means any individual employed by an employer under any contract of hire, oral or written, express or implied (including any contract entered into by any helper or assistant of any such individual, whether paid by him or his employer, if such assistant or helper is employed with the knowledge, actual or constructive, of the employer), or any individual formerly so employed whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice: *Provided*, That the term "employee" shall not include an individual who has replaced a striking employee. Wherever the term "employee" is used, it shall not be limited to mean the employee of a particular employer, but shall embrace any employee, unless the Act explicitly states otherwise.

(4) The term "representatives" includes any individual or labor organization designated by workers as their representative or representatives.

4

(5) The term "labor organization" means any organization, labor union, association, corporation, or society of any kind in which employees participate to any degree whatsoever, which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, or hours of employment.

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(6) The term "commerce" means trade or commerce, or any transportation of communication relating thereto, among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State of any Territory or the District of Columbia or any foreign country.

(7) The term "unfair labor practice" means any unfair labor practice listed in section 5.

(8) The term "National Labor Board" means the National Labor Board created by section 201 of this Act.

SEC. 4. Employes shall have the right to organize and join labor organizations, and to engage in concerted activities, either in labor organizations or otherwise, for the purposely of organizing and bargaining collectively through representatives of their own choosing or for other purposes of mutual aid or protection.

SEC. 5. It shall be an unfair labor practice for an employer, or anyone acting in his interest, directly or indirectly—

(1) To attempt, by interference, influence, restraint, favor, coercion, or lockout, or by any other means, to impair the right of employees guaranteed in section 4.

(2) To refuse to recognize and/or deal with representatives of his employees, or to fail to exert every reasonable effort to make and maintain agreements with such representatives concerning wages, hours, and other conditions of employment.

(3) To initiate, participate in, supervise, or influence the formation, constitution, bylaws, other governing rules, operations, policies, or elections of any labor organization.

(4) To contribute financial or other material support to any labor organization, by compensating anyone for services performed in behalf of any labor organization, or by any other means whatsoever.

(5) To fail to notify employees in accordance with the provisions of section 304 (b).

(6) To engage in any discriminatory practice as to wage or hour differentials, advancement, demotion, hire, tenure of employment, reinstatement, or any other condi-

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tion of employment, which encourages membership or non-membership in any labor organization: *Provided*, That

6

where a contract or agreement of any kind is or shall be in force between an employer and a group of employees, the provisions of such contract or agreement regarding conditions of employment shall not, because of anything contained in this paragraph, compel an employer to observe similar conditions of employment in his relations with all his employees: *Provided further*, That nothing in this Act shall preclude an employer and a labor organization from agreeing that a person seeking employment shall be required, as a condition of employment, to join such labor organization if no attempt is made to influence such labor organization by any unfair labor practice, if such labor organization is composed of at least a majority of such employers' employees, and if the said agreement does not cover a period in excess of three years.

SEC. 6. (a) Any unfair labor practice that burdens or affects commerce or obstructs the free flow of commerce, or has led or tends to lead to a labor dispute that might affect or burden commerce or obstruct the free flow of commerce shall be a misdemeanor, and upon a conviction thereof an offender shall be fined not more than $500 for each offense, and each day such offense shall be continued shall be considered a separate offense.

(b) The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain any unfair labor practice that burdens or affects commerce

7

or obstructs the free flow of commerce, or has led or tends to lead to a labor dispute that might affect or burden commerce or obstruct the free flow of commerce, and it shall be the duty of the several district attorneys of the United States, but solely at the request of the National Labor Board, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain any such unfair labor practices.

TITLE II

SECTION 201. There is hereby created a Board, to be known as the "National Labor Board" (hereinafter referred to as the "Board"), which shall be composed of seven

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members, to be appointed by the President, by and with the advice and consent of the Senate. Two of the appointed members shall be representative employers of labor who have participated in the activities of a national trade association which is affiliated with similar national trade associations, and two members shall be representatives of labor who have participated in the activities of a national labor union which is affiliated with similar national labor unions, and three as representatives of the general public. The members representing the general public shall be appointed for terms of five years each, and the other members shall be appointed for terms of one year each, and all members shall be eligible for reappointment. Any person chosen to

8

fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one of the members as chairman of the Board. No member representing the general public shall engage in any other business, vocation, or employment. A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board. The Board shall have an official seal, which shall be judicially noticed.

SEC. 202. (a) Each member shall receive a salary of $10,000 a year. The Board shall appoint and fix the compensation of an executive secretary, and it shall have authority to appoint and fix the compensation of such attorneys, special experts, examiners, mediators, clerks, and other employees, and to establish such regional or local boards, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may make such appointments without regard to the civil service laws or the Classification Act of 1923, as amended.

(b) All the expenses of the Board, including all necessary traveling expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

9

SEC. 203. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise all its powers at any other place. The Board may, by one or

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more of its members or by such employees as it may designate, prosecute any inquiry necessary to its duties in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 204. The Board may, either by itself or through its agents, offer its services to the parties to any labor dispute as conciliator or mediator in such dispute, and may act as conciliator or mediator for the parties who accept such offer.

SEC. 205. (a) The Board is empowered to prevent any person from engaging in any unfair labor practice that burdens or affects commerce or obstructs the free flow of commerce, or has led or tends to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

(b) Whenever any member of the Board, or the executive secretary, or any person designated for such purpose by the Board, shall have reason to believe, from information acquired from any source whatsoever, that any person has engaged in or is engaging in any such unfair labor practice, he shall in his discretion issue and cause to be

served upon such person a complaint stating the general nature of the charges in that respect, and containing a notice of hearing before either an examiner or the Board at a place therein fixed, not less than twenty-four hours after the service of said complaint, but the examiner or the Board shall have discretion to continue or adjourn such hearing from time to time. Any such complaint may be amended by any member of the Board or by any person designated for that purpose by the Board at any time prior to the issuance of an order based thereon; and the original complaint shall not be regarded as limiting the scope of the inquiry. The person so complained of shall have the right to file an answer, to appear and give testimony at the place and time fixed in the complaint, and to avail himself of the compulsory process of the Board in summoning witnesses in his behalf. In the discretion of the examiner or the Board, any other person shall be allowed to appear in the said proceeding by consul or in person to present testimony. In any such proceeding, the examiner or the Board shall not be bound by the rules of evidence prevailing in courts of law or equity.

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(c) The testimony taken by an examiner or the Board shall be reduced to writing and filed in the office of the executive secretary. Thereafter, in its discretion, the Board may itself take further testimony and/or hear argument.

11

If upon all the testimony taken, the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an appropriate order directed to such person. The order may require such person to cease and desist from such unfair labor practice, or to take affirmative action, or to pay damages, or to reinstate employees, or to perform any other acts that will achieve substantial justice under the circumstances. Such order may further require such person to make a report from time to time showing the extent to which he has complied with the order. Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(d) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any district court of the United States within any district wherein the labor practice in question was engaged in or wherein such person resides or carries on business, or the Supreme Court of the District of Columbia, for the enforcement of the order of the Board, and shall certify and file in the court a transcript of the record upon which such

12

order was entered, together with a copy of the findings and the order of the Board. Upon such filing of the petition and transcript, the court shall place such petition upon its motion or equity calendar and shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside in whole or in part the order of the Board. No objection to the order of the Board shall be considered by the court unless such objection shall have been urged before the Board.

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The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, the court may order such additional evidence to be taken before the Board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken, and it shall file such modified or new findings, which, if supported

13

by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree, affirming, modifying, or setting aside, in whole or in part, any order of the Board, shall be final, except that the same shall be subject to review by the appropriate Circuit Court of Appeals or the Court of Appeals of the District of Columbia, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347). The commencement of proceedings under this subsection shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(e) No court shall have any jurisdiction to enjoin the Board or an examiner from taking action or holding hearings under a complaint.

(f) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

(g) Complaints, orders, and other processes of the Board and its agents may be served by anyone duly authorized by the Board, either (1) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other

14

executive officer, or a director of the corporation to be served; or (2) by leaving a copy thereof at the principal office or place of business of such person, partnership, or

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corporation; or (3) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business; or (4) by sending a telegraphic copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the agent so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt or telegraph receipt for said complaint, order, or other process registered and mailed or telegraphed as aforesaid shall be proof of the service of the same.

SEC. 206. (a) The Board shall have power to act as arbitrator in labor disputes. When any of the parties to a labor dispute agree to submit the whole or any part thereof to the arbitration of the Board, and the Board accepts such submission, the agreement shall be valid, irrevocable, and enforceable as to the submitting parties save upon such grounds as exist at law or in equity for the revocation of any contract. In any case accepted by it for arbitration the Board shall have power to issue an award applicable to the submitting parties.

(b) Unless a party to the arbitration has otherwise stipulated at the time of the submission of the case to the Board, any party to the arbitration, or the Board itself, may within one month after the award is made, apply to the Supreme Court of the District of Columbia for an order confirming the award, and thereupon the court shall grant such an order unless the award is vacated, modified, or corrected as hereinafter prescribed. Notice of the application shall be served upon the other parties to the arbitration by the marshal of any district within which they may be found, in like manner as any other process of such court, and thereupon such court shall have jurisdiction of such parties as though they had appeared generally in the proceeding.

(c) The court may make an order vacating the award upon the application of any party to the arbitration if the Board exceeded its powers or executed them so imperfectly that a mutual and definite award upon the subject matter was not made. The court may make an order modifying or correcting the award upon the application of any party to the arbitration if (1) the award covers a matter not

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submitted to the Board (unless the award upon such matter does not affect the merits of the decision upon the matter submitted) or (2) the award is imperfect in matter of form not affecting the merits of the controversy. The order

16

may modify or correct the award so as to effect the intention thereof and promote justice between the parties. A party to the arbitration, claiming to be aggrieved by the award, may apply to the court, within one week after the award is made, for an order vacating, modifying, or correcting the award. Notice of such application shall be served upon all other parties to the arbitration proceeding or their attorneys, by the marshals of the respective districts within which such parties may be found. For the purposes of the application, any judge who might make an order to stay the proceedings in any action brought in the same court may make an order, to be served with the notice of the application, staying the enforcement of the award.

(d) The party applying for an order confirming, modifying, or correcting an award shall, at the time the application is filed, also file the following papers with the clerk of the court: (1) An agreement to arbitrate; (2) the award of the Board; and (3) each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon any such application. The order shall be docketed as if it were rendered in a suit in equity and shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a decree in a suit in the court in which it is entered; and it may be enforced

17

as if it had been rendered in a suit in the court in which it is entered.

SEC. 207. (a) In any dispute as to who are the representatives of employees, the Board, if the dispute might burden or affect commerce or obstruct the free flow of commerce, may investigate such dispute and certify to the parties, in writing, the name or names of the individuals or labor organizations that have been designated and authorized to represent the employees. In any such investigation, the Board shall be authorized to take a secret ballot of employees, or to utilize any other appropriate method to ascertain their representatives.

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(b) In any dispute not of the character described in subsection (a), as to who are the representatives of employees, the Board may offer its services to aid in determining who are the employees' representatives.

SEC. 208. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by sections 205 and 207 (a)—

(1) Any member of the Board, or any agent designated by it for such purposes, is empowered to administer oaths and affirmations, take depositions, subpena witnesses, take evidence, and require the production of any books, papers, or other documents which the Board deems relevant

or material to the inquiry. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any district court of the United States, the United States courts of any Territory or possession, and the Supreme Court of the District of Columbia, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides, upon application by the Board, shall issue to such person an order requiring such person to appear before the Board, or an examiner designated by it, there to produce documentary evidence if so ordered, or there to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and other documents before the Board, or in obedience to the subpena of the Board or any member thereof or any agent designated by it, or in any cause, proceeding, or investigation instituted by the Board, on the ground that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him

to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning

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which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Witnesses summoned before the Board or any of its examiners shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 209. The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

SEC. 210. Any person who shall willfully assault, resist, prevent, impede, or interfere with any member of the Board or any of its agents in the performance of his duties pursuant to section 205 or section 207 (a), shall be punished by a fine of not more than $5,000, or by imprisonment for not more than one year, or both.

TITLE III

SECTION 301. There is hereby created in the Department of Labor the United States Conciliation Service, under the direction of a Director of Conciliation. The Secretary of Labor shall appoint and fix the compensation of such Director, and shall have authority to appoint and fix the compensation of such commissioners of conciliation, clerks, and other officers and employees as he may from time to time find necessary for the proper performance of the duties of the Service, and as may from time to time be appropriated for by Congress. The Secretary of Labor may make such appointments without regard to the provisions of the civil-service laws or the Classification Act of 1923, as amended.

SEC. 302. It shall be the duty of the United States

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Conciliation Service, whenever the Director deems it desirable, to offer its services to the parties to any labor dispute, and to attempt to adjust such dispute by conciliation or mediation, or by arranging for voluntary arbitration. Nothing in this title shall limit the power given to the

Secretary of Labor under section 8 of the Act of March 4, 1913 (U. S. C., title 5, sec. 619).

SEC. 303. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 304. (a) Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act and/or of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U. S. C., title 29, secs. 101–115), conflicts with the application of the provisions of this Act, the provisions of this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of section 7 (a) of the National Industrial Recovery Act and/or of such Act of March 23, 1932 shall apply.

(b) Any term of a contract or agreement of any kind which conflicts with the provisions of this Act is hereby abrogated, and every employer who is a party to such contract or agreement shall immediately so notify his employees by appropriate action.

SEC. 305. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application

of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

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CONGRESSIONAL RECORD, HOUSE—APRIL 23, 1934

(78 Cong. Rec. 7164)

RADIO ADDRESS OF HON. JOHN LESINSKI, APRIL 15, 1934

Ladies and gentlemen of the radio audience—

I have been afforded the privilege to speak over this station and am taking the liberty to deliver my message to the listeners and endeavor to explain section 7–A of the National Recovery Act.

The feeling and the unrest among the labor ranks is due to the fact that many of the laborers have been exploited through the speed-up system in our industries inasmuch as the industries in their continuous competition have attempted to produce products at a continual reduction of price, so that not only the domestic trade, but also the foreign trade would absorb our products on account of the low price.

Industry has forgotten one fundamental part, and that is—that by constantly attempting to lower the price of the commodity that is manufactured, the cost must be taken out of labor and the industries knowing that the present Government's desire is to increase the wage-earner's income, many of them have cooperated with the Government to that extent; but by so doing, they have speeded up the production per man to such a point that today an employee in many of the factories is only a mechanical machine working at a top speed, which in no way aids the welfare of the worker but makes him a mechanical slave.

The average worker is only able to give so many years of his life to the industry; and by the time he reaches the age of 40 years he is no more wanted, as the industry has taken the best part of his life and no longer considers him efficient. There is only one solution to this—and that is, that the industry must be fair to its employees and slow down the production lines, which, of course, will put many more men to work and will naturally add to the cost of the product. I realize fully, that the industry is not willing to do this, and on account of its stand the present unrest and dissatisfaction among the employees exist.

The present government has done more for the laborer than any other previous government has done for many years. When section 7–A became a part of the National Recovery Act, it was not put there as a gesture. It was placed on the statute books of this country for the benefit of labor, and it is up to labor to use it fully, and the Government is willing to use its offices for the benefit of labor when such demand is made. This procedure, of course, is slow, but in a long run it is the best, because both the employee and employer should have a certain amount of time to settle their differences which arise when

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demands are made either by the employer of the laborer, or employee of the manufacturer.

Realizing that the unemployment situation in this area has been beyond the comprehension of many people, and knowing that the labor cannot constantly wait until all arguments between themselves and the employers are settled, many temporarily resort to strikes, as that is the only remedy left for the employee. Relative to this matter, I still would say to the laborer that before an attempt is made to force any employer to agree to the demands of labor by striking, that labor should first use the machinery of the Government to settle their differences before they resort to other means of forcing the employer to give heed to their demands.

Being an employer for many years myself, I have always followed a rule which I personally thought was best for my business, and that was by seeing that my employees were always paid fair wages, as by paying them a fair wage I knew that I was creating a power which not only helped my business, but helped merchants along the avenue, who in turn became customers of mine. I think that the manufacturers should do likewise and treat their employees the same way.

It is up to all of us to do our share to restore prosperity back to this Nation by following a certain course and willingness to cooperate fully with the Government for the benefit of both labor and manufacturer.

I know that the President is keenly interested to bring about the recovery of the whole Nation, and he is also greatly interested that the labor should be allowed the American standard of living. A few days before I left Washington I corresponded with him regarding the situation of the speed-up system of our factories and presented to him these matters as I thought were for the benefit of the laborers. His reply to me reads as follows:

"Thank you for your note of March 24. I know a good deal about the speed-up system and that in many cases it has been carried too far in certain industries. It occurs to me, however, that it would be more practical to ask the Department of Labor to make a preliminary study of the problem. I think the Department is equipped to to this. Later on, after such a study has been made, we could deterimine whether a congressional investigation was or was not desirable."

I have since taken this matter up with the Labor Department and have a promise that an investigation is going to be made. I fully realize that if the speed-up systems and mass productions are not checked, it will be a long time before we can expect a full recovery of this Nation.

I am attempting to show labor that everything possible is being

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done for its benefit; but, of course, we also realize that labor must be fair in its demands and should not overstep its bounds and create unemployment. At the present time, in this district, or in this territory, the major portion of our labor is not organized, and I believe that great consideration should be given the welfare of its families; and for that reason I am asking labor to go along cautiously, and believe that by using the proper agencies of the Government they eventually will not only gain their point but the manufacturer will also be satisfied to go along on a program of this type.

I also realize, of course, that all the employers do not want to abide by any actions of the Government, as evidenced by the facts in the coal industry. An agreement has been reached with the producers on hours and wage scale, and a statement made by Forney Johnston, coal operator, reads as follows:

"As between the civil war in the industry and subjection of the industry to three proconsuls working through a military ringmaster, we prefer civil war."

Speaking at the closing session of the Recovery Administration's coal-wage hearing, Johnston said:

"So far as we are concerned, we have definitely and finally determined that we will not conform any further to any one-man determination of policy and dictation in repudiation of essential basis and covenant of the code."

If industry will take this type of stand, then there will be nothing else left for Congress or the Government to do but to make a law enforcing all the laws, which would then upset the condition of this country of free speech and the collective bargaining between the employee and the employer.

The industry must realize that the Government has been very lenient not to upset the traditions of the Government; but if that employer will take a stand as the Alabama coal operators did, then there is nothing left for the Government to do but enact laws which will force the employer to abide by the law as it is written. When the National Industrial Recovery Act was enacted, it was not only to protect organized labor or the unions, but it was also intended for the benefit of all employees to have the right of collective bargaining. The employees of any individual plant, if they so elect, can form their own organization in that particular industry free from any intimidation of the employer.

The employer has no right to help organize nor has he any right to prepare bylaws for the employees. The employee in this case must stand on his own right and can demand in the particular industry in which he is employed that an organization be formed by the employees, and through their efforts only. The reason for this is

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so that the collective bargaining between employer and employee is free from intimidation or coercion.

I also wish to say that I am always at the service of both the laborer and employer, and my office is open at all times to all my constituents, be they laborers or manufacturers.

CONGRESSIONAL RECORD, HOUSE—MAY 15, 1934

(78 Cong. Rec. 8884)

LABOR

Mr. PEAVEY. Probably the most important measure in Congress in protection of labor is the Wagner-Connery labor disputes bill now before the Committee on Labor. This bill has for its fundamental purpose a plan to encourage capital to operate and insure labor its right to organize and thereby exercise its liberty of contract to secure a just reward for labor performed and to preserve a decent standard of living.

Recently a petition was laid on the Speaker's desk to discharge the Committee on Labor from further consideration of the bill and bring it to the floor for a vote at this session of Congress. Representative CONNERY, author of the bill in the House, soon after the petition was placed on the desk appealed to the Members to refrain from signing the petition, stating he was in constant communication with the White House on the measure for the purpose of bringing it up for consideration at the best time. The general sentiment prevailing is that the administration is opposed to the measure and that it will not be considered at this session, unless consideration is forced by discharge of the committee.

CONGRESSIONAL RECORD, HOUSE—MAY 17, 1934

(78 Cong. Rec. 9060)

WELFARE OF THE LABORING CLASS

Mr. CARPENTER of Nebraska. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD.

The SPEAKER. Is there objection?

There was no objection.

Mr. CARPENTER of Nebraska. Mr. Speaker, some remedy must quickly be found for the misery and wretchedness which presses so heavily on the large majority of the laboring class. Workingmen have been given over, isolated and defenseless, to the callousness of employers and the greed of unrestained competition. A small number of rich men have been able to lay upon the masses of the poor a yoke little better than slavery itself.

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If business men ever adverted to the possibility that industrial relations might have an ethical aspect, they promptly satisfied their conscience by recalling the teaching of the classical economists to the effect that every free contract is also a fair contract.

Speaking generally, I may say that the rights and the obligations of both capital and labor and proposed remedies for the most destructive evils in the industrial system, showing partiality neither to employer nor to employee, treating both with evenhanded justice and charity, resolves itself into four general divisions, property, state, wages, and labor unions, which four subjects constitute the most fundamental and difficult of all our industrial problems.

Property should be widely distributed and as many as possible of the laboring class should become owners. The advantages of society would be greatly increased by a more equitable division of the productive wealth of our country, and, as far as possible, bridge over the gulf between vast wealth and sheer poverty. I do not believe in the doctrines of plutocracy, which teach that the function of ownership [9061] belongs to a few industrial and banking supermen, while the great mass of people are competent only to use the property under the dominating direction of the so-called "supermen." No reconstruction will be satisfactory or stable which does not include a wide distribution of the ownership and the profits of ownership and advantages of modern scientific improvements among the laboring masses.

State: Whenever the general welfare and interest of the great majority suffers and is threatened with destruction, it is the duty of the State and public authority to intervene, as has this administration under the great leadership of Franklin D. Roosevelt. This intervention should be broad and progressive. Our situation justified the enactment into law the 30-hour week and all reasonable measures of labor legislation. The abolishment of child labor, minimum-wage laws, and insurance against sickness, old age, and unemployment must necessarily follow. "No class legislation" is one of the shallowest of all shallow slogans that have protected the strong at the expense of the weak and defeated the ends of social justice. Legislation should be adjusted to meet the varying needs of the different social classes. The rich have always had means of shielding themselves and stand less in need of help from the State, but are usually the first to apply; while the poor have no resources of their own to fall back on and must rely chiefly upon the State to recognize their need. The wage earners belong principally to this class, and it necessarily follows, must be protected and cared for by the Government. This principle has been followed, in my judgment, to a great extent in this new deal, and the 30-hour week should also be passed to round out the program.

Wages: It has been generally thought by many that the wage contract fell under the regulative principle of supply and demand.

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Outside of the working classes themselves it was almost universally held that the wages fixed in the market by the forces of unlimited competition were always fair and just. No matter how low the remuneration of labor descended, it was ethically right and correct if it was determined by a free contract. This is not so, and has been proven incorrect and the dictates of nature have decried that in any bargain between man and man the remuneration must be sufficient to support the wage earner in reasonable and frugal comfort. If, through necessity or fear of worse evil, the workingman accepts harder conditions because the employer will give him no better, he is made the victim of force and injustice.

Almost everyone renders at least lip service to the principle of the living wage. It is the principle embodied in the N. R. A. No business whose existence depends on paying less than living wages to its workers has any right to continue in this country, and by that is meant wages that insure a decent living.

If that principle had been heeded during the past 12 years this great depression would have been much less severe, and there is a possibility that it would not have happened at all. Persons whose judgment has not been perverted by antiquated economic theories or selfish economic interest realize that the main cause of the depression has been too little money in the hands of those who would have bought more of the products of industry and the farm, and too much money in the hands of those who were unable to spend more than a small part of it for consumption goods. Had employers given more to labor and kept less for themselves, they would not have carried so far the overexpansion of our industrial plant, and therefore caused so much unemployment. If all the workers in this country had been receiving living wages during the last 20 years, they would have been able to purchase much, if not all, the goods that would have been produced.

A living wage and shorter hours, thereby putting these idle men back to work, is peculiarly appropriate and necessary in our present situation, and our present situation will never be solved successfully until we do this. Until labor obtains higher wages and shorter hours and permanent employment, thereby obtaining a larger amount of purchasing power and a greater share of profit, we shall not make much progress in wading out of our present appalling situation of 10,000,000 unemployed. We will not be able to prevent the coming of another and even more destructive collapse unless we give labor more and capital less. Our recent experience has proved by demonstration that a living wage is not only right ethically but wise economically.

Labor unions: Another subject we must also consider is the organization of labor and their right to bargain. It is a general and lasting

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law that workingmen's associations should be so organized and governed as to furnish the best and most suitable means for attaining what is aimed at; that is to say, for helping each individual member to better his or her condition to the utmost in body, mind, and property. It is well to distinguish between effective unions and hypocritical imitations. Into the United States has come such imitation, known as the "company union," and the words just quoted are an implicit condemnation of that abominable invention. The company union does not enable its members to "better their condition to the utmost in body, mind, and property." The right of the worker to enter associations is and should be his natural right. The company union violates this right and principle because in practically every case it is imposed from above by threats and coercion. The worker's right to form labor unions and to bargain collectively is as much his right as his right to participate through delegated representatives in the making of laws which regulate his civic conduct. Both are inherent rights. The worker can exercise his God-given faculty of freedom only through a system which permits him to choose freely his representatives in industry. From a practical standpoint the worker's free choice of representatives must be safeguarded in order to secure for him equality of contractive power in wage contracts. Undue interference with this choice is an unfair labor practice, unjust alike to the worker and the general public.

This, I believe, in a general way and brief time explains my stand relative to labor.

I have wandered somewhat from the subject of the 30-hour week bill, which I had the honor and privilege of signing a petition to take the bill from further consideration of the committee, and when 145 names have been attached to the petition it will bring the bill before the House to have the Members, by roll call, show their true status. Certainly no man should hesitate to cast his vote upon his own full convictions without the fear of what anyone thinks. It is utterly ridiculous to think of Members of the House being in the frame of mind that they will hesitate to vote on questions of national importance such as this bill is. I have signed the petition to discharge the committee from further consideration of the Crosser bill, giving to the railroad men the 6-hour day and I most certainly hope we will not adjourn until we have had an expression upon both these measures.

In final conclusion no permanent progress can be made until these 10,000,000 men are put back to work, and that cannot be done except by shortening the hours of labor and at the same time paying decent living wages for those shorter hours of work. By this procedure employment would be spread so that again we will give to those people what this country guarantees to people who are willing and anxious to work—a right to make a living for their families and themselves.

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CONGRESSIONAL RECORD, HOUSE—MAY 23, 1934
(78 Cong. Rec. 9422)

LABOR LEGISLATION NOW PENDING SHOULD BE ENACTED TO INSURE INDUSTRIAL PEACE

Mr. BEITER. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD.

The SPEAKER. Is there objection?

There was no objection.

Mr. BEITER. Mr. Speaker, I receive complaints from all corners of my district concerning the hardships which follow increased prices for necessities when there is no corresponding increase in wages. I get complaints about the widespread and common disregard for the N. R. A. regulations. There are complaints, and justifiable ones, too, about the little fellows being squeezed by the big, "fat" boys.

It has been clearly recognized that men and women must be counted as persons, not as mere hands and that they must have some active part in the control of the industry to which their lives are given.

Trade unions, as I see it, were organized out of the necessities of a situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Unionization is essential to give employees opportunity to deal on an equal basis with their employers.

Governments must recognize the right of men collectively to bargain for human objects that have at their base the mutual protection and welfare of those engaged in all industries. Labor must no longer be treated as a commodity. It must be regarded as the activity of human beings, possessed of deep yearnings and desires. The businessman gives his best thought to the repair and replenishment of his machinery, so that its usefulness will not be impaired and its power to produce may always be at its height and kept in full vigor and motion. No less regard ought to be paid to the human machine which, after all, propels the machinery of the world and is the great dynamic force that lies back of all industry and progress.

Mr. Speaker, I am proud to represent a State which has been brought from last to first place in the liberality of labor laws. Fifty-four, yes, fifty-four bills have been passed by the State legislature. Among them were the workmen's compensation act, wage and house laws for women and children, widows' pensions, and the law declaring that labor shall not be treated as a commodity or an article of commerce.

We in New York State are proud of the champions we have in the cause of labor. There is Al Smith, Franklin Roosevelt, Bob Wagner,

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Jimmy Walker, and last, but not least, my colleague, Jim Mead, who served in the State legislature with all four back in 1914 to 1918.

These men had nothing in common except a common cause—to make the old mossbacks of their party abandon their conservatism, to secure a new deal for labor and the man in the street.

They have been at it ever since 1910, and have done quite well. In their time they have been connected with the greatest labor reforms since the abolition of slavery. And the end is not yet.

I trust there will be no more struggles in futile opposition to the right of collective bargaining on the part of employees, and I recommend that destructive labor policies, encompassing the use of spies and deputy sheriffs as paid company guards and the contracting of individual agreements which are not free-will contracts, be abolished. The recognition of the right of representation and the prompt hearing of grievances provide the open door to reasonable and just settlements.

The employment of women and minors in trade and industry at wages unreasonably low and not fairly commensurate with the value of the services rendered is a matter of grave and vital public concern. Many women and minors employed for gain throughout the country are not as a class upon a level of equality in bargaining with their employers in regard to minimum fair wage standards, and freedom of contract as applied to their relations with their employers is illusory.

Since a very large percentage of such workers are obliged, from their weekly wages, to support themselves and others who are dependent upon them in whole or in part, they are, by reason of their circumstances, forced to accept whatever wages are offered them.

The constant lowering of wages by unscrupulous employers constitutes a serious form of unfair competition against **[9423]** other employers, reduces the purchasing power of the workers, and threatens the stability of industry.

Social workers and officials of State labor departments are reporting from different parts of the country the reappearance and rapid growth of conditions in industry which it was thought had been definitely abolished by law and public opinion. Illegally long hours, low pay, violation of protective labor legislation, and direct cheating of employees are among the conditions reported as appearing in certain industries in which children and young workers are employed in large numbers. No locality has a monopoly of such conditions, but naturally they are most frequently reported from the industrial States. According to one authority, however, conditions have grown worse also in the beet fields of the West, an industry in which, it was noted some years ago, agriculture had taken on many of the aspects of factory work.

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Concurrently with the general decrease in employment, there has been in certain industries an increase in the number of workers aged 16 and 17. Census figures show that while in general the number of youthful workers declined between 1920 and 1930, a few increases stand out strongly.

In several Southern States the percentage of textile workers of 16 and 17 years showed an increase since 1920; in the clothing industries in certain of the New England and Middle Atlantic States there has occurred a shift from older to younger employees. Thus in the clothing industry of Connecticut and Rhode Island the number of workers of 16 and 17 increased by 123 and 283 percent, respectively, whereas in New Jersey the increase was 81 percent; in Pennsylvania, 62 percent; and in Massachusetts, 52 percent.

Undoubtedly an increase in workers in this age group might exist together with the maintenance of good conditions and fair wage scales, but there is strong evidence that in many cases hours, wages, and working conditions are all far from satisfactory.

It is my hope that Congress will not adjourn until vital legislation, now pending, has been passed. If it does adjourn without considering such relief legislation as the 30-hour week bill, the Wagner disputes bill, the Crosser bill to provide a retirement system for railroad employees, the Wagner-Lewis unemployment insurance bill, the Crosser bill to establish a 6-hour day for employees engaged in interstate and foreign commerce, and the old-age pension bill, the workers may seek to obtain by strikes that which they hoped to receive by legislation.

Congress should realize the situation, with its attendant responsibilities, by passing this legislation or similar measures in order to prevent the riots, suffering, hunger, and misery that invariably follow in the wake of strikes.

Our efforts for recovery should include a program to secure and maintain industrial peace.

CONGRESSIONAL RECORD, HOUSE—MAY 29, 1934

(78 Cong. Rec. 9888)

Mr. CONNERY. I felt it was my duty as a Member of this House, with the knowledge which I possessed from these labor men and from these industrialists and the consumers all over the country, to make a statement to you today, and I say this advisedly. You have seen strikes in Toledo, you have seen Minneapolis, you have seen San Francisco, and you have seen some of the southern textile strikes—Birmingham, for instance—but, Mr. Speaker, a labor man in whom I have the greatest confidence said to me 2 days ago, "You have seen Toledo, Minneapolis, and San Francisco. That is mild. You have not yet seen the gates of hell opened, and that is what is going to happen from now on unless the Congress of the United States passes labor legisla-

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tion to cure the evils which are existing in industry and which are driving these workers to desperation."

That is strong language. I do not say this to stir you up, but I say it because the man who stated those words to me probably has a better first-hand knowledge of the labor conditions in the country than anyone I know. I believe what he told me, and I dread the days that are to come, because I know that strikes mean misery, suffering, and many times bloodshed and death to the workers and their dependents. It is because I hope that Congress can prevent these things by passing labor legislation that I take your time to address you today.

The day after the agreement on the Detroit automotive situation I said that I had hoped in that agreement it would be recognized that if you ever expect industrial peace in the United States you have got to outlaw company unions. This agreement with the Detroit manufacturers was the Waterloo of labor from labor's point of view. They were up then right on the line. That agreement to recognize company unions partially and to recognize organized labor partially is the cause of your strike today in Toledo, your strike in San Francisco, and your strike in Minneapolis.

You know it is very difficult for a stepchild and the real child of the family to get along together, just as it is very difficult for a child to get along with its stepmother. Company unions are the children of big business. Trade unions are the representatives of the workers of the United States and are stepchildren to the big industrialists.

Let us start off with the premise that either trade unions are bad or they are good. If they are bad—if they are bad for the American people, if they are bad for the American Government, they should be abolished and wiped out of existence. If they are good, if they are responsible for whatever wages labor has got in the past, if they are responsible for doing away with sweatshops and the terrible living conditions of the workers in the United States, then they ought to be supported, and there is no half-way between trade unions and organized labor in the United States and the children of big industry known as "company unions."

I appeal to your common sense as men who have studied these problems; how can a group of men in any large corporation in the United States get together in a company union and have their representatives stand up and fight for the interests of the workers? Of course it cannot be done. You may say, "Why, some manufacturers are so kindhearted that their workers do not want unions; they want to form their own organizations and deal with the kindhearted owner of the plant who is going to take care of them and give them everything they want."

Well, I have worked. I know the feelings of men and women who work in industry. I was a foreman in the General Electric Co., the Edison Lamp Works, at East Boston, where they make lamp bulbs.

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I had labor experience when I was on the stage in the theatrical profession. I was in a strike in New York and was arrested for picketing on the East Side when we of the actors' union were picketing the Avenue B Theater. We were trying to get decent living conditions for the people on the stage who at that time were in vaudeville. Conditions were such, for instance, that actors would be booked to play, for instance, Keith's Theater in Washington for a week, and Monday afternoon, if they did not like your act, they fired you and you did not get paid for anything you had done or even your expenses to Washington. They had various tricks in New York whereby they would employ 10 acts for Monday afternoon; of course, all the people would come in to see the 10 acts and then they would fire five of the acts before the evening performance and pay them nothing, not even for the afternoon performance. This is just a sample of conditions at that time. We went on strike. I was arrested as a picket and taken up to the night court of New York. They put men on the stand who stated we pushed people off the sidewalk, which was all a lot of lies, because not a soul went into that theater all the time we were picketing that day, and I shall always remember the Jewish people of New York City.

The patronage of this theater was almost entirely Jewish, and they would come up to the door and when they would see us walking up and down they would just utter the one word, "Strike," and turn around and go home and not two people went into the theater that day or night, and ordinarily the theater was packed, as it was a Saturday. We were tried and we were each fined $1 after the judge told us what terrible people we were and told if we came into court the next day on the same charge we would be sent to Welfare Island for 30 days. We went on with the strike next day, picketed the same theaters again, and they found out we were not subject to arrest but were within our rights of lawful picketing, and we were not arrested.

I know something about these company unions. The man who belongs to a company union and goes to the foreman or the boss to discuss wages or hours is not a representative of labor. He is a man trying to court favor; he is a man trying to hold his job; he is a man getting special privileges; he is a man who is allowed to go around the plant and be paid for work he is not doing, when he is around spreading the propaganda, "We have a fine boss." Then the unions step in and say, "Listen, let us be Americans. Let us not be bootlickers. Let us not bow down before the boss and say; 'Please, can I have a decent living wage?' Let us be Americans under the Constitution of the United States and stand up and say, 'We demand our right to organize. We demand the right of collective bargaining'. "

Do not forget, while we are on this point, that the bulwark against communism in the United States has been your labor unions—the American Federation of Labor. [Applause.] Your unions have been

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the defense of the United States against communism and bolshevism and nazi-ism. They are American citizens fighting for a decent living.

Let us think this thing over. Do you think in Toledo today and in Minneapolis today and in any place else in the country where they are having strikes—do you think a man with a family of five children goes out there and is chased down the street with bayonets by the National Guard, as I saw in a picture yesterday of the strike in Toledo, does this **[9889]** because he likes excitement? Do you think he goes out there risking his life or to get a clubbing on the head from the police or the hired guards of these companies because he likes it? Do you think he does it with these five children at home, perhaps hungry, for such a reason as that? No; he is out there fighting for bread for these hungry little mouths. He is fighting for clothing to put on these wasted little forms. He is fighting for milk for the baby. That is what he is fighting for, and I am asking you here today if you will not pass legislation through this Congress shortening the hours by enacting the 30-hour week bill, and give them decent, living wages after you shorten the hours. Pass legislation now to take these 10,000,000 people unemployed in the United States and put them back to work.

Now, here is the legislation I think this Congress should pass. I say this is only my opinion—I do not claim to have any cure-all, but I do claim that I know a little something about it. I think this Congress should not adjourn until it passes the Black 30-hour week bill. I want to congratulate Senator Black on his courage and foresight for having introduced the bill and for having it passed through the Senate.

I think we ought to pass the Black bill, and I think we should pass the Wagner disputes bill, which does away with the evils of company unions, although it does not go as far as I should like to have it go. But it does bring out the principle that 7A in the N. I. R. A. gives to labor the right to bargain collectively, through representatives of their own choosing. I think we ought to pass that bill, and I think we ought to pass the Wagner-Lewis bill, the unemployment insurance bill, because that is a bill to prevent hard times, to provide funds for paying wages to workers thrown out of employment by machines until they can be reabsorbed in industry.

We ought to pass the railroad pension bill, making the railroads do their share to take care of railroad employees and retire them, thus making available thousands of jobs for the younger workers and apprentices now unable to secure employment. I believe we should pass old-age pension legislation and do away with workhouses which are relics of the age of barbarism. That is the labor legislation that we ought to pass now. What has Congress done for labor in this session of Congress; I ask you, what?

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Mr. COX. What about the N. R. A.?

Mr. CONNERY. I am talking about this session of Congress; not the last session. I want to say this to my friend from Georgia [Mr. Cox]—and he is a good and sincere friend—that I think the N. R. A. is the greatest piece of legislation put on the statute books in a hundred years for labor. The N. R. A. came as the result of the Black-Connery 30-hour week bill. It abolished child labor, abolished the "yellow dog" contract, and authorized labor to bargain collectively as an organization, and upheld the right of labor to organize, and it shortened the hours by writing into the bill some other provisions of the Black-Connery bill which had been reported favorably by our Labor Committee. All the foregoing provisions I have mentioned were written into the Black-Connery 30-hour bill weeks before the N. I. R. A. was presented to Congress, and the Black-Connery bill was reported favorably to the House weeks before the N. I. R. A. was presented to either House or Senate. I say this in justice to my colleague on the Committee on Labor.

Mr. O'CONNOR. Will the gentleman yield?

Mr. CONNERY. I yield.

Mr. O'CONNOR. Is not the gentleman mistaken? Did we not pass the bill abolishing the "yellow dog" contract long before the N. R. A. was passed?

Mr. CONNERY. Yes; but that only applied to the Federal courts. You could not go into the States on an intrastate question.

Mr. O'CONNOR. But it practically abolished the "yellow dog" contract.

Mr. CONNERY. No; I wish it had. But in order to get into the Federal court they had to prove diversity of citizenship. But, further, I will say to my good friend from New York [Mr. O'CONNOR] that it took labor 40 years of hard fighting to get through that Norris-LaGuardia anti-injunction bill; and I was happy to be designated by Speaker Garner to preside in the chair during the consideration of that bill, and I was very happy to see it pass.

If the N. R. A. had done nothing else but abolish child labor and abolish the "yellow dog" contract, it would have been well worth its passage. [Applause.]

The passage of the N. R. A. has been a great forward step. It has set up principles that labor has fought for for a hundred years.

That the law has been badly administered in spots does not detract from the wonderful things that are possible under it when properly administered.

Properly administered, the N. R. A. can be made a new charter of liberty for the American workers and for industry.

I am not here to criticize the N. R. A. Above all, I am not here to criticize the President of the United States. I have repeatedly said at home and here that I think he is the greatest President we have had

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since Abraham Lincoln. [Applause.] I am not going to compare the Democratic administration with the Hoover administration, because there is no comparison. The American people know the answer to that without being told. I am asking, What have we done for labor now, in this session of Congress, with the terrible need for something to be done, with 10,000,000 people unemployment in the United States? Take the codes! We tried to fix it in the bill reported by the Committee on Labor this year. We tried to have labor representatives on the codes. That was in the Connery bill which we reported to the House this year—the 30-hour week bill. Where you have 15 men on code authorities under that bill there would be 5 employers, 5 labor employees, and 5 for the public, but you do not have that.

On your code authorities, with the exception of Sol Rosenblatt, on the amusement code, you have not a friend of labor. Look up and see who are on your code authorities. I am not blaming the President of the United States. On March 5 of this year the President, addressing a large assemblage of industrial leaders in Constitution Hall in Washington, asked industry to shorten hours and increase wages. It is now May 29, and less than one twenty-fifth of 1 percent of these industrialists have complied with the request of the President. Congress should act and do by legislation what industry refused to do for the President. The President has hundreds of problems to take care of, foreign and domestic, but I am blaming the administration of the N. R. A. Take the shoe industry. They put that on a 40-hour week. They have never worked 40 hours weekly in the history of the industry. All labor in that industry united to ask for a 30-hour week. They were refused. Then they asked for a reopening of the code to present their case. That was refused. I sent a telegram to Maj. George Berry, the administrator of that code, asking would he or would he not reopen that code. I have yet to receive an answer to my telegram sent weeks ago.

Mr. MOTT. Mr. Speaker, will the gentleman yield?

Mr. CONNERY. Yes.

Mr. MOTT. The gentleman says that he is not blaming the President, but he does say that he blames the administration of the N. R. A.

Mr. CONNERY. Yes.

Mr. MOTT. Is not the President responsible for the Administrator and the immediate personnel of the Administrator?

Mr. CONNERY. I suppose he is. I suppose the President appointed him; but when a law goes on the statute books, and this bill has been on the books for only a year, the President cannot be expected to know every detail of everything; he has to take the word many times of his subordinates that things are O. K., when they are not O. K., and he may have it in his mind for all we know to fire them all 2 weeks from now.

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CONGRESSIONAL RECORD, SENATE—JUNE 13, 1934
(78 Cong. Rec. 11267)

NATIONAL LABOR BOARD

The bill (S. 2926) to equalize the bargaining power of employers and employees to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes, was announced as next in order.

Mr. WALSH. Mr. President, that is a controversial measure. I suppose it should go over.

The PRESIDING OFFICER. The bill will be passed over.

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CONGRESSIONAL RECORD, SENATE—JUNE 15, 1934

(78 Cong. Rec. 11635)

ADJUSTMENT OF INDUSTRIAL LABOR DISPUTES

Mr. ROBINSON of Arkansas. Mr. President, I ask permission out of order to introduce a joint resolution and to have it referred to the Committee on Education and Labor and to make a very brief statement with reference to it.

The PRESIDING OFFICER. Is there objection? The Chair hears none.

Mr. ROBINSON of Arkansas introduced a joint resolution (S.J. Res. 143) to effectuate further the policy of the National Industrial Recovery Act.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. ROBINSON of Arkansas. Mr. President, the joint resolution which I have introduced, and which will be referred to the Committee on Education and Labor, is very brief. It contains only a few paragraphs and represents what to some of us is believed to be the minimum of legislation which is now required in connection with the settlement and adjustment of industrial labor disputes.

It is well known that the subject matter has received prolonged consideration by the Senate Committee on Education and Labor and that a bill relating to the subject is pending on the calendar. A great deal of very important legislation has been discussed and disposed of during the present session, but the subject matter of industrial labor disputes has not been taken up. There are threatened controversies which, it is thought, make necessary the existence of some machinery for the investigation of the controversies and to assist in their adjustment.

The joint resolution provides for the establishment of a board or boards by the President, authorized to investigate issues, facts, practices, or activities of employers or employees in controversies arising under section 7 (a) of the Industrial Recovery Act, or which are burdening or obstructing, or threatening to burden or obstruct, the free flow of interstate commerce.

Any board so authorized to be established is empowered, when it shall appear in the public interest, to order and conduct an election by a secret ballot of any of the employees of any employer, to determine by what person or persons or organization they desire to be represented in order to insure the right of employees to organize and to select their representatives for the purpose of collective bargaining.

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The boards are given authority to require the production of pertinent documents, and under the draft as it is submitted, upon application of the board or upon petition of the person to whom an order is directed, in the enforcement of the order, an appeal may lie as in cases of orders issued by the Federal Trade Commission.

The board is authorized, with the approval of the President, to prescribe such rules and regulations as it deems necessary to carry out the provisions of the joint resolution and to assure freedom in respect to all elections. Penalties are attached for violation of the rules and regulations or for efforts to impede or interfere with the action of the board. The authority under the joint resolution expires June 16, 1935.

The hope is expressed by many Senators that it may be possible to have a report from the committee to whom the joint resolution is referred, and that sometime tomorrow, if the opportunity arises, it may be possible to take up for consideration the joint resolution.

I ask reference of the joint resolution to the Committee on Education and Labor and thank the Senate for affording me this opportunity of outlining the joint resolution.

Mr. McNARY. Mr. President, may I ask the Senator from Arkansas if the joint resolution has been introduced?

Mr. ROBINSON of Arkansas. Yes.

Mr. McNARY. Has it been read twice?

Mr. ROBINSON of Arkansas. I ask that it be read twice and referred to the Committee on Education and Labor.

The joint resolution (S. J. Res. 143) to effectuate further the policy of the National Industrial Recovery Act was read twice by its title and referred to the Committee on Education and Labor.

Mr. LA FOLLETTE. Mr. President, I desire to offer an amendment to the joint resolution in the nature of a substitute therefor, which I ask to have printed and lie on the table.

The PRESIDING OFFICER. The amendment in the nature of a substitute will be printed and lie on the table.

Mr. WALSH. Mr. President, has the joint resolution been referred?

The PRESIDING OFFICER. The joint resolution has been referred to the Committee on Education and Labor.

Mr. McNARY. Mr. President, I desire only briefly to supplement the remarks made by the Senator from Arkansas.

A few days ago a proposal was placed in my hands by the Senator from Arkansas looking to a substitution for the so-called "Wagner bill." A conference of Republicans was called, including all members of the party and Senator SHIPSTEAD. The 36 Members of the Senate on this side of the aisle were requested to be present. We held a

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conference and studied thoroughly the proposal which was placed in my hands by the Senator from Arkansas. Some suggestions of modifications were made and considered and adopted. Those suggestions yesterday were placed in the hands of the Senator from Arkansas, who unquestionably consulted with the President. After further conference today, an agreement was reached by a great majority of the Members on this side to cooperate with the President, and to accept and support the proposal offered by the Senator from Arkansas.

I only hope that if the reference has not been made to the committee under the rule, after the joint resolution is read twice it may be considered without further reference. If the refernce has been made, as probably it should be, I hope that almost immediate consideration may be given the joint resolution, so that we may consider it tomorrow, in the hope that we may adjourn the session tomorrow evening.

The PRESIDING OFFICER. The Chair will state to the Senator from Oregon what the Senator, of course, knows, that a request for unanimous consent for immediate consideration would be in order.

Mr. McNARY. I am not suggesting immediate consideration. I am familiar with the rule.

The PRESIDING OFFICER. The present occupant of the chair is sure the Senator is.

Mr. McNARY. In order to keep this matter from going over, I asked that the joint resolution be read twice. That gives it such a status that it can be brought before the Senate tomorrow or can be referred to the committee tomorrow.

Mr. ROBINSON of Arkansas. I understand that the request was granted that the joint resolution be read twice. It is my expectation that the committee will report it promptly.

Mr. WALSH. Mr. President, as I understand, the matter of referring this joint resolution to the committee is a formal one. The subject matter of the joint resolution has been under consideration and study by the Committee on Education and Labor for from 2 to 3 months. We have pending on the calendar a bill which the committee favors. I understand that it is felt that the provisions of this joint resolution—which, after all is said and done, are but one or two sections lifted out of the bill pending on the calendar—should now be considered as a substitute and as a temporary measure pending the convening of the next Congress.

I see no reason why there cannot be an immediate report, because, as I said, the committee have studied the matter and are familiar with it, and there is no reason why they cannot report at once to the Senate and have the Senate make a choice as to which measure it prefers.

Mr. ROBINSON of Arkansas. Mr. President, I wish to add to what has been said by the Senator from Massachu- **[11636]** setts and also the Senator from Oregon, and to what I said a few moments ago,

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the further statement that the joint resolution is not intended to be permanent legislation on the subject.

Mr. WALSH. It is merely, as I understand, in the nature of an amendment to the National Recovery Act, which expires next June.

Mr. ROBINSON of Arkansas. The joint resolution is intended to obivate the necessity of the Congress' remaining in session for a prolonged or indefinite period to deal with a very important subject matter, namely, industrial labor disputes. It is recognized, I think, by all of us who present the joint resolution, as temporary and but a partial treatment of the subject.

Mr. WALSH. I simply desire to say in conclusion that the subject matter is not new to the committee, and there is no reason why a committee meeting cannot be held very shortly and a report made.

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Calendar No. 1546

73D CONGRESS
2D SESSION

S. J. RES. 143

[Report No. 1447]

IN THE SENATE OF THE UNITED STATES

JUNE 6 (calendar day, JUNE 15), 1934

Mr. ROBINSON of Arkansas introduced the following joint resolution; which was read twice and referred to the Committee on Education and Labor

JUNE 6 (calendar day, JUNE 15), 1934

Reported by Mr. WALSH, with amendments

[Insert the part printed in italic]

JOINT RESOLUTION

To effectuate further the policy of the National Industrial Recovery Act.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to further effectuate the policy of title I of the National Industrial Recovery Act, and in the exercise of the powers therein and herein conferred, the President is authorized to establish a board or boards authorized and directed to investigate issues, facts, practices, or activities of employers or employees in any controversies arising under section 7a of said Act or which are burdening or obstructing, or threatening to burden or obstruct the free flow of interstate commerce, *the salaries, compensations, and*

expenses of the board or boards and necessary employees being paid as provided in section 2 of the National Industrial Recovery Act.

SEC. 2. Any board so established is hereby empowered when it shall appear in the public interest, to order and conduct an election by a secret ballot of any of the employees of any employer, to determine by what person or persons or organization they desire to be represented in order to insure the right of employees to organize and to

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select their representatives for the purpose of collective bargaining as defined in section 7a of said Act and now incorporated herein.

For the purposes of such election such a board shall have the authority to order the production of such pertinent documents or the appearance of such witnesses to give testimony under oath, as it may deem necessary to carry out the provisions of this resolution. Any order issued by such a board under the authority of this section may, upon application of such board or upon petition of the person or persons to whom such order is directed, be enforced or reviewed, as the case may be, in the same manner, so far as applicable, as is provided in the case of an order of the Federal Trade Commission under the Federal Trade Commission Act.

SEC. 3. Any such board, with the approval of the President, may prescribe such rules and regulations as it

deems necessary to carry out the provisions of this resolution *with reference to the investigations authorized in section 1* and to assure freedom from coercion in respect to all elections.

SEC. 4. Any person who shall knowingly violate any rule or regulation authorized under section 3 of this resolution or impede or interfere with any member or agent of any board established under this resolution in the performance of his duties, shall be punishable by a fine of not more than $1,000 or by imprisonment for not more than one year, or both.

SEC. 5. This resolution shall cease to be in effect, and any board or boards established hereunder shall cease to exist, on June 16, 1935, or sooner if the President shall by proclamation, or the Congress shall by joint resolution, declare that the emergency recognized by section 1 of the National Industrial Recovery Act has ended.

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Calendar No. 1546

73D CONGRESS, 2d Session | SENATE | REPORT No. 1447

TO EFFECTUATE FURTHER THE POLICY OF THE NATIONAL INDUSTRIAL RECOVERY ACT

JUNE 6 (calendar day, JUNE 15), 1934.—Ordered to be printed

Mr. WALSH, from the Committee on Education and Labor, submitted the following

REPORT

[To accompany S. J. Res. 143]

The Committee on Education and Labor, to whom was referred the joint resolution (S.J. Res. 143) to effectuate further the policy of the National Industrial Recovery Act, having given the same consideration, report the same with amendments and recommend that the resolution, as amended, do pass.

At the end of section 1, replace the period with comma, and add the following:

the salaries, compensations, and expenses of the Board or Boards and necessary employees being paid as provided in section 2 of the National Industrial Recovery Act.

In section 3, line 3, after the word "Resolution" and before "and" insert the following:

with reference to the investigations authorized in section 1.

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73D CONGRESS
2D SESSION

S. J. RES. 143

IN THE SENATE OF THE UNITED STATES

JUNE 6 (calendar day, JUNE 15), 1934

Referred to the Committee on Education and Labor and ordered to be printed

AMENDMENTS

Intended to be proposed by Mr. LA FOLLETTE to the joint resolution (S.J.Res. 143) to effectuate further the policy of the National Industrial Recovery Act, viz: Strike out all after the resolving clause and insert in lieu thereof the following:

DECLARATION OF POLICY

SECTION 1. It is hereby declared to be the policy of the United States to remove unnecessary obstructions to the free flow of commerce, to encourage the establishment of uniform labor standards, and to provide for the general welfare, by establishing agencies for the peaceful settlement of labor disputes, and by protecting the exercise by the worker of complete freedom of association, self-organization, and designation of representatives of his own choosing, for

the purpose of negotiating the terms and conditions of his employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this resolution—

(1) The term "person" includes an individual, partnership, association, corporation, labor organization, legal representative, trustee in bankruptcy, or receiver.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State, municipal corporation, or other governmental instrumentality, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization, or any person employing less than ten employees.

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(3) The term "employees" shall include any employee, and shall not be limited to the employees of a particular employer, unless the resolution explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at

his home, or any individual employed by his father, mother, or spouse.

(4) The term "representatives" includes any individual or labor organization designated by employees to act for them or any individual or employer organization designated by an employer to act for him.

(5) The term "labor organization" means any organization or any agency or employee representation committee, in which employees participate and which exists for the purpose, in whole or in part, or dealing with employers concerning hours of labor, wages or working conditions.

(6) The term "employers organization" means any organization or any agency or employers representation committee which exists for the purpose, in whole or in part, of dealing with employees concerning hours of labor, wages or working conditions.

(7) The term "commerce" means trade or commerce, or any transportation or communication relating thereto, among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in

the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 3.

(9) The term "National Industrial Adjustment Board" means the National Industrial Adjustment Board created by section 4 of this resolution.

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(10) The term "old Board" means the National Labor Board established by the President in August 1933.

(11) The term the "Circuit Court of Appeals" includes the Court of Appeals of the District of Columbia.

UNFAIR LABOR PRACTICES

SEC. 3. It shall be an unfair labor practice—

(1) For an employer to attempt, by interference or coercion, to impair the exercise by employees of the right to form or join labor organizations, to designate representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or for an employer to refuse to recognize and deal with such representatives for the purpose of collective bargaining or other mutual aid or protection.

(2) For employees to attempt, by interference or coercion, to impair the exercise by employers of the right to join or form employer organizations and to designate repre-

sentatives of their own choosing for the purpose of collective bargaining.

(3) For an employer to interfere with or dominate the administration of any labor organization or contribute financial support to it: *Provided*, That, subject to rules and regulations prescribed by the National Industrial Adjustment Board, an employer shall not be prohibited from permitting an employee, individually, or local representatives of employees, from conferring among themselves or with management during working hours without loss of pay while engaged in the business of a labor organization.

(4) For an employer, by discrimination in regard to hire or tenure of employment or any term or condition of employment, or by contract or agreement, to encourage or discourage membership in any labor organization: *Provided*, That nothing in this resolution or in the National Industrial Recovery Act, or in any code or agreement approved thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or controlled by any unfair labor practice) to the effect that a person seeking employment shall be required, as a condition of employment, to join such labor organization, if the agreement is sought by the majority of employees in the

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6

unit covered by it when made and its duration is limited to a reasonable period. Nothing in this proviso shall be construed by the Board to indicate that any employer is bound to enter into an agreement conditioning employment upon membership in any labor organization.

NATIONAL INDUSTRIAL ADJUSTMENT BOARD

SEC. 4. (a) There is hereby created in the Department of Labor a board, to be known as the "National Industrial Adjustment Board" (hereinafter referred to as the "Board"), which shall be composed of five members, appointed as hereinafter provided.

(b) The President, by and with the advice and consent of the Senate, shall appoint three members to represent the general public, and shall designate one of such members as chairman of the Board. One of these members shall be appointed for a term of one year one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. Each member representing the general public shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment.

7

(c) The President, by and with the advice and consent of the Senate, shall appoint for terms of one year each six individuals as a panel to represent employers and six individuals as a panel to represent employees. In making such appointments the President may consult organized representatives of employers and employees. The chairman of the Board shall from time to time select individuals from these panels to serve as members of the Board, and shall fix and rotate their periods of service in such manner that (1) there shall always be one representative of employers and one representative of employees upon the Board, and (2) all the individuals on the panels shall, insofar as practicable, serve as members of the Board for approximately the same length of time. Members of the Board who are selected from the panels shall each receive $20 per diem

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and necessary traveling and subsistence expenses when engaged in the performance of their duties.

(d) Three members of the Board, including one member representing the general public, shall constitute a quorum. A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board. The Board shall have an official seal which shall be judicially noticed.

SEC. 5. (a) The members representing the general public shall appoint such employees, and, without regard for

the provisions of the civil-service laws, appoint such attorneys, special experts, and examiners as may be from time to time appropriated for by Congress. The Board may utilize such voluntary and uncompensated services, and establish such voluntary and uncompensated regional, or local boards, as it may from time to time find necessary.

(b) Upon the organization of the Board and the designation of its chairman, the old Board shall cease to exist; and all pending investigations and proceedings of the old Board shall be continued by the Board. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board, shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this resolution. All employees of the old Board shall be transferred to and become employees of the Board at their present grades and salaries.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by

the Board or by any individual it duly designates for that purpose.

(d) The Board may request and the Secretary of Labor may direct from time to time the officers and employees of the Department of Labor to render services and furnish information and otherwise to aid the Board in the

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performance of its duties, insofar as such assistance can be made available under the appropriations and other legal obligations of the Department of Labor.

SEC. 6. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise all its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 7. The Board shall have authority from time to time to make, amend, and rescind such reasonable rules and regulations as may be necessary to carry out the provisions of this resolution. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

10

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 8. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice defined in section 3 that burdens or affects commerce, or obstructs the free flow of commerce, or has led or tends to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

(b) Whenever a complaint is made to the Board which causes the Board to believe that any person has engaged in or is engaging in any such unfair labor practice, the Board shall issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or before a designated agent or agency, at a place therein fixed, at a time to be designated by the Board. Any such complaint may be amended by the Board in its discretion at any time prior to the conclusion of the taking of the evidence. The person so complained of shall have the right to file an answer to the original or amended complaint and appear in person or by counsel and give testimony at the place and time fixed in the complaint, and to invoke the compulsory process of the Board in summoning witnesses in its behalf.

(c) The testimony taken by such agent or agency or the Board shall be reduced to writing and filed with the

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11

Board. Thereafter, in its discretion, the Board may itself take further testimony and/or hear argument. If upon all the testimony taken, the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, or take affirmative action or to perform any other acts that will achieve substantial justice under the circumstances. Such order may further require such person to make a report from time to time showing the extent to which it has complied with the order.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) If such person fails or neglects to obey such order of the Board while the same is in effect the Attorney General, at the request of the Board, may petition any circuit court of appeals of the United States within any circuit wherein the labor practice in question occurred or wherein such person resides or carries on business, for the enforcement of such order, and shall certify and file in the court a

12

transcript of the entire record in the proceeding, including the testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such

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additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, the court may order such additional evidence to be taken before the Board and to be adduced upon the hearing. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification

13

or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347). The commencement of proceedings under this subsection shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(f) Any person aggrieved by an order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any Circuit Court of Appeals of the United States in the circuit wherein the unfair labor practice in question was engaged in or wherein such person resides or carries on business, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, and including the testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall have the same jurisdiction to affirm, set aside, or modify the order of the Board, and shall proceed in the same manner, as in the case of an application by the Board

14

for an enforcement of its order, and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) When making and entering a decree affirming, modifying, or setting aside in whole or in part an order of the Board as provided in this section, the jurisidiction of courts

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sitting in equity shall not be limited by the Act entitled, "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U. S. C., title 29, secs. 101–115).

(h) Petitions filed under this resolution shall be heard expeditiously, and if possible within ten days after they have been docketed.

(i) Complaints, orders, and other process and papers of the Board and its agents may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post-office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same.

15

ARBITRATION

SEC. 9. (a) The Board shall have power to act, and to appoint any agent or agency to act, as arbitrator in labor disputes, when parties agree to submit the whole or any part of a labor dispute to the arbitration of the Board or its appointees. When the Board accepts such submission, the agreement shall be valid, irrevocable, and enforceable as to the submitting parties save upon such grounds as exist at law or in equity for the revocation of any contract. In any such arbitration the Board shall have power to issue an award applicable to the submitting parties.

(b) In any dispute in which an award has been made, the Board shall file the award in the clerk's office of the United States district court that has been agreed upon by the parties or, in default of such agreement, that of the Supreme Court of the District of Columbia. Notice of the filing shall be personally served or sent by registered mail to each submitting party. Unless a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter final judgment confirming the award.

(c) A petition for the impeachment of any award may be filed only in the court where the award has been filed and not more than ten days after the communication of notice of the filing of the award to the submitting parties.

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16

Notice of the filing of such a petition shall be served personally or sent by registered mail to each submitting party. This petition shall be sustained by the court only on one or more of the following grounds:

1. That the proceedings were not substantially in conformity with this Resolution;

2. That the award does not conform nor confine itself to the stipulations of the agreement to arbitrate; or

3. That an arbitrator or member of the Board participating in the award was guilty of fraud or corruption; or that a party to the award practiced fraud or corruption which affected the result.

(d) The court shall not set aside an award on the ground that it is invalid for uncertainty; in such case the court shall suspend action pending a resubmission of such award to the Board for interpretation. It shall not set aside an award for irregularity or clerical error, going only to form and not to substance; in such case the court shall correct the form of the award in its judgment. If the award has ceased to be operative because it has been carried out or superseded, the court shall enter judgment accordingly. The court shall construe every award with a view to favoring its validity. But if the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but that a part of the award is

17

valid, the court shall set aside the entire award; unless all interested parties shall agree that the valid part is severable. If the petition is not sustained, the court shall enter judgment confirming the award.

(e) Within ten days from the entry of judgment upon the petition, confirming or otherwise disposing of the award, any party may appeal to the circuit court of appeals. Only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law to be decided. The determination of the circuit court of appeals upon these questions shall be final, and judgment pursuant thereto shall thereupon be entered by the district court.

(f) If at any time before final judgment all interested parties agree upon a settlement in lieu of the award, judgment may be entered upon such settlement.

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(g) The judgment shall be entered and docketed as if it were rendered in a suit in equity and shall have the same force and effect as, and be subject to all the provisions of law relating to, a decree in a suit in the court in which it is entered.

(h) The several United States courts are hereby vested with jurisdiction to entertain proceedings and to enforce all judgments entered pursuant to this section, without respect to the amount in controversy.

18

CONCILIATION AND MEDIATION

SEC. 10. The Board shall have the power to use and to create agencies for the mediation or conciliation of labor disputes: *Provided*, That the Board may decline to take cognizance of any labor dispute where there is another means of settlement provided for by agreement, industrial code, or law which has not been utilized.

REPRESENTATION OF EMPLOYEES

SEC. 11. (a) In any dispute as to who are the representatives of employees, the Board, if the dispute might burden or affect commerce or obstruct the free flow of commerce, may investigate such dispute and certify to the parties, in writing, the name or names of the individuals or labor organizations that have been designated and authorized to represent employees. In any such investigation, the Board shall hold an appropriate hearing, and the Board shall be authorized to take a secret ballot of employees, or to utilize any other suitable method to ascertain by whom or by what labor organization they desire to be represented. The Board shall decide whether eligibility to participate in a choice of representatives shall be determined on the basis of employer unit, craft unit, plant unit, or other appropriate unit. Each unit may be given representation in proportion to its membership. The Board may determine that representatives agreed upon by the majority of employees in

19

an appropriate unit shall represent the entire unit for the purpose of negotiating agreements concerning terms and conditions of employment: *Provided*, That nothing in this Act shall be construed to prohibit an employer from dis-

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cussing grievances with an employee or groups of employers at any time.

(b) In any dispute not of the character described in subsection (a), as to who are the representatives of employees, the Board may offer its services to aid in determining who are such representatives.

INVESTIGATORY POWERS

SEC. 12. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 8 and section 11 (a)—

(1) Any member of the Board representing the general public shall have power to require by subpena the attendance and testimony of witnesses and the production of all documentary evidence relating to any matter under investigation. Any member of the Board, or any agent designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States,

the United States Courts of any Territory or possession, and the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides, upon application by the Board, shall issue to such person an order requiring such person to appear before the Board, or an agent designated by it, there to produce documentary evidence if so ordered, or there to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and other documents germane to the matter under investigation before the Board, or in obedience to the subpena of the Board, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted

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or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise germane to the matter under investigation except that such individual so testifying shall not be exempt

21

from prosecution and punishment for perjury committed in so testifying.

(4) Witnesses summoned before the Board or any of its agents shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same, other than employees of the Board, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board unless such records, papers, or information, relate to trade secrets or have been received by the Government under an assurance of nondisclosure.

SEC. 13. Any person who shall willfully assault, resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to section 8, section 10 (in the case of a labor dispute which tends to burden or affect commerce), or section 11 (a), shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

22

REPORTS

SEC. 14. The Board shall at the close of each fiscal year make a report in writing to Congress stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

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LIMITATIONS

SEC. 15. Nothing in this resolution shall be construed to require any employee to render labor or service without his consent, or to authorize the issuance of any order or injunction requiring such service, or to make illegal the failure or refusal of any employee individually, or any number of employees collectively, to render labor or service.

SEC. 16. Nothing in this resolution, except as otherwise expressly provided, shall abridge the rights of employees secured to them, under any code, agreement, or otherwise, by section 7 (a) of the National Industrial Recovery Act, it being the purpose of this resolution to supplement and not to supersede such rights.

SEC. 17. If any provision of this resolution or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this resolution, or the application of such provision to persons or circumstances

other than those as to which it is held invalid, shall not be affected thereby.

Amend the title so as to read: "Joint resolution to equalize the bargaining power of employers and employees, to promote the amicable settlement of labor disputes, to create a National Industrial Adjustment Board, and for other purposes."

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CONGRESSIONAL RECORD, SENATE—JUNE 16, 1934

(78 Cong. Rec. 12016)

SETTLEMENT OF LABOR CONTROVERSIES

Mr. ROBINSON of Arkansas. Mr. President, I move that the Senate proceed to the consideration of the joint resolution (S. J. Res. 143) to effectuate further the policy of the National Industrial Recovery Act.

The motion was agreed to; and the Senate proceeded to consider the joint resolution (S. J. Res. 143) to effectuate further the policy of the National Industrial Recovery Act, which had been reported from the Committee on Education and Labor with amendments.

The PRESIDENT pro tempore. The amendments will be stated.

The amendments were, in section 1, page 1, line 11, after the word "commerce", to insert "the salaries, compensations, and expenses of the board or boards and necessary employees being paid as provided in section 2 of the National Industrial Recovery Act"; and in section 3, page 3, line 2, after the word "resolution", to insert "with reference to the investigations authorized in section 1"; so as to make the joint resolution read

Resolved, etc., That in order to further effectuate the policy of title I of the National Industrial Recovery Act, and in the exercise of the powers therein and herein conferred, the President is authorized to establish a board or boards authorized and directed to investigate issues, facts, practices, or activities of employers or employees in any controversies arising under section 7a of said act or which are burdening or obstructing, or threatening to burden or obstruct the free flow of interstate commerce, the salaries, compensations, and expensse of the board or boards and necessary employees being paid as provided in section 2 of the National Industrial Recovery Act.

SEC. 2. Any board so established is hereby empowered, when it shall appear in the public interest, to order and conduct an election by a secret ballot of any of the employees of any employer, to determine by what person or persons or organization they desire to be represented in order to insure the right of employees to organize and to select their representatives for the purpose of collective bargaining as defined in section 7a of said act and now incorporated herein.

For the purposes of such election such a board shall have the authority to order the production of such pertinent documents or the appearance of such witnesses to give testimony under oath, as it may deem necessary to carry out the provisions of this resolution. Any order issued by such a board under the authority of this section may, upon application of such board or upon petition of the person or persons to whom such order is directed, be enforced or reviewed, as the case may be, in the same manner, so far as applicable, as is provided in the case of an order of the Federal Trade Commission under the Federal Trade Commission Act.

SEC. 3. Any such board, with the approval of the President, may prescribe such rules and regulations as it deems necessary to carry out the provisions of this resolution with reference to the investigations authorized in section 1 and to assure freedom from coercion in respect to all elections.

SEC. 4. Any person who shall knowingly violate any rule or regulation authorized under section 3 of this resolution or impede or interfere with any member or

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agent of any board established under this resolution in the performance of his duties, shall be punishable by a fine of not more than $1,000 or by imprisonment for not more than 1 year, or both.

SEC. 5. This resolution shall cease to be in effect, and any board or boards established hereunder shall cease to exist, on June 16, 1935, or sooner if the President shall by proclamation, or the Congress shall by joint resolution, declare that the emergency recognized by section 1 of the National Industrial Recovery Act has ended.

The amendments were agreed to.

The PRESIDENT pro tempore. That completes the committee amendments.

Mr. ROBINSON of Arkansas. Mr. President, when it became apparent a few days ago that it would be impracticable at this session to consider and dispose of permanent and well-worked-out legislation on the subject of industrial labor disputes, there was prepared and submitted to some Senators a draft of a very brief measure which does not attempt to deal with the subject matter of industrial labor disputes in a comprehensive way, but which does provide for a board or boards with certain very well-defined powers.

The draft to which I have referred was submitted by me to the able Senator from Oregon [Mr. MCNARY], the leader of the minority, and conferences were held. Changes in the original draft were suggested, and finally an agreement was reached between the Senators engaging in the conference. The agreement was incorporated in the joint resolution which is here presented. With the passage of this joint resolution and the disposition of conference reports, including an agreement on the housing bill, which has just passed the Senate, the Congress will be ready for adjournment.

There has never been, in a comparable period during the history of the country, more important legislation enacted and disposed of than during the present session. Unavoidably, there will remain on the calendar some measures of general importance which to act upon now would require a prolongation of the session for an indefinite time. It is thought that the joint resolution which is now the subject before the Senate will provide means and agencies which will be very helpful in the study and adjustment of controversies that may arise between industrial employers and their laborers.

I express the hope that it may be found practicable by the Senate to pass this joint resolution in the same spirit and with comparable promptness to that which marked the favorable action of the House of Representatives on the subject this morning. It is said that the joint resolution passed that body by a unanimous vote.

Permit me to take just a few moments to explain the provisions of the joint resolution, although I think perhaps they are already very well understood.

[12017] The joint resolution authorizes the President to appoint a board or boards which are to exercise certain powers. First, the

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boards are authorized to investigate issues, facts, practices, or activities of employers or employees in any controversies arising under section 7a of the National Industrial Recovery Act whic hare burdening or obstructing or threatening to burden or obstruct interstate commerce.

The second authority is to order or conduct an election whenever it shall appear to the public interest, the election to be held by a secret ballot, to determine by what person, persons, or organization the employees voting in the election desire to be represented in order to secure their rights to organize, and so forth. This is of vital importance.

For the purposes of the election there is a third power conferred upon the board, namely, to require the presence of witnesses and the production of such documents as may be found necessary to carry out the provisions of the joint resolution.

There is a provision which was inserted, after the joint resolution was first drawn, which secures the right of appeal to the courts in the case of any order which may be made by any board. The proceedings in the appeal or review, as the case may be, are in accordance with those which are pursued under the law governing orders issued by the Federal Trade Commission.

The fourth authority conferred is to make rules and regulations necessary to carry out the provisions of the joint resolution.

An amendment has been incorporated by the Committee on Education and Labor, I think at the instance of the senior Senator from Idaho [Mr. BORAH], which limits the application of the rules and regulations to the orders of the board carrying out the provisions with respect to investigations.

Penalties are attached for violating the joint resolution. Another provision which was inserted after the measure was first drafted is to the effect that all authority under it shall expire June 16, 1935, or sooner if the President, by proclamation, shall proclaim that the emergency recognized by section 1 of the National Industrial Recovery Act has ended.

Mr. COSTIGAN. Mr. President, will the able Senator from Arkansas permit a question

Mr. ROBINSON of Arkansas. Certainly.

Mr. COSTIGAN. May I ask how far the procedure which is identified in the pending joint resolution with that provided for the Federal Trade Commission extends; that is, to what orders or actions?

Mr. ROBINSON of Arkansas. By the terms of the joint resolution, it is restricted to the orders in connection with the holding of elections, and, by the amendment to which I have referred, the rules and regulations are restricted to the investigations authorized in section 1.

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Mr. COSTIGAN. In such cases could the Federal courts take jurisdiction, and, possibly by mandatory injunctions, coupled with the power to punish for contempt, enforce elections, as provided for in the joint resolution?

Mr. ROBINSON of Arkansas. I think that if the board should make an application to a court for the enforcement of an order, for instance, to supply a document or a list of employees, and the application was heard by the court, it could issue a writ directing the production of the document; and that is one of the purposes in mind.

Mr. COSTIGAN. And, in the event of refusal, it might punish for contempt?

Mr. ROBINSON of Arkansas. It might punish for contempt.

Mr. NORRIS. Mr. President, I wish to ask the Senator from Arkansas a question.

Mr. ROBINSON of Arkansas. I am glad to yield.

Mr. NORRIS. I came in while the Senator was speaking, so I did not hear the beginning of his remarks. Has the House passed this joint resolution?

Mr. ROBINSON of Arkansas. It passed it unanimously.

Mr. NORRIS. Is the Senator now referring to the House joint resolution?

Mr. ROBINSON of Arkansas. Yes. I have actually, for parliamentary reasons, taken up the Senate joint resolution, but I ask unanimous consent now to substitute the House joint resolution for the Senate joint resolution.

Mr. LA FOLLETTE. A parliamentary inquiry.

The PRESIDENT pro tempore. The Senator will state it.

Mr. LA FOLLETTE. Has the House joint resolution been messaged to the Senate?

The PRESIDENT pro tempore. The chair is informed that it has not been messaged to the Senate as yet.

Mr. ROBINSON of Arkansas. Mr. President, I was informed a few moments ago that the House joint resolution had been sent to the Senate.

Mr. LA FOLLETTE. I think the Senator from Arkansas is in error about its having been messaged to the Senate. The measure which came over was the amendment to the railway labor act.

Mr. ROBINSON of Arkansas. Very well. I shall hasten it over and, with the consent of the Senate, substitute the House joint resolution for the Senate joint resolution.

Mr. NORRIS. Mr. President, is there any difference between the House joint resolution and the Senate joint resolution as the latter was reported by the Committee on Education and Labor? I understand the committee has suggested two amendments, and I was

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wondering whether the House joint resolution had incorporated those amendments.

Mr. ROBINSON of Arkansas. I do not think it has.

Mr. NORRIS. Then will it be the Senator's object to incorporate those amendments?

Mr. ROBINSON of Arkansas. Yes, I shall ask to incorporate them in the House joint resolution.

Mr. WAGNER. Mr. President, as the proponent of Senate bill 2926, originally known as the "labor disputes bill", I deem it my duty in these closing days of the session to explain why I believed and still believe that this measure ought to be passed, and why I am nevertheless willing to support the substitute that is backed by the wisdom and judgment of the President of the United States.

A little more than a year ago we set forth upon a new policy of economic reconstruction. Industrial cooperation was given sanction in order to limit the evils of destructive competition. Employees were guaranteed protection in their cooperative efforts in order that they might help the Government to insure a just flow of purchasing power through adequate wages.

At the present time there is controversy as to whether industrial cooperation is a wise policy. There are some who plead for the strict enforcement of the antitrust laws. There are others who argue with equal force that concerted action is made necessary because of technological conditions, and that the real problem is to make such unity serve social interests. But there is no one who denies that industrial cooperation has increased enormously, and that the trade association has blanketed the entire country.

Still less open to question is the proposition that workers also should be allowed to cooperate fully. If impartial students agreed, and Congress recognized, that full freedom of association and self-organization among workers was desirable even when the antitrust laws were a policy, if not an actuality, how much more necessary is this freedom today, when the antitrust laws have been in part suspended? The governmental policy of fixing minimum wages and maximum hours is not a solution. It is merely the foundation upon which can be built the mutual endeavors of a revived industry and a rehabilitated labor. This process of economic self-rule under the code system must fail unless every group is equally well represented. In order that the strong may not take advantage of the weak, every group must be equally strong. Not only is this common sense; it is also in line with the philosophy of checks and balances that colors our political thinking. The Recovery Act did not give employees any rights of organization to which they were not entitled before the act was passed. But the passage of the act has made the protection of these rights imperative.

[12018] It is a matter of common knowledge that the principles of section 7 (a) of the Recovery Act have been flaunted at the very

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crucial spots where their observance is most essential. This does not inflict injury upon one group alone. It is unjust to employees who have seen what was handed to them as a new charter being treated as a meaningless gesture. It is unfair to the vast majority of employers who are anxious and willing to obey the law and who are faced with the destructive competition of those who seek to gain advantage by disobeying it. It is disastrous to every economic interest because it is a main cause for the reappearance of those very tendencies which brought collapse in 1929, and which will certainly bring it again if they are not checked.

Again we are failing to maintain a balance among production, profits, and wages. At the start of the recovery drive the index of production rose 67 percent between March and July 1933, while the real earnings of workers increased only 9 percent. This inevitably brought a sharp decline, but corrective influences soon became manifest. But the gap reopened this year, and a month ago production was 53 percent above March 1933, while wages were only 28 percent higher. During the past 6 months there has been no appreciable gain in employment, no reduction in hours of work, and no increases in the real wages of the individual worker, although the earnings of 163 large corporations were almost twice as great during the first quarter of 1934 as during the last quarter of 1933. With between nine and ten million people still unemployed, the consequences of this tendency, if not checked, are truly alarming.

In addition, the uncertainty about section 7 (a) has caused flashes of industrial discontent that threaten a minor conflagration. No matter in which direction we look we see the same signs. I do not claim that employees are justified in all of these cases. I do not know whether they are justified even in a majority of them. But I do know that employers, employees, and the general public are entitled to a clearly stated law accompanied by adequate agencies for enforcement.

Mr. COSTIGAN. Mr. President——

The PRESIDING OFFICER (Mr. LEWIS in the chair). Does the Senator from New York yield to the Senator from Colorado?

Mr. WAGNER. I yield.

Mr. COSTIGAN. Does the able Senator from New York attribute current disturbances to the absence of such legislation as is planned through the pending resolution?

Mr. WAGNER. Mr. President, that is a difficult question to answer.

Mr. COSTIGAN. In other words, would the pending resolution be helpful if adopted?

Mr. WAGNER. I think it would.

The bill which I introduced, known as the "labor disputes bill", which has had such a stormy career, was not the result of a momentary

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impulse. Every one of its provisions is addressed to specific evils that have become abundantly manifest during the 10 months' experience of the National Labor Board, an agency which has put more than one and one-half million people back to work on terms mutually satisfactory to employers, employees, and the general public. Every one of its provisions is based upon principles that have received specific and repeated recognition in prior acts of Congress.

Contrary to wide-spread reports, the bill does not compel or even encourage anyone to enter a union. It attempts to make every worker a free man to follow his own inclinations. That is all it does.

Contrary to repeated charges, the bill does not confer upon any one group a single privilege that other groups do not now enjoy, nor would it prohibit any group from seeking its own advancement in ways allowed to any other group.

I ask to have inserted in the RECORD at the end of my remarks a letter appearing in the New York Times, written by one of the most enlightened and farsighted employers in the country, who served on the National Labor Board, Mr. Ernest G. Draper, in which he urges the passage of the bill which I introduced and which the Committee on Education and Labor perfected by week after week of painstaking and public-spirited effort.

The PRESIDING OFFICER. The request of the Senator from New York in nowise being objected to is conceded.

(See exhibit A.)

Mr. WAGNER. However, the Congress and the country during the past year have united in passing and applying the most varied and sweeping changes in our economic life that have ever occurred in so short a time. Perhaps it may be a good thing to allow these reforms to encounter an additional period of trial and error, so that the processes of education and understanding may catch up with the social program that has been inaugurated. That is the judgment of the President with regard to the labor-disputes bill, and I am prepared to go along with him. No one is in a better position than he to weigh the program in its entirety, and no one is more determined than he that we are but commencing a new deal that will in proper time be pushed forward to its ultimate conclusions.

But we cannot afford to neglect entirely the industrial problems that must be met at once. The substitute measure which the President has proposed is designed simply to meet the most serious and immediate difficulty. This has been interference with the right of employees to select representatives of their own choosing by means of an election conducted by some board appointed by the President.

The sole purpose of the present joint resolution, as I understand it, is to permit a board or boards established by the President to hold elections of employees in an atmosphere free from the coercion,

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interference, or restraint that is prohibited by section 7 (a) of the National Industrial Recovery Act as incorporated in the resolution. This is one of the provisions contained in the bill I introduced. Boards thus empowered would be able to take a great step forward in clarifying the industrial atmosphere and abetting the recovery program.

Let me add that nothing could be more fallacious, in my opinion, than the claim that legislation of this sort is directed against industry. If this criticism could be sustained it would certainly be decisive.

American industry is deserving of every consideration. It has played a tremendous role in developing economically the greatest Nation in the world, with the highest standards of living for people in all walks of life.

Industry as a whole has met the problems of the recent depression, and the immediate problems of industrial unrest, with heroic courage, resourcefulness, and public spirit. It will continue to exert the same profound influence and fine leadership in American life. Upon its welfare depends the welfare of all. The congressional duty to help industry solve its difficulties is coincident with the duty to help workers or consumers.

But the proposed measure is not derelict in its duties to all. Is not economic strife a curse to every group? Is not industrial peace beneficial to all? Has not every step in the new-deal program embraced the interests of the public at large? The new law, for a period of 1 year and within its limited scope, will apply the healing balm of an upright, impartial, and peaceful forum, and thus will benefit employers, workers, and the country at large.

Mr. President, I feel very confident about that, and therefore I am going to support the resolution.

EXHIBIT A

[From the New York Times]

PASSAGE OF BILL URGED—NATIONAL INDUSTRIAL ADJUSTMENT ACT HELD EXTREMELY VALUABLE

To the EDITOR OF THE NEW YORK TIMES:

As a member of the present National Labor Board may I urge strongly the passage at this session of Congress of the proposed National Industrial Adjustment Act? It will not prevent strikes or the right to strike. But it will be a powerful agency in preventing industrial disputes from reaching the critical strike stage. Anyone familiar with the record of the present Board will realize what a valuable contribution to industrial peace it has made. Hardly 9 months old, the Board has put back to work or kept **[12019]** at work more than 800,000 men. And all this has been accomplished in the face of legal restraints which have seriously hampered the Board's effectiveness.

To remove some of these restraints and to clarify the sphere of its usefulness is the purpose of the new act. There are two main points of dispute which the act proposes to dissolve. First, that pertaining to so-called "company unions", and

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second, that relating to majority and minority representation upon committees of workers chosen for collective-bargaining purposes. While this is not the time or place to argue for or against company unions, it must be admitted by employers and the public that the present act takes an exceptionally fair attitude toward company unions as such. Apparently its purpose is to keep open by any lawful agency the channels of good will and cooperation which ought to flow spontaneously between employee and employer. On this account, as well as for many others, the act should have the support not only of labor but of management and the public.

The second main point of dispute hinges upon who shall represent the workers in bargaining with employers. Shall it be solely the majority chosen at an election, or shall the minority be permitted to voice its views also? So much discussion has taken place on this point that the public is quite ready for the solution proposed in the new act. It is that the matter be left for the Board to decide. But this Board's decision shall in no case prevent the minority from having the right to discuss any grievance it may have with the management. This is a wise compromise of the Labor Board's previous ruling in which the position was taken that the minority in an election was automatically washed out. The new proposal will undoubtedly undo much of the ill will caused by the Board's former stand. It will substitute internal healing for external force.

One other point must be stressed. An act of this nature, passed now, might help to avert a series of strikes such as this country has never known before. If passed 6 months or a year from now, its effect upon the situation may be no more than the effect of throwing a stone into Long Island Sound.

ERNEST G. DRAPER.

NEW YORK, *May 31, 1934.*

Mr. WALSH. Mr. President, the position of a majority of the Committee on Education and Labor in regard to this measure and the other measure of a kindred nature which have been pending before it can be very briefly stated.

First of all, the committee approached the subject of legislation in reference to labor disputes open-mindedly. We had presented to us a bill drafted by the distinguished junior Senator from New York [Mr. WAGNER], whom we soon discovered had been most active in the midst of the labor disputes resulting from the operations of N. R. A. and who had given months of unselfish and most helpful service to his country as the Chairman of the National Labor Board in helping to find a solution for these labor disputes. It was the result of his experience as a member of that Board which prompted him and others associated with him to draft some legislation which would be beneficial in not only defining clearly the rights of workers but, by reason of the clarification of the rights of both employers and employees preventing or settling labor disputes.

Most of the labor disputes we have experienced in the last year have grown out of the existence in the National Industrial Recovery Act of what is known as "section 7 (a)." Section 7 (a) attempted to define certain rights briefly described as freedom for workers to form and join labor organizations of their own choosing for the purpose of collective bargaining.

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It provided that the worker should have the right to organize freely and independently of any interference upon the part of his employer; that he should have the right, independently of any coercion upon the part of his employer, to select representatives of his own choosing; and it provided for the right of employees having selected an organization of their choosing and representatives of their choice to engage in collective bargaining with their employers.

Immediately upon the passage of that law (section 7 (a)) the employers began to put one construction upon parts of it, and the employees began to place different constructions upon it. Leaders of the trade-union movement in the country began to spread their organization into plants where the employees were not organized. Employers began to establish so-called "company unions" of their own creation and making, with the result that there has been constant strife, and the claim has been made again and again that section 7 (a) is ineffective because it is only general in its terms and merely makes general declarations as to the rights of the workers.

Mr. President, to enact a statute which says religion is free or the press is free is ineffective. The only way that religion can be free is by defining the acts which interfere with that freedom and punishing the commission of such acts accordingly. So, with the press, it would be necessary to enact a statute prohibiting the acts that would impair the freedom of the press and provide for the punishment of those guilty of such acts.

Herein is the whole trouble with section 7 (a). There is no clear definition of what the rights are; there is nothing in section 7 (a) that says to an employer, "You cannot and you shall not interfere with the right of an employee in his right to join or not join a labor organization without violating a right of your employee for which you may be enjoined."

What did the committee find? It found that the employer possessed a weapon that few if any other class possess, namely, the weapon of economic pressure. An employer may rob his employee of his fundamental rights if he chooses, subtly and secretly, to use the power he has by reason of the fact that he can deprive the employee of his livelihood and remove his name from the pay roll.

So, it is my judgment, and it was the judgment of the committee, that this question will never be settled until we define the forms of economic pressure which cannot and must not be exercised against the right to organize which we have given to the employees under section 7 (a).

If an employer can dismiss any man he finds seeking to organize his employees, that is a form of economic pressure that must be forbidden, if we mean what we say, namely, that employees have a right to organize freely. If employers can, by the exercise of economic

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power and pressure, dismiss the representatives chosen by the employees, the employees have not the freedom that it is claimed or alleged we have given them. Therefore, the bill which was introduced by the Senator from New York [Mr. WAGNER] and the bill which was reported by the committee specifically defined the acts that employers cannot do, to impair the right of the employees, first, to organize; second, to choose their own representatives; and third, not to be dismissed or discharged or demoted simply because they belong to a labor organization the employers did not choose to recognize.

Mr. CUTTING. Mr. President——

Mr. WALSH. I will yield in just a moment. These things we called unfair labor practices. We provided a Board that would find the facts when representation was made that an employer had interfered with the rights of workers under section 7 (a) by indulging in one of these unfair practices and then submit a finding of facts, and we provided for the enforcement of the decrees of the Board by proper restraining orders. I now yield to the Senator from New Mexico.

Mr. CUTTING. Is there anything in the pending joint resolution which takes care of any of the subjects the Senator has been discussing?

Mr. WALSH. There is nothing in the pending joint resolution which defines or clarifies the rights of the employers or the employees insofar as preventing an employer from exercising economic pressure is concerned. Every employee is free to go to work or not to go to work; every employee is free to join a labor union and elect his own representatives until his employer says, "If you do it, your job is gone." What is the use of talking to workmen about protecting their freedom of organization and their freedom in the choice of their representatives unless there is a weapon in the hands of the governmental authority to prevent that freedom being denied through the exercise by an employer of that which we call economic pressure, namely, the right to punish a man insofar as his livelihood is concerned for attempting to exercise the freedom of organization.

So, in my opinion, this question will not be settled and cannot be settled until we take action to enforce what we mean when we say the worker shall be free.

I know of no better illustration than that in regard to the freedom of the press. What do we mean by that? We mean that certain things which deny the freedom of the **[12020]** press are forbidden. Where is the law, where is the statute, where is the clarifying language that an employer can read and an employee can read, which prevent the acts upon the part of the employer which deprive the employee of his freedom? It is not here, and we have got to have some legislation of that kind. It is not in the pending joint resolution.

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That is a very highly controversial question, and that is why it is not in the joint resolution, because no employer—I will not say no employer, but because a large number of employers do not want that restriction. They do not want to be deprived of that economic weapon which they possess, namely, the weapon for punishing or rewarding those who serve them or fail to serve them or who exercise their right as workers independent of their employers.

Mr. CUTTING. Mr. President——

Mr. WALSH. I yield to the Senator from New Mexico.

Mr. CUTTING. Of course, I agree with the Senator that this is a controverted subject, but the Senator has left no possible doubt as to his own attitude, and I share that attitude completely.

Mr. WALSH. I know the Senator does.

Mr. CUTTING. Is there any reason why we should not express our views through the medium of adequate legislation or, at any rate, make that attempt before we adjourn for an indefinite period?

Mr. WALSH. So far as I am concerned, I am in accord with the Senator, and I would be willing to take any length of time to enact proper legislation on this subject, but, as the Senator knows, representations have been made that to attempt to define these unfair practices and pass a bill such as I have been describing would be stubbornly resisted here and would prolong the deliberations of the Congress. Personally, I am not frightened or disturbed by such a suggestion.

Mr. NORRIS. Mr. President, will the Senator yield?

Mr. WALSH. I gladly yield to the Senator.

Mr. NORRIS. Does the Senator hope that in a future Congress such legislation will be passed without opposition? Do we not have to meet that opposition sometime?

Mr. WALSH. There is no doubt about that.

Mr. NORRIS. Why not meet it now? Is there any reason why we cannot meet it now as well as during the next Congress?

Mr. WALSH. The Senator has heard what the leader of the majority said as to his conferences with the leader of the minority in reference to the disposal of this matter.

Mr. NORRIS. But he has not said, and nobody will claim, that in those conferences he has reached an agreement with the leader of the other side or with anybody else that at the next Congress such a measure will go through without opposition. If we had such an assurance given to us there might be some reason why we should now stop.

Mr. WALSH. Mr. President, there is another development.

Mr. WAGNER. Mr. President, while the Senator is on that subject will he permit me to bring out just one more point which perhaps is not known by all the Senators unless they have watched the history

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of the movement since the National Recovery Act was passed with reference to labor's effort to reorganize?

The PRESIDING OFFICER. Does the Senator from Massachusetts yield to the Senator from New York?

Mr. WALSH. I am glad to yield to the Senator for that purpose.

Mr. WAGNER. Until we passed the National Recovery Act, which provided that in every code there shall be a 7 (a) provision, many of the large industries, such as the steel industry and others, would not permit their workers to organize at all; they would not deal with any kind of union. When 7 (a) was enacted, fearing that the Government might take an interest in the enforcement of the right guaranteed by that section, the companies themselves began to form unions, company unions, under their complete domination and as a result of coercive methods in order again to circumvent 7 (a). That is what prompted all this legislation and my efforts during this entire session.

Mr. WALSH. I intended to state that.

Now, Mr. President, there is one feature of this joint resolution that is most commendable.

Mr. President, the Labor Board in seeking to settle disputes growing out of section 7 (a) discovered that when two contending groups claimed to control and represent a majority of the employees in any industry, it had no power to decide which group controlled. It has the power to make a decision, but not an enforceable decision, not a decision which it could command the employers or employees to obey. It found further that even when the members of the Board themselves were in dispute and unable to determine which group represented the majority of employees, it had no power to call or hold an election. The Board did get consent to hold elections in some cases, but in other cases they were openly defied by employers and the Board was powerless.

The joint resolution lifts out of the bill which we reported from our committee a provision for the Board holding an election to determine that fact. To that extent it is most helpful. To that extent it will prevent some strikes, because some of the strikes have been a result of the claim that one group represented the employees and the further claim that a different group represented them. The Board may call both groups together and say, "Stop. We will have an election. We will conduct the election and determine who represents a majority of the employees." To that extent the joint resolution is in my opinion of considerable benefit in the present crisis, tending to lessen somewhat labor disputes.

Practically every labor dispute, or an overwhelming majority of labor disputes, has grown out of section 7 (a) and the contentions on the one side or the other that the employees were not free, that their

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real representatives were not being recognized by the employer. Thus we will have, as a result of the passage of the joint resolution, some machinery for conducting an election.

Mr. NORRIS. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from Massachusetts yield to the Senator from Nebraska?

Mr. WALSH. I yield.

Mr. NORRIS. Did not the committee find it to be true that while there were some exceptions, the corporations or the companies, the employers, up to the time of the passage of section 7 (a), had been opposed to unions? Of course, there were some exceptions.

Mr. WALSH. Yes; even company unions.

Mr. NORRIS. Yes; they were opposed to all kinds of unions.

Mr. WALSH. Yes; any kind of organization.

Mr. NORRIS. Immediately when section 7 (a) was passed they became very friendly to a certain kind of union which they themselves organized, ordinarily known as "company unions", which gave them the opportunity to sit on both sides of the table in any dispute.

Mr. WALSH. The Senator has stated known facts. In addition, let me state that the national trade-union organizations, seeing that thing going on in individual plants, put their leaders to work to try to organize a trade union independent from a company union.

Mr. NORRIS. The employees could not very well, without the danger of losing their jobs, oppose the organization of the so-called "company unions."

Mr. WALSH. Of course not, and that is the economic pressure which can be brought to bear and which must be checked.

Mr. NORRIS. Of course, it must be checked.

Mr. WALSH. Mr. President, we may enact almost any kind of a restrictive measure affecting employees that we want, if we will do one thing—if we will make the same restrictions apply to employees. In other words, if we will forbid one employee from coercing another employee in his exercise of the right to join labor organizations, as in the [12021] Wagner bill we propose to prevent an employer from exercising that coercion, the employers will all agree to it.

The trouble with them is that they do not understand and appreciate the fundamental policy and purpose of this labor legislation. There is no economic pressure between one workman and another. No one workman can dismiss another from the shop. The workman would probably have the protection of his employer if he should resist an urgent invitation to join a labor organization. There is no such thing as economic pressure between employee and employee.

What we are dealing with is an effort to curb and restrict the right of the employer to dismiss, to discharge, to put a man on the street, to send a man home to his family penniless because he joins a labor

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organization. Some of the representatives of industry admitted there is between employer and employee such a thing as economic pressure, which does not exist between two employees.

Furthermore, the bill introduced by the Senator from New York [Mr. WAGNER] and modified by our committee is not a mere police-court bill. If one employee threatens another, he can be taken to police court. If one employee or employer strikes an employee, he can be taken to police court. If he undertakes to interfere with a fellow employee by force, he can be taken to police court. There is plenty of law to cover conditions of that kind. But if an employer says in his pay envelop, "You are hereby dismissed from my employ", where is the employee's remedy if the reason for it is that he joined a labor organization?

One of the great troubles about the bill—and that is why we ought not to have been frightened and run away from it—has been that the country has not realized that we are dealing here with what has to be dealt with if we mean what we say when we say the worker shall be free to organize and have representatives of his own choosing, preventing the employer from using the weapon of dismissal because a man does exercise that right.

I have had employer after employer say, "We will support your measure if you put in it a provision that no employee shall coerce another employee into joining a labor organization." This indicates that there is an inability to realize the great distinction between an employer preventing an employee from exercising his right and the case of an employee trying to urge upon and prevent another employee joining or not joining a labor organization.

Mr. BONE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Massachusetts yield to the Senator from Washington?

Mr. WALSH. I yield.

Mr. BONE. I take it one of the chief objections the Senator has to the pending joint resolution lies in the fact that it does not specifically forbid an employer to discharge a man for joining a union. I thoroughly agree with the Senator's viewpoint that in the absence of that sort of prohibition, of course, this measure would lack a provision which I think most of us agree is a necessary one. There is nothing that forbids the employer from letting the ax of execution drop on the employee's neck if he joins a labor union, and it has been determined that the labor organization was to represent him.

Mr. WALSH. I am taking this occasion to present to those Members of the Senate who are interested in the problem some of the results of the study of the question by myself and other members of the committee, and giving the views that I personally entertain of what it will be ultimately necessary to do in order to give force and effect to

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section 7 (a), which, I repeat, is just like saying "the press is free" with no provision of law to define what is interfering with the freedom of the press.

Mr. President, there is another provision in this joint resolution I will now discuss.

The provision in the joint resolution providing for elections is most helpful. If nothing else comes out of this joint resolution, that will be of great benefit. It will enable somebody with governmental authority, when two groups come claiming to be the representatives of the workers, to find out who does represent them and to issue an order and compel the employer to recognize them for the purpose of collective bargaining.

Now, may I say this, which is a digression, and then I shall close.

Another great misapprehension regarding the Wagner bill was that for some reason or other employers and most of the public got the notion that it compelled an employer to make an agreement with the representatives of a majority of his workers. The bill did no such thing. It not only did not do that but it did not prevent the employer from calling a minority of his employees into his office, or each and every one of them, and discussing all conditions relating to their work. What the Wagner bill did, and what we must do to make section 7a secure and safe is, first, to provide that there shall be no coercion, no interference with the employee; that the workers have a right to organize. Secondly, the bill provides that the men have a right to have their own representatives to represent them in collective bargaining. There must be no coercion, no interferences, no dismissals, and no curtailment of the right to promotion by reason of that. Thirdly, the bill says that the representatives of the employees have a right to knock on the employer's door and ask to be admitted in the name of their fellow employees and to engage in a conference with the employer.

Beyond that the Wagner bill does not go; and yet we have heard all kinds of stories to the effect that employees' representatives could come in and say, "Put you name on that paper; sign these papers here; give us higher wages; give us an increase in pay." The bill never went beyond determining that there should be a free organization, there should be free representatives, and that the employer must receive them. The moment they entered the employer's door, their deliberations and their acts were as sacred as in any tribunal in the world. Furthermore, the employer did not have to make an agreement with them if he did not see fit, but he did have to recognize the right of men in his own employ to confer with him.

Mr. LONG. Mr. President——

The PRESIDING OFFICER. Does the Senator from Massachusetts yield to the Senator from Louisiana?

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Mr. WALSH. I yield to the Senator.

Mr. LONG. I think the Senator and I are alike for very liberal labor legislation. While probably I would write the joint resolution a great deal more in favor of labor than my colleagues would, I see in this joint resolution one thing—a guarantee by which fairly and honorably, without exposing themselves to peril, laboring men may actually express their wish to be free from company unions, and to be organized under a leadership that is not subject to company influence.

That seems to me, if carried out, to be a guaranty that they may honestly and freely express themselves, without peril, in favor of a fair organization to represent them. That much seems to be quite a forward step to the laboring people.

Mr. WALSH. There is no doubt about that.

Mr. President, the provision about investigations is very helpful, too. After all, there is much to be said for the joint resolution. It does not go as far as some of us would like to go, but there is this to be said: First, there is given the power to investigate any dispute or threatened dispute arising out of a misinterpretation or misunderstanding of the meaning of section 7 (a). That is provided for. Secondly, there is a right for an investigation by this board or these boards of any dispute tending to threaten or burden the free flow of interstate commerce.

There is no authority except to investigate. It is expected that investigation, a finding of the facts and giving publicity to them, will have a very beneficial effect, and will result in making suggestions that will lead toward settling the strike or settling labor disputes. To that extent that provision is, in my judgment, very helpful; but I do hope that in the beginning of the next session, at least, we shall face the real, underlying, necessary statute that we must enact here, preventing the exercise by the employer of economic pres- **[12022]** sure to break down a free labor organization, to break down free representatives, and to break down the right of collective bargaining.

Mr. LA FOLLETTE and Mr. NORRIS addressed the Chair.

The PRESIDING OFFICER. May the Chair say to the Senator from Nebraska that perviously there was an understanding to recognize the Senator from Wisconsin.

Mr. NORRIS. I have no objection to the secret agreement being carried out, Mr. President. Of course, it violates the rules of the Senate, but that is done every day.

The PRESIDING OFFICER. The Chair, then, will finish his remark. Will the Senator from Nebraska find it agreeable to consent to the Chair recognizing the Senator from Wisconsin to present his amendment?

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Mr. NORRIS. Mr. President, it is not necessary for the Chair to get the consent of the Senator from Nebraska to recognize anybody.

Mr. LA FOLLETTE obtained the floor.

* * * * * * *

[12024] SETTLEMENT OF LABOR CONTROVERSIES

The Senate resumed the consideration of the joint resolution (S. J. Res. 143) to effectuate further the policy of the National Industrial Recovery Act.

Mr. LA FOLLETTE. Mr. President, I offer the amendment which I send to the desk, in the nature of a substitute for the joint resolution.

The PRESIDING OFFICER. The amendment, in the nature of a substitute, will be read.

The legislative clerk read as follows:

DECLARATION OF POLICY

SECTION 1. It is hereby declared to be the policy of the United States to remove unnecessary obstructions to the free flow of commerce, to encourage the establishment of uniform labor standards, and to provide for the general welfare, by establishing agencies for the peaceful settlement of labor disputes, and by protecting the exercise by the worker of complete freedom of association, self-organization, and designation of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this resolution—

(1) The term "person" includes an individual, partnership, association, corporation, labor organization, legal representative, trustee in bankruptcy, or receiver.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State, municipal corporation, or other governmental instrumentality, or any person subject to the Railway Labor Act, as amended from time to time, or any [12025] labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization, or any person employing less than 10 employees.

(3) The term "employees" shall include any employee, and shall not be limited to the employees of a particular employer, unless the resolution explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his father, mother, or spouse.

(4) The term "representatives" includes any individual or labor organization designated by employees to act for them or any individual or employer organization designated by an employer to act for him.

(5) The term "labor organization" means any organization or any agency or employee representation committee, in which employees participate and which

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exists for the purpose, in whole or in part, or dealing with employers concerning hours of labor, wages, or working conditions.

(6) The term "employer organization" means any organization or any agency or employers representation committee which exists for the purpose, in whole or in part, of dealing with employees concerning hours of labor, wages, or working conditions.

(7) The term "commerce" means trade or commerce, or any transportation or communication relating thereto, among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 3.

(9) The term "National Industrial Adjustment Board" means the National Industrial Adjustment Board created by section 4 of this resolution.

(10) The term "old Board" means the National Labor Board established by the President in August 1933.

(11) The term the "Circuit Court of Appeals" includes the Court of Appeals of the District of Columbia.

UNFAIR LABOR PRACTICES

SEC. 3. It shall be an unfair labor practice—

(1) For an employer to attempt, by interference or coercion, to impair the exercise by employees of the right to form or join labor organizations, to designate representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or for an employer to refuse to recognize and deal with such representatives for the purpose of collective bargaining or other mutual aid or protection.

(2) For employees to attempt, by interference or coercion, to impair the exercise by employers of the right to join or form employer organizations and to designate representatives of their own choosing for the purpose of collective bargaining.

(3) For an employer to interfere with or dominate the administration of any labor organization or contribute financial support to it: *Provided*, That, subject to rules and regulations prescribed by the National Industrial Adjustment Board, an employer shall not be prohibited from permitting an employee, individually, or local representatives of employees, from conferring among themselves or with management during working hours without loss of pay while engaged in the business of a labor organization.

(4) For an employer, by discrimination in regard to hire or tenure of employment or any term or condition of employment, or by contract or agreement, to encourage or discourage membership in any labor organization: *Provided*, That nothing in this resolution or in the National Industrial Recovery Act, or in any code or agreement approved thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or controlled by any unfair labor practice) to the effect that a person seeking employment shall be required, as a condition of employment, to join such labor organization, if the agreement is sought by the majority of employees in the unit covered by it when made and its duration is limited to a reasonable period. Nothing in this proviso shall be construed by the Board to indicate that any employer is bound to enter into an agreement conditioning employment upon membership in any labor organization.

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NATIONAL INDUSTRIAL ADJUSTMENT BOARD

SEC. 4. (a) There is hereby created in the Department of Labor a board, to be known as the "National Industrial Adjustment Board" (hereinafter referred to as the "Board"),which shall be composed of five members, appointed as hereinafter provided.

(b) The President, by and with the advice and consent of the Senate, shall appoint three members to represent the general public, and shall designate one of such members as chairman of the Board. One of these members shall be appointed for a term of 1 year, one for a term of 3 years, and one for a term of 5 years, but there successors shall be appointed for terms of 5 years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. Each member representing the general public shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment.

(c) The President, by and with the advice and consent of the Senate, shall appoint for terms of 1 year each 6 individuals as a panel to represent employers and 6 individuals as a panel to represent employees. In making such appointments the President may consult organized representatives of employer and employees. The chairman of the Board shall from time to time select individuals from these panels to serve as members of the Board, and shall fix and rotate their periods of service in such manner that (1) there shall always be one representative of employers and one representative of employees upon the Board, and (2) all the individuals on the panels shall, insofar as practicable, serve as members of the Board for approximately the same length of time. Members of the Board who are selected from the panels shall each receive $20 per diem and necessary traveling and subsistence expenses when engaged in the performance of their duties.

(d) Three members of the Board, including one member representing the general public, shall constitute a quorum. A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board. The Board shall have an official seal which shall be judicially noticed.

SEC. 5. (a) The members representing the general public shall appoint such employees, and, without regard for the provisions of the civil-service laws, appoint such attorneys, special experts, and examiners as may be from time to time appropriated for by Congress. The Board may utilize such voluntary and uncompensated services, and establish such voluntary and uncompensated regional, or local boards, as it may from time to time find necessary.

(b) Upon the organization of the Board and the designation of its chairman, the old Board shall cease to exist; and all pending investigations and proceedings of the old Board shall be continued by the Board. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board, shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this resolution. All employees of the old Board shall be transferred to and become employees of the Board at their present grades and salaries.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside of the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it duly designates for that purpose.

(d) The Board may request and the Secretary of Labor may direct from time to time the officers and employees of the Department of Labor to render services and furnish information and otherwise to aid the Board in the performances of its

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duties, insofar as such assistance can be made available under the appropriations and other legal obligations of the Department of Labor.

SEC. 6. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise all its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 7. The Board shall have authority from time to time to make, amend, and rescind such reasonable rules and regulations as may be necessary to carry out the provisions of this resolution. Such rules and regulations shall be effective upon publication in the manner which the Board may prescribe.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 8. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice defined in section 3 that burdens or affects commerce, or obstructs the free flow of commerce, or has led or tends to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

(b) Whenever a complaint is made to the Board which causes the Board to believe that any person has engaged in or is engaging in any such unfair labor practice, the Board shall issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or before a designated agent or agency, at a place therein fixed, at a time to be designated by the Board. Any such complaint may be amended by the Board in its discretion at any time prior to the conclusion of the taking of the evidence. The person so complained of shall have the right to file an answer to the original or amended complaint and appear in person or by counsel and give testimony at the place and time fixed in the complaint, and to invoke the compulsory process of the Board in summoning witnesses in its behalf.

(c) The testimony taken by such agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board may itself take further testimony and/or hear argument. If upon all the testimony taken, the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, than the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, or to take affirmative action or to perform any other acts that [12026] will achieve substantial justice under the circumstances. Such order may further require such person to make a report from time to time showing the extent to which it has complied with the order.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) If such person fails or neglects to obey such order of the Board while the same is in effect the Attorney General, at the request of the Board, may petition any circuit court of appeals of the United States within any circuit wherein the labor practice in question occurred or wherein such person resides or carries on business, for the enforcement of such order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question deter-

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mined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, the court may order such additional evidence to be taken before the Board and to be adduced upon the hearing. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347). The commencement of proceedings under this subsection shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(f) Any person aggrieved by an order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any Circuit Court of Appeals of the United States in the circuit wherein the unfair labor practice in question was engaged in or wherein such person resides or carries on business, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, and including the testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall have the same jurisdiction to affirm, set aside, or modify the order of the Board, and shall proceed in the same manner, as in the case of an application by the Board for an enforcement of its order, and the findings of the Board as to facts, if supported by evidence, shall in like manner be conclusive.

(g) When making and entering a decree affirming, modifying, or setting aside in whole or in part an order of the Board as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the act entitled, "An act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U. S. C., title 29, secs. 101–115).

(h) Petitions filed under this resolution shall be heard expeditiously, and if possible within 10 days after they have been docketed.

(i) Complaints, orders, and other process and papers of the Board and its agents may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post-office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same.

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ARBITRATION

SEC. 9. (a) The Board shall have power to act and to appoint any agent or agency to act, as arbitrator in labor disputes, when parties agree to submit the whole or any part of a labor dispute to the arbitration of the Board or its appointees. When the Board accepts such submission, the agreement shall be valid, irrevocable, and enforceable as to the submitting parties save upon such grounds as exist at law or in equity for the revocation of any contract. In any such arbitration the Board shall have power to issue an award applicable to the submitting parties.

(b) In any dispute in which an award has been made, the Board shall file the award in the clerk's office of the United States district court that has been agreed upon by the parties or, in default of such agreement, that of the Supreme Court of the District of Columbia. Notice of the filing shall be personally served or sent by registered mail to each submitting party. Unless a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter final judgment confirming the award.

(c) A petition for the impeachment of any award may be filed only in the court where the award has been filed and not more than 10 days after the communication of notice of the filing of the award to the submitting parties. Notice of the filing of such a petition shall be served personally or sent by registered mail to each submitting party. This petition shall be sustained by the court only on one or more of the following grounds:

1. That the proceedings were not substantially in conformity with this resolution;

2. That the award does not conform nor confine itself to the stipulations of the agreement to arbitrate; or

3. That an arbitrator or member of the Board participating in the award was guilty of fraud or corruption; or that a party to the ward practiced fraud or corruption which affected the result.

(d) The court shall not set aside an award on the ground that it is invalid for uncertainty; in such case the court shall suspend action pending a resubmission of such award to the Board for interpretation. It shall not set aside an award for irregularity or clerical error, going only to form and not to substance; in such case the court shall correct the form of the award in its judgment. If the award has ceased to be operative because it has been carried out or superseded, the court shall enter judgment accordingly. The court shall construe every award with a view to favoring its validity. But if the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but that a part of the award is valid, the court shall set aside the entire award; unless all interested parties shall agree that the valid part is severable. If the petition is not sustained, the court shall enter judgment confirming the award.

(e) Within 10 days from the entry of judgment upon the petition, confirming or otherwise disposing of the award, any party may appeal to the circuit court of appeals. Only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law to be decided. The determination of the circuit court of appeals upon these questions shall be final, and judgment pursuant thereto shall thereupon be entered by the district court.

(f) If at any time before final judgment all interested parties agree upon a settlement in lieu of the award, judgment may be entered upon such settlement.

(g) The judgment shall be entered and docketed as if it were rendered in a suit in equity and shall have the same force and effect as, and be subject to all the provisions of law relating to, a decree in a suit in the court in which it is entered.

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(h) The several United States courts are hereby vested with jurisdiction to entertain proceedings and to enforce all judgments entered pursuant to this section, without respect to the amount in controversy.

CONCILIATION AND MEDIATION

SEC. 10. The Board shall have the power to use and to create agencies for the mediation or conciliation of labor disputes: *Provided*, That the Board may decline to take cognizance of any labor dispute where there is another means of settlement provided for by agreement, industrial code, or law which has not been utilized.

REPRESENTATION OF EMPLOYEES

SEC. 11. (a) In any dispute as to who are the representatives of employees, the Board, if the dispute might burden or affect commerce or obstruct the free flow of commerce, may investigate such dispute and certify to the parties, in writing, the name or names of the individuals or labor organizations that have been designated and authorized to represent employees. In any such investigation, the Board shall hold an appropriate hearing, and the Board shall be authorized to take a secret ballot of employees, or to utilize any other suitable method to ascertain by whom or by what labor organization they desire to be represented. The Board shall decide whether eligibility to participate in a choice of representatives shall be determined on the basis of employer unit, plant unit, or other appropriate unit. Each unit may be given representation in proportion to its membership. The Board may determine that representatives agreed upon by the majority of employees in an appropriate unit shall represent the entire unit for the purpose of negotiating agreements concerning terms and conditions of employment: *Provided*, That nothing in this act shall be construed to prohibit an employer from discussing grievances with an employee or groups of employers at any time.

(b) In any dispute not of the character described in subsection (a), as to who are the representatives of employees, the Board may offer its services to aid in determining who are such representatives.

INVESTIGATORY POWERS

Sec. 12. For the purpose of all hearings and investigations, which, in the opinoin of the Board, are necessary and proper for the exercise of the powers vested in it by section 8 and section 11 (a)—

(1) Any member of the Board representing the general public shall have power to require by subpena the attendance and testimony of witnesses and the production of all documentary evidence relating to any matter under investigation. Any member of the Board, or any agent designated by the Board for such purposes, [12027] may administer oaths and affirmations, examine witnesses, and receive evidence.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States, the United States courts of any Territory or possession, and the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides, upon application by the Board, shall issue to such person an order requiring such person to appear before the Board, or an agent designated by it, there to produce documentary evidence if so ordered, or there to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and other documents germane to the

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matter under investigation before the Board, or in obedience to the subpena of the Board, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise germane to the matter under investigation except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Witnesses summoned before the Board or any of its agents shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same, other than employees of the Board, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board unless such records, papers, or information relate to trade secrets or have been received by the Government under an assurance of nondisclosure.

SEC. 13. Any person who shall willfully assault, resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to section 8, section 10 (in the case of a labor dispute which tends to burden or affect commerce), or section 11 (a), shall be punished by a fine of not more than $5,000 or by imprisonment for not more than 1 year, or both.

REPORTS

SEC. 14. The Board shall at the close of each fiscal year make a report in writing to Congress stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

LIMITATIONS

SEC. 15. Nothing in this resolution shall be construed to require any employee to render labor or service without his consent, or to authorize the issuance of any order or injunction requiring such service, or to make illegal the failure or refusal of any employee individually, or any number of employees collectively, to render labor or service.

SEC. 16. Nothing in this resolution, except as otherwise expressly provided, shall abridge the rights of employees secured to them, under any code, agreement, or otherwise, by section 7 (a) of the National Industrial Recovery Act, it being the purpose of this resolution to supplement and not to supersede such rights.

SEC. 17. If any provision of this resolution or the application of such provision to any person or circumstance shall be held invalid, the remainder of this resolution, or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

Mr. LA FOLLETTE. Mr. President, I listened to the statements made by the distinguished Senator from Arkansas [Mr. ROBINSON], the junior Senator from New York [Mr. WAGNER], and the senior Senator from Massachusetts [Mr. WALSH], who is Chairman of the Senate Committee on Education and Labor. I did not hear from the lips of those three distinguished Senators one sound reason why the

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Congress should not legislate upon one of the most important questions, so far as public policy and public welfare are concerned, that has confronted the Congress in recent years.

Any person who is at all familiar with the situation on the industrial front in the United States knows that there are ominous signs of great unrest. Strikes are in progress in practically every section of the United States. Unless some action shall be taken by the Congress to set up machinery whereby the wage earners of this country may hope to have a fair determination of the rights which they believe were extended to them in section 7 (a) of title I of the National Industrial Recovery Act, there is every indication that we shall have the most serious labor conditions with which the United States has ever been confronted.

I, for one, am not frightened by the false propaganda against the Wagner bill. I do not propose, insofar as I have responsibility as one Member of this body, to shirk the duty which I feel is upon me, to make the best possible effort to see that this grave situation shall be met by adequate and well-considered legislation to effectuate the organization of instrumentalities which will make it possible to avoid the labor conflicts which every person knows are in the making.

Mr. President, the junior Senator from New York [Mr. WAGNER], who has given of his time and his labors most assiduously in connection with this work, not only in the Senate, but as chairman of the National Labor Board, stated a few moments ago that section 7 (a) of the National Industrial Recovery Act was being flouted by employers. Every Senator knows that statement to be true, and at bottom it is the failure to enforce section 7 (a) of the National Industrial Recovery Act which is primarily responsible for the ominous rumblings of unrest and the numerous conflicts which are already in progress in the industrial sections of the United States.

What sound reason can there be for Congress failing to discharge the responsibility which rests upon it as one of the coordinate branches of the Federal Government, in the face of this impending crisis, to enact legislation to meet the situation adequately, insofar as that may be humanly possible?

Was the 7-year fight waged by the distinguished Senator from Nebraska [Mr. NORRIS] for the enactment of the socalled "lame duck resolution", which did away with the terminate adjournment of Congress, all in vain? There is no sound reason any man has given or can give for the Congress to adjourn and to turn its back upon a situation which may bring open industrial warfare in the United States.

Every Senator who takes part in avoiding that responsibility for enacting legislation must, in my opinion, also take responsibility for the situation which will develop if we do not pass adequate legislation upon this grave subject matter.

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Mr. President, what does section 7 (a) of the National Industrial Recovery Act provide? It provides as follows:

SEC. 7. (a) Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of-collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President.

Mr. President, that was a plain declaration of right. It was framed in language which had come to have an accepted usage. "The right to organize", "the right to bargain collectively through representatives of their own choosing", are words which had come to have a definite meaning.

The Senator from New York stated on the floor this afternoon that this section of the law has been flouted and violated. Labor has been denied their rights and the section of the law enacted for their benefit has been violated. Any person who will review the activities of the National Labor Board will find that 75 percent, approximately, of all the cases with which it has had to deal have, in the last analysis, been concerned with the question of company unionism, and of the failure of employers to grant the rights extended under section 7 (a) for the free choice of representatives by their employees, and the right to collective bargaining.

Mr. President, I am perfectly willing to concede that if this measure had been introduced in the closing hours of this Congress, it would have been absurd for any one to **[12028]** have suggested that it ought to receive consideration by the Congress before it adjourned. Such is not the case. This measure is the outgrowth of the experience of the able junior Senator from New York in meeting his responsibility as chairman of the National Labor Board. The measure, carefully drawn, is designed to solve the problems with which the National Labor Board has been confronted.

The bill was introduced early in this session of Congress. It has had protracted hearings. So far as I know every person who asked to be heard either for or against the bill was given ample opportunity to present his arguments and his points of view and his testimony to the committee.

Then the committee took the bill and worked upon it day after day and day after day. Finally it was reported with a substitute amendment. So it cannot be said, I reiterate, that this is a hastily

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drawn, ill-considered piece of legislation. Nor can it be contended that it was brought in at the last minute and urged upon the attention of Congress.

Mr. President, what I have done—and may I say that it was not done without notice—what I have done is to take the substitute amendment as reported by the Senate Committee on Education and Labor to the Wagner bill, and in it I have incorporated the printed amendments which the Senator from New York has prepared and intended to offer had the measure been given consideration. Of course, the whole purpose of the amendment is to give implementation to the definite, broad, square declaration of public policy to be found in section 7 (a) of title I of the National Recovery Act. It will not overthrow or destroy the organization or the experience of the National Labor Board and its 19 regional and special boards.

Section 3 defines and enlarges rights, many of which are already embodied in section 7 (a) of the National Industrial Recovery Act. It characterizes certain activities of employers by which they frustrate employees' rights of self-organization and collective bargaining as unfair labor practices.

Section 8 empowers the National Industrial Adjustment Board in cases where these practices affect interstate commerce to prevent their continuance in the same way that the Federal Trade Commission has for 20 years dealt with "unfair methods of competition." The experience of the Federal Trade Commission has shown that the courts give a restrictive interpretation to such a general phase as "unfair methods of competition." It is, therefore, important that unfair labor practices should be defined explicitly.

The practices of employers specifically forbidden are:

First. Interference with organizations of employees.

Second. Interference with their designation of representatives.

Third. Refusal to recognize and bargain with such representatives.

Fourth. To prevent the financial support of labor organizations by employers.

Fifth. To prevent the discrimination in hire or tenure of employment because of membership or nonmembership in any labor organization.

This last prohibition is tempered by a provision permitting closed-shop agreements relating to future employees when a majority of the present employees so desire.

The experience of the National Labor Board, the Petroleum Labor Policy Board, the bituminous coal labor boards, all administering section 7 (a), as well as an 8-year test of the Railway Labor Act, indicate that such specific prohibitions are needed to effectuate the purpose of section 7 (a). Certainty should be substituted for uncertainty in this field, for uncertainty as to what the law bestows and

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withholds is one of the removable causes of labor unrest in this country today.

Section 4 of this piece of legislation creates the central board of five members to administer it. The conflict between a public representative (or quasi-judicial) personnel and a bipartisan (or quasi-arbitral) personnel is resolved by a happy compromise. The public-representative personnel of three members outnumbers at every particular moment the partisan representatives of labor and of management. But the latter will be drawn one at a time from panels of six for each group. No doubt all 12 of these appointees will watch the board's activity with critical eye and give it the benefit of their advice. The need of a paid and fairly professional personnel is clear. A weakness of the existing National Labor Board has been its lack of members giving it their foremost thought. Its distinguished chairman in recent months has had, as I have suggested, responsibilities that have demanded his first attention.

The wonder to me, Mr. President, is that he has been able to carry all of the work and all of the responsibility which he has shouldered during this long and arduous session of Congress.

The partisan members, representing industry and labor, respectively, heavily burdened with private and public responsibilities, could not give to its work the attention and time required for continuity and vitality of policy. The National Industrial Adjustment Board will not be deprived of the counsel of the sort of leaders who represent industry and labor on the present National Labor Board. But it will gain a nucleus of three full-time members representing the general public who may be expected by reason of their special qualifications of temperament, training, and experience to bring to the Board a new prestige, and by their assiduity during their long terms of office to enhance it from month to month. The temporary and uncertain character of all boards that have been or might be set up by the President's authority alone prevent the development of the very stability of policy needed for successful long-time handling of labor relations.

Sections 5, 6, and 7 relating to the appointment of staff, place of operation, and authority to make administrative rules require no comment.

Section 8 deals with the procedure to assure the observance of fair labor practices. This procedure, it has been said, closely parallels that in use for 20 years by the Federal Trade Commission. No objection has been expressed to these provisions. They are well tested by experience and essential to success.

Section 9 empowers the National Industrial Arbitration Board to arbitrate cases voluntarily submitted by the parties, and sets out a procedure of enforcement closely resembling that for arbitration

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under the Railway Labor Act. The importance of this power will depend entirely on the confidence with which labor and management view the new Board. The presence of employer and employee members on the Board may assure it a great future in this field of definitive settlement of labor disputes by consent of the interested parties. I am not given to prediction, Mr. President, but it seems to me that the prospect is bright.

Should this amendment be adopted we might take a long step forward in settling labor disputes in the United States.

Section 10 continues the mediatory functions of the National Labor Board and the regional boards and permits the new Board to consider disputes that may be within the competence of special agencies, especially by way of appeal, under identical language in the President's Executive order of December 16. This power has been scarcely exercised by the present National Labor Board. But it seems probable that uniformity of decision, particularly in the interpretation of the unfair labor practice provisions, will become increasingly necessary. It is hoped that the National Industrial Arbitration Board may provide such uniformity where uniformity is needed and allow diversity between industries and between localities where diversity will not cause confusion. Discretion in this matter is best entrusted to an expert central administrative agency such as the proposed National Industrial Arbitration Board.

Section 11 deals specifically with elections and is an amplification of powers now exercised by the National Labor Board and labor boards in particular industries. It gives to the Board wide discretion to determine the manner and effect of elections, thus placing on the Board a responsibility which existing agencies have tended to avoid assum- **[12029]** ing because of doubt as to their authority and divergence in view as to the manner and meaning of the representation envisaged by section 7 (a).

Section 12 provides the usual authority of administrative bodies to compel testimony and to prosecute for contempt those who are obdurate. The National Labor Board, in inquiring into the observance of section 7 (a), has been constantly balked by its inability to obtain needed testimony. No witnesses and no records could be obtained by the Board except by the good will of the persons having the information within their control. This grave defect can be cured only by the action of Congress. It is cured by this action which enables the Board to issue subpenas to summon witnesses and to obtain pay rolls and other documents in cases where there is a charge of an unfair labor practice including those concerning employee representation and elections to determine such representation.

Section 13 provides the usual penalty for those who willfully impede the Board in the discharge of its duties.

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Section 14 requires an annual report to Congress.

Section 15 safeguards any miscontruction of the statute to compel service or to make strikes illegal.

Section 16 safeguards the rights conferred on employees by section 7 (a) of the National Industrial Recovery Act.

Section 17 is the usual separability clause.

The whole proposal is a well considered and reasonably satisfactory provision for governmental guidance in labor relations.

Mr. President, although we have made great progress in our industrial development, insofar as the relations between labor and management are concerned, this country is far behind some other industrial countries. It is my judgment that the National Industrial Recovery Act would never have been passed by this body had it not contained section 7 (a) and had not the majority of the membership of the Senate believed that section 7 (a) meant what it said and that it would be enforced.

Today labor conflicts and strikes threaten the peace and the economic life of many communities all over the United States. At bottom these conflicts are primarily over company unionism and the right of collective bargaining which was pledged in section 7 (a) of the Industrial Recovery Act.

The joint resolution to which I have offered an amendment does not meet the problems which are responsible for approximately 75 percent of all the cases which have been passed upon by the National Labor Board.

I realize that there has been serious opposition to the so-called "Wagner bill" but I do not think Congress should be deterred in the discharge of its responsibility to enact legislation designed to meet this critical emergency simply because there is opposition. Too many American industrialists fail to recognize that without an organized labor market it is inevitable that the industrial process will constantly be interrupted by strikes, by lockouts, by riots, by bloodshed, yes, and even by death. Already we have seen an example in the strike at Toledo.

Of course every individual Senator would like an early adjournment and to go home; I admit, Mr. President, so far as I am personally concerned, I am weary with the session, but I say that, in my opinion, a grave mistake will be made if, instead of enacting legislation which will meet this situation, we shall pass a joint resolution, which I think every person will admit is a makeshift, and which I believe the chairman of the committee admitted in his own statement fails to deal with the most serious problems that are creating labor unrest in America today.

What boots it, Mr. President, if representatives are chosen by the employees or if elections are held as provided by the joint resolution if

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after those representatives are chosen the employers refuse to meet with them? In instance after instance, after representatives were chosen by the wage earners, employers have contended that they have complied with their obligations as to collective bargaining when they permitted the representatives to enter their offices but have declined to consult with them further.

It seems to me it is perfectly obvious that if we would be willing to remain here but a few days longer we could pass legislation which would meet this situation adequately and which would prevent the economic crisis, produced by conflicts between labor and management, which looms ominously on the horizon. Unless adequate treatment shall be given this subject by the present Congress, I am apprehensive, Mr. President, that a situation which will constitute a grave national emergency will arise, and that thousands of persons perchance will lose their lives in bloody, open conflict. We had a preview of such a picture in the Toledo strike. Fortunately it has been settled, but not until there had been casualties.

Labor has been looking to the Congress to act upon this question. I hesitate to think what their reaction will be if this amendment shall be defeated and labor shall realize that the second session of the Seventy-third Congress has been barren of legislation in the interest of the masses of the wage earners of this country.

Mr. TYDINGS obtained the floor.

Mr. NYE. Mr. President, will the Senator from Wisconsin yield to me?

Mr. LA FOLLETTE. I will yield for a question.

Mr. TYDINGS. The Senator from Wisconsin yielded the floor, and I obtained it; but I am glad to yield to the Senator from North Dakota so that he may ask a question.

Mr. NYE. The Senator from Wisconsin [Mr. LA FOLLETTE] has stated it to be his view that if we were to remain here a matter of a few days we could accomplish the passage of a worth-while labor bill. I want to ask the Senator if by chance it should take the Senate and the other House a month of continued effort to accomplish the enactment of a worth-while labor bill, would it be any the less our duty to stay here and do that job in the light of what is in prospect the country over?

Mr. LA FOLLETTE. Mr. President, my answer to the Senator, of course, is in the affirmative; we should stay here so long as is necessary. I take little stock in the cloakroom threats of a filibuster which have been made against a labor bill. I am convinced that if the same pressure should be put behind an adequate measure dealing with this question which has been put behind other bills which have been considered and passed at this session the measure could be passed within a few days.

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Mr. COSTIGAN. May I ask a question?

The PRESIDING OFFICER (Mr. AUSTIN in the chair). Does the Senator from Maryland yield to the Senator from Colorado?

Mr. TYDINGS. I yield for a moment.

Mr. COSTIGAN. I was regrettably called from the Senate Chamber for a few moments. May I ask the eloquent Senator from Wisonsin [Mr. LA FOLLETTE] whether he has discussed the history of his substitute?

Mr. LA FOLLETTE. I have.

Mr. COSTIGAN. And stated whether or not it has been considered by a committee or committees of the Senate?

Mr. LA FOLLETTE. I have. Mr. President, I ask unanimous consent to insert certain material as a part of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

The matter referred to is as follows:

STATEMENT OF LABOR BOARD PRINCIPLES ISSUED TO BOARDS

The first volume of decisions of the National Labor Board, Senator ROBERT F. WAGNER announced today, is being transmitted for information and guidance to all regional labor boards, as well as to industrial relations boards and mediators. The decisions, covering 46 cases from the inception of the board to March 1934, are being issued in printed form.

Senator WAGNER characterized the decisions as "a sound contribution to the formulation of a national labor policy, evolved by practical men as solutions of disputes involving fundamental industrial problems. The decisions follow established lines, preserving and advancing the principles of industrial relations contained in the recovery law."

Membership of the National Labor Board is as follows: Chairman, Senator Robert F. Wagner; vice chairman, S. Clay Williams; for industry—Henry S. Dennison, Ernest Draper, Pierre S. du Pont, [12030] Louis E. Kirstein, Walter C. Teagle; vice chairman, Dr. L. C. Marshall; for labor—George L. Berry, William Green, Dr. Francis J. Haas, John L. Lewis, Dr. Leo Wolman.

A summary of the Board's principles by Milton Handler, general counsel of the Board, follows:

ARBITRATION

Where the parties have not been able to settle their difficulties by collective bargaining, the National Labor Board has frequently recommended arbitration. In some cases the Board has acted as arbitrator itself upon a joint submission of a dispute by the parties (particularly wage disputes). All arbitration, however, has been voluntary and based upon the joint submission and consent of the parties.

COLLECTIVE BARGAINING

The Board has held that the employees' right to bargain collectively imposes a corresponding duty on the employer. Collective bargaining has been construed to mean the exertion of every reasonable effort to reach an agreement. The Board has deprecated the calling of a strike without attempt at negotiations or the presentation of grievances, on the part of the employees.

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Company union

The Board has ruled that organization is a matter exclusively within the control of the employees. It has counseled a "hands-off" policy on the part of employers. It has condemned the initiation of a company union by an employer and the participation by him in its affairs, where such initiation and participation have in effect, been an interference with the employees' self-organization, or resulted, in fact, in the domination of the organization by the employer, and where the employees have not clearly consented thereto. The Board has drawn a distinction between employee-representation plans which were fully submitted to the employees for their acceptance or rejection and plans which were imposed upon them. It has held that the fact that an election of representatives has been conducted under a plan does not constitute an approval of the plan itself.

Disclosure of employees' names

It is unnecessary for a collective-bargaining agency to disclose the names of those it represents when it seeks to bargain collectively with the employer.

Discriminations

The Board has rules that the discharge of employees because of their union activity is contrary to section 7 (a). The Board has ordered the reinstatement of employees whose discharge it found to have been discriminatory. Other forms of discrimination have been held unlawful.

Election

The Board has employed the device of an election by secret ballot under Government supervision, when the employer has questioned the authority of any agency to act as the representative of employees. The Board has held that the manner of conducting an election is entirely within the discretion of the employees, and that the employer in no way can interfere with the conduct of the election.

Form of contract

The Board has approved various forms of contract for designation of the collective-bargaining agency chosen by the employees. In the absence of agreement by the parties, the Board has recommended that the collective agreement be made by the employer and the agency, as representative of the employees.

Interference

The Board has condemned interference with the rights guaranteed employees by section 7 (a). Such interference may take various forms, such as discriminatory discharges, initiation of company unions, participation in its affairs, restrictions upon the qualification of representatives, etc.

Jurisdictional disputes

Where, in the construction of Government projects, the conflicting labor organizations are unable to settle the dispute by negotiation or are unwilling to submit the dispute to a board of arbitration, or where the American Federation of Labor has failed to adjust the controversy, the employer may then determine which union shall receive the disputed work.

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Majority rule

The representatives selected by the majority of the employees within a given plant or department are the sole collective bargaining agency for the plant or department.

Preferential list

In a ruling terminating a strike, the Board has frequently recommended that an employer, if business conditions do not permit him to reinstate the strikers at once, should place them on a preferential list and reinstate them in order of seniority before hiring any new employees.

Reinstatement

The Board has ordered reinstatement as a remedy for discharges which it considered discriminatory. It has also frequently recommended reinstatement of all strikers at the conclusion of a strike, if business conditions permit, and the division of work wherever possible.

Representatives of their own choosing

The employees may select any representatives whom they choose as their agents for the purposes of collective bargaining. The employer may not restrict their right of free choice in any way. Representatives may not be restricted to fellow employees. Since the word "representatives" in section 7 (a) is used in its generic sense, employees may select a union as their representative.

Seniority

Reinstatement and placing on a preferential list in order of seniority after a strike have frequently been recommended in order to avoid all question of possible discrimination.

Violence

The Board has ruled that striking employees who have been proven guilty of violence in the course of a strike need not be reinstated.

Written agreement

The Board has often recommended that agreements which are reached between employers and employees should be reduced to writing in order to establish certainty and good will.

1,750,000 WORKERS IN LABOR BOARD SETTLEMENTS

Senator ROBERT F. WAGNER made public today statistical summaries of the work of the National Labor Board and 19 regional labor boards from their inception up to June 1, 1934.

"The summaries show that of over 2,000,000 workers directly affected by labor board cases", Senator WAGNER said, "an estimated 1,750,000 have been returned to work, or kept at work, or had their other disputes adjusted.

"There was a total of 3,755 cases, of which 3,061, or 80 percent, were settled by the boards. Approximately two-thirds of these settlements were agreements, and agreements spell sound settlements.

"The boards mediated 1,323 strikes, involving 870,000 workers, not counting many more thousands directly affected. Three-fourths of these strikes were settled. In addition, 497 strikes were averted. Thus, the boards in strike situations alone

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returned to work or kept at work 1,270,000 workers directly involved, or about 1,500,000 including workers directly affected.

"Moreover, the boards reinstated 10,000 men found to have been discriminated against and unjustly discharged.

"Of the 3,755 cases, the primary cause of complaint in 2,655 cases was alleged violation of section 7 (a), the collective-bargaining provision of the recovery law."

SUMMARY OF THE NATIONAL LABOR BOARD AND ALL REGIONAL BOARDS UP TO JUNE 1, 1934

TABLE I.—*Cases and settlements*

	Total cases	Workers involved	Cases settled	Agreements	Decisions	Pending
Total regional boards	3,497	[1] 1,226,874	2,875	1,877	689	423
National Labor Board	258	506,600	186	80	66	30
Combined total	3,755	[2] 1,733,474	3,061	1,957	755	[3] 453

[1] Exclusive of workers directly affected.
[2] Estimated total including workers directly affected, 2,200,000.
[3] Incomplete.

TABLE II.—*Strikes*

Total	Strikes	Workers involved	Settled	Workers involved	Averted	Workers involved	Reinstated
Total regional boards	1,175	558,176	882	482,093	461	432,726	10,039
National Labor Board	148	312,300	123	223,400	36	132,000	----------
Combined total	1,323	[1] 870,476	1,005	[1] 705,493	497	[1] 564,726	[2] 10,039

Total workers returned to work or kept at work in strike situations ---------- 1,270,219
Same, including estimated workers directly affected ---------- 1,520,000

[1] Exclusive of workers directly affected.
[2] Incomplete.

TABLE III.—*Causes of complaint*

	Cases	7 (a) cases	Reduced earnings	Wage demands	Elections	Joint arbitration
Total regional boards	3,497	2,453	76	772	283	149
National Labor Board	258	202	----------	56	47	11
Combined total	3,755	2,655	76	828	330	160

Recapitulation: Of over 2,000,000 workers directly affected by Labor Board cases, an estimated 1,750,000 have been returned to work, or kept at work, or had their other disputes adjusted.

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[12031] TABLE IV.—*Cases and settlements for regional and National Labor Board*

[Totals from inception to June 1, 1934]

	Total cases	Workers involved	Cases settled	Agreements	Decisions	Pending
Atlanta	90	15,600	62	45	16	28
Boston	211	69,090	178	90	38	33
Buffalo	98	21,498	84	80	4	14
Chicago	245	85,317	190	113	58	55
Cleveland	281	124,130	233	194	39	----------
Detroit	232	27,803	182	144	38	22
Indianapolis	268	32,070	215	172	41	63
Kansas City	98	10,515	58	42	6	----------
Los Angeles	91	53,634	65	38	27	----------
Minneapolis-St. Paul	84	50,755	72	56	16	12
Newark	134	24,796	126	67	22	----------
New Orleans	97	85,000	60	47	13	21
New York	740	273,715	721	413	259	32
Philadelphia	326	[1] 89,096	265	172	43	61
Pittsburgh	180	60,482	158	91	28	22
St. Louis	113	54,018	99	39	30	----------
San Francisco	74	76,936	55	44	0	----------
Seattle	88	28,022	31	24	7	34
San Antonio	47	36,785	21	6	4	26
Total	3,497	[2] 1,226,874	2,875	1,877	689	423
National Labor Board	258	506,600	186	80	66	30
Combined total	3,755	[3] 1,733,474	3,061	1,957	755	[4] 453

[1] Total including workers directly affected 393,000. [2] Exclusive of workers directly affected.
[3] 2,200,000 estimated total including workers directly affected. [4] Incomplete.

TABLE V.—*Strikes, regional, and National Labor Board*

[Totals from inception to June 1, 1934]

	Strikes	Workers involved	Strikes settled	Workers involved	Strikes averted	Workers involved	Reinstated
Atlanta	17	13,000	10	2,500	17	7,100	116
Boston	53	26,250	43	24,127	21	10,573	94
Buffalo	27	6,497	27	6,497	9	5,441	7
Chicago	85	45,205	64	37,322	22	22,682	2,559
Cleveland	113	45,257	57	28,957	24	35,384	545
Detroit	89	18,394	85	18,169	9	1,170	67
Indianapolis	20	3,529	19	3,514	41	12,654	----------
Kansas City	13	3,901	6	954	3	2,480	382
Los Angeles	22	18,329	20	16,349	17	18,200	15
Minneapolis-St. Paul	24	36,317	24	36,317	28	19,758	658
Newark	40	8,519	39	7,711	34	8,000	39
New Orleans	19	21,180	16	17,450	35	38,000	275
New York	497	182,967	357	175,690	100	173,641	3,600
Philadelphia	61	[1] 47,190	46	[1] 45,406	25	[1] 9,282	756
Pittsburgh	32	12,666	26	10,824	18	11,670	106
San Antonio	8	11,000	1	7,000	2	500	----------
St. Louis	26	23,294	22	22,653	13	3,350	750
San Francisco	20	33,639	15	20,439	32	48,136	--------
Seattle	9	3,952	5	214	11	4,705	70
Total	1,175	558,176	882	482,093	461	432,726	[2] 10,039
Nationa Labor Board	148	312,300	123	223,400	36	132,000	----------
Combined total	1,323	[1] 870,476	1,005	[1] 705,493	497	[1] 564,726	[2] 10,039

[1] Exclusive of workers directly affected. [2] Incomplete.

Total workers returned to work or kept at work in strike situations ---------- 1,270,219
Same, including estimated workers directly affected ---------- 1,520,000

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TABLE VI.—*Causes of complaint, regional and National Labor Board*

[Totals from inception to June 1, 1934]

	Cases	7-A cases	Reduced earnings	Wage demands	Elections	Joint arbitration
Atlanta	90	60	2	23	33	11
Boston	211	145	5	68	11	17
Buffalo	98	84	----	14	2	6
Chicago	245	141	0	59	8	0
Cleveland	281	240	3	70	2	13
Detroit	232	126	----	105	2	0
Indianapolis	268	182	1	32	6	3
Kansas City	98	85	6	----	10	1
Los Angeles	91	----	----	----	28	5
Minneapolis-St. Paul	84	66	0	16	122	3
Newark	134	91	8	40	3	20
New Orleans	97	57	----	36	0	24
New York	740	620	39	111	19	23
Philadelphia	326	197	----	70	12	3
Pittsburgh	180	152	4	13	2	1
St. Louis	113	113	1	26	0	4
San Antonio	47	46	1	----	3	2
San Francisco	74	8	6	60	2	9
Seattle	88	40	----	29	18	4
Total	3,497	2,453	76	772	283	149
National Labor Board	258	202	----	56	47	11
Combined total	3,755	2,655	76	828	330	160

[Excerpt from N.R.A. release no. 2792, Jan. 17, 1934]

NATIONAL LABOR BOARD SUMMONS NATIONAL LOCK CO. TO HEARING

The original complaint of the workers was that the company refused to negotiate for collective bargaining, in violation of section 7 (a) of the recovery law, while continuing to fly the Blue Eagle. Subsequently the strikers complained that the company was setting up a company union.

[Excerpt from N.R.A. (Labor Board) release no. 3041 of Jan. 31, 1934]

LABOR BOARD DECIDES DRESNER (CHICAGO) CASE

From the text of the Board's decision:

"Since the strike, a company union has been formed. At the hearings before the National Labor Board, the attorneys for the company claimed authorship of the plan of employee representation under which the company union was established. It is patent that the new union is the creature of the company and not of its employees. Under the plan the workers are restricted to the selection of representatives from their own ranks. Moreover, a representative must have been in the company's employ for at least a period of 1 year; upon leaving the company's employ his term of office ceases. The management has equal voice and voting power in all matters coming before the joint committee which administers the plan and can veto any changes in or amendments to the plan. It is difficult to conceive of a more effective method of frustrating the rights of the employees to bargain collectively through representatives of their own choosing. Section 7 (a) of the National Recovery Act would soon become a meaningless scroll if such plans of employee representation, formulated in the midst of a strike, were to be countenanced."

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[Excerpt from N.R.A. release no. 3062, Feb. 1, 1934]

NATIONAL LABOR BOARD HEARS NORGE CASE (MICHIGAN)

Maurice Sugar, counsel for the Federal Union, traced the history of what he described as attempts of the company to force the men to join a company union. He said at a hearing before the Detroit Regional Board, Mr. Blood, president of the company, had agreed to hold an election under auspices of the union, but despite the fact that the board had found the old employee-representation plan of the company was in violation of the law the regional board decided by a vote of 6 to 5 not to order an election.

[Excerpt from N.R.A. release no. 3093, Feb. 2, 1934]

NATIONAL LABOR BOARD ANNOUNCES DECISION IN A. ROTH & CO. CASE (CHICAGO)

The company's attorney answered as follows: "With respect to your ultimatum and the three points set forth in your letter which must be acceded to, we have the following to say: (1) A. Roth & Co. has no need for the 23 employees who left its employ and will not reemploy them, nor will it discharge the 7 new employees who were taken in their places. (2) A. Roth & Co. will permit its employees to hold an election under the supervision of your board and let them choose by secret ballot their representatives to deal with the company, provided that only employees now on the pay roll will be eligible to vote, and provided that the representative chosen is an employee of A. Roth & Co. (3) A. Roth & Co. will abide by the provisions of the National Industrial Recovery Act insofar as it is able to do so and remain in business."

The record reveals a studied effort on respondent's part to negate the rights conferred upon its employees by section 7 (a) of the National Industrial Recovery Act. The statute imposes no restrictions on the choice of representatives. The workers may select whomsoever they please to represent them in bargaining collectively with their employers. The mandate of the law is clear and unequivocal. The wording of the statute leaves no room for reservation or qualification. It is for Congress and not the employer to rewrite the law. Whether employees shall be represented by fellow workers or by outsiders is a question for them alone to determine and the attempts of respondent to limit their freedom of choice are interdicted by the law.

[Excerpt from N. R. A. (Labor Board) release no. 3152, Feb. 6, 1934]

NATIONAL LABOR BOARD HEARS DATA ON HOUDE ENGINEERING CO., BUFFALO, N. Y.

Eggleston said the company contended it must have the names of all the people the union represents. "But the union," he said, "has withheld this information because of the action taken in the majority of cases where this kind of information was made available. The union felt it had not been organized to assist its members toward joining the unemployed." He said immediately following the organization of the union, or on September 27, 1933, "the company originated the idea of a social and athletic club, as the source of 'information' in regard to 'working conditions'." On October 9, 1933, this company union, he said, was created. Although the chairman of this association, William Wright, suggested resigning to join the union, "he has not done so, and he has kept his job."

[Excerpts from N. R. A. release no. 3310, Feb. 15, 1934]

LABOR BOARD HEARS REPUBLIC STEEL CASE, BIRMINGHAM, ALA.

Replying to charges brought before the National Labor Board today by representatives of the Mine, Mill and Smelter Workers [12032] Union, that the Republic Steel Corporation was fostering a company union at his Birmingham divi-

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sion, Thomas F. Veach, counsel for the company, testified that "our position is that of the steel industry generally and we will take such steps as lawfully necessary to uphold the employees' representative plan."

Questioned by Pierre S. du Pont, who acted as chairman, whether the employees had "absolute control of the plan", Mr. Veach replied that while the men had power to "initiate changes", they could not change the fact that the company has representatives on the control committee functioning under the system. There is equal representation of company and employees on this committee, but full attendance with two-thirds' vote is necessary to effectuate any action by the committee.

Mr. du Pont further asked if the company would be willing to "retire from the committee, in order to perfect the plan for holding an election." He asked: "You would rather do that than to have the plan thrown out and an entirely new one put in, wouldn't you?" William P. Belden, of Cleveland, Ohio, another counsel for the company, replied, "I want to tell you what we lawyers would recommend to our executives upon that point." He said the Weirton plan has been changed in this direction, and he would recommend it here. First, he suggested that the qualification of a year's employment for a worker committee representative be suspended during the life of the N. I. R. A., and, secondly, that while joint committees may consider all matters, company representatives on such committees may have no vote, leaving determination "solely" to the elected worker committee members. However, Counsel Belden said this question "is purely academic here."

Thereafter, he said, secret ballots were held by the men to choose representatives, with more than 90 percent of the men at the Raimund mine and Thomas furnace voting. While the plan contained a restriction that in order to be eligible to vote a man must be employed for at least 90 days, Veach said "this was not enforced." He said no "outside" names were posted on the ballots and the men "did not desire to have any outsiders to represent them."

The plan worked satisfactorily for several months "with no strife or trouble among the men" until "officers of the union who were not employees of the company" called upon company officials and presented complaints "which were admitted on all sides to be of no great importance." Following refusal to recognize these men, he said, a strike was called on December 17 and following that a hearing at Atlanta on January 17, where "the union officials claimed the right to represent the men by reason of certain so-called 'petitions', which purported to bear the signature of most of the employees." Following this hearing, he said, the strike had been called off "without prejudice to the company or to the union." He denied the validity of the petitions and stated the company "owes a moral duty to recognize the representatives duly elected by the men in their election last June by secret ballot." He said another election was scheduled for this June, when all questions as "to who should represent the men can and will be settled in an orderly fashion."

Veach maintained there was no dispute with the employees, but "there is simply an attempt on the part of the American Federation of Labor to enlist all of our workmen in its organization, and it seems to us there is present a gigantic attempt on the part of the American Federation of Labor to create in itself a monopoly of labor throughout the United States of America in violation of the prohibitions of the National Industrial Recovery Act."

Mr. du Pont pointed out that "it seems quite important under the act that the company should separate itself from the committee." He then asked if it were considered "material to keep management membership on the committee, as well as surrendering the voting power of management representatives." Belden replied that "as a general thing, for the purpose of proper contact, the company

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should have membership on the committee." In reply to a further question Belden said he did not believe this to be in conflict with the law. "It is only due the employer", he said, "that he should have representatives who sit on committees."

George L. Googe, of Atlanta, representing the Mine, Mill, and Smelter Workers' Union, told the Board the strike had occurred in Raimund because of nonrecognition of the union and oppression of minor officials in the mine. He said the strike vote has not been taken in the Thomas Furnace pending the National Labor Board's decision. He read a detailed analysis of the plan as effectuated by the company, claiming that among other things, it prevents recall of representatives by the workers, permits management control of committee tie votes and personnel of the committee. Under the plan the system of handling grievances was long drawn out, he said, and did not permit collective action until permission was granted by the management. He introduced affidavits from workers purporting to show oppressive tactics to induce workers to relinquish the outside union and join the company union. He told the Board that the "stalling tactics" of the Republic Co. in this case had become general with other industries in the South and that the workers were resenting it.

[Excerpt from N.R.A. release no. 3315, Feb. 16, 1934]

LABOR BOARD DECIDES CORCORAN SHOE CASE (STOUGHTON, MASS.)

The genesis of the strike is to be found in the opposition of the company to the attempts of the Brotherhood to unionize this plant. Late in October an organizer of the Brotherhood was ejected from the premises of the company. Mr. Corcoran, one of the owners, immediately decided to conduct an election and personally prepared a ballot, reading as follows:

"Do you wish to be represented in all matters pertaining to labor, prices, and conditions by a shops crew committee of your own choosing?"

The workers were given 2 hours' notice of the election. The ballot was explained to them by the foremen, who had received their instructions from the superintendent of the plant. The vote was 115 in favor of such representation and 92 opposed. There appears to have been no request for an election from the workers; the idea of a poll originated with the management; the arrangements were made by the company and the form of the ballot, as stated, was prepared by one of the owners. There thus was no self-organization of employees; the balloting and organization was dictated and superimposed by the management with a haste that can only be characterized as unseemly.

[Excerpts from N.R.A. release no. 3433—Feb. 23, 1934]

LABOR BOARD RULES IN NATIONAL LOCK CASE (ILLINOIS)

The Board finds "that the National Lock Co. interfered with its employees' right to organize to bargain collectively", and rules that the strike shall be called off and strikers placed on a preferential list and that an election shall be held under the supervision of the National Labor Board, employees on the pay roll of August 31 to be included in those eligible to vote.

The formation of the employees' representation plan was described in considerable detail by the witnesses for the company at the hearing before this Board. An election was held within the plant for the choice of employee representatives on October 3. This plan was promulgated by the company and was explained to the employees less than an hour before the election. A meeting of the employees in each department was called by the management. The works manager admitted that he had not only selected those who were to explain the plan to the

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employees, but that he had also explained it himself in several of the departments of the plant. All of the employees were instructed to vote. Section 7–a was not read to them, and they were not afforded an opportunity to pass upon any other form of organization or representation. Nominations were oral. The judges of the election were selected by the employees. Various officials of the company called off the names of the employees as they proceeded to the ballot box. The ballot itself was secret, but the company officials were in a position to know whether or not an employee participated in the election. Immediately after the election the length of the terms of the individual representatives were fixed by pulling numbers out of a hat. The company not only proposed that the terms should vary from 1 to 3 years, but suggested and supervised the device which was employed to determine the length of each representative term. No constitution or bylaws were prepared for the plan either before the election or since, and no collective agreement with the management has ever been reached by the elected representatives. At least two of the elected representatives are assistant foremen.

[Excerpt from N.R.A. (Labor Board) release no. 3700, Mar. 8, 1934]

NATIONAL LABOR BOARD DECISION ON BERLINER-JOYCE AND GENERAL AVIATION CASES (DUNDALK, MD.)

During August 1933 the employees at the Berliner-Joyce and General Aviation plants of the General Aviation Mfg. Corporation at Dundalk, Md., formed a Federal labor union and received a charter from the American Federation of Labor. Shortly after the companies became parties to the President's reemployment agreement, a committee selected by the union members of both plants protested against the new wage schedules which the company was putting into effect. A few days later the management posted notices containing an outline of a representation plan for the guidance of employees and requesting the selection of three committeemen for each plant. The proposed plan for the Berliner-Joyce factory limited the eligibility of representatives to those who "have at least 1 year's service in the Berliner-Joyce plant." A similar plan was suggested for the General Aviation factory but was not acted upon by the employees there. On September 29 the Berliner-Joyce workers, who were not offered an express opportunity to accept or reject the plan itself, selected as their representatives the same persons who were members of the original union committee.

[Excerpt from N.R.A. (Labor Board) release no. 3737, Mar. 9, 1934]

CORCORAN SHOE CO. NOTIFIES LABOR BOARD OF ACCEPTANCE—SHOW-CAUSE HEARING CANCELED

The company agrees that the brotherhood is the representative of its employees for collective bargaining until July 1, 1934, that the present price list on army shoes shall remain unchanged during the agreement; that disputes shall be settled "by sincere negotiations" or representatives of the two parties, and in case of disagreement shall be referred to an arbitrator who, if need be, may be appointed by the New England Regional Board. The agreement provides against stoppages and for another election, supervised by the New England Regional Labor Board, to be held at the close of the agreement, if a substantial number of the employees desire it.

Mr. COSTIGAN. I have already stated today my personal opposition to adjournment without further legislative action as suggested by the Senator from Wisconsin.

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[12033] Mr. TYDINGS. Mr. President, at Sparrows Point, Md., the plant of the Bethlehem Steel Co. is located. It is the largest single employer of labor in the State of Maryland. I hold in my hand a very significant letter sent by some of the employees of the Bethlehem Steel Co. at Sparrows Point, Md., which I ask the clerk to read very distinctly for the benefit of the Senate.

The PRESIDING OFFICER. Without objection, the clerk will read as requested.

Mr. WAGNER. Mr. President, will the Senator from Maryland yield to me?

Mr. TYDINGS. Yes; I will yield before the reading of the letter.

Mr. WAGNER. May I ask the Senator whether the letter he presents is from members of a company union or of a regular labor union?

Mr. TYDINGS. I think the reading of the letter will answer the Senator's question.

The PRESIDING OFFICER. The clerk will read as requested.

The legislative clerk read as follows:

SPARROWS POINT, MD., *June 1, 1934.*

Hon. MILLARD E. TYDINGS,
United States Senator, Washington, D. C.

DEAR SENATOR TYDINGS: As the duly elected representatives of the employees of the Maryland plant of the Bethlehem Steel Co., chosen in an election conducted by the employees, in which 86 percent of our working forces, or a total of 9,563 employees, participated, we are very much concerned over the threatened strike, at some plants of a certain group of employees for union recognition. The workmen at this plant are not in sympathy with this proposed strike, and we feel that the large group of employees, who are working under satisfactory relations with our employers, are being misrepresented in Washington. The plan of employees' representation has been functioning at this plant for 17 years and furnishes us with a highly satisfactory method for the settlement of the various problems arising in our employment relations.

From the impression we get from the press articles coming out of Washington, the entire labor situation appears to be greatly clouded by misinformation, and if the absolute truth were told by everybody concerned in the present labor controversy, our plan of employees' representation would need no defense.

The employees' representatives at Sparrows Point, and the workers in this plant, are convinced that our plan is entirely satisfactory, and that the present strike threat has been fomented by men who have done so for strictly selfish reasons.

We cannot conceive that a strike order would have any effect on our local operations, but we fear that the general situation would curtail orders coming into this plant, and work a hardship on our employees who are enjoying steady work and getting out of the debt, accumulated during the depression. With the improvement in steel operations, we are more concerned now in maintained employment for the men we represent than in trying out any new scheme whereby outsiders will have a voice in the affairs, which we are competent, through our present machinery, to settle ourselves.

We earnestly entreat you not to be misled by those men who are doing the most talking, and who claim to represent the working men in the steel industry.

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We are against the closed shop. We have not been discriminated against if we wanted to join a union, but we seriously object to the making of any man join a union in order to get a job.

Our men are very inexperienced in the matter of strikes, this plant having been remarkably free from labor difficulties in the past, and we sincerely hope that we may be allowed to continue to carry on as we are now doing.

Very sincerely,

CHAS. H. WEAVER,
Chairman General Body of Employees Representatives.
ALBERT CREW,
Secretary General Body of Employees Representatives.

Mr. TYDINGS. Mr. President, that letter speaks for itself. While I am not in a position of having intimate knowledge as to conditions at Sparrows Point, I have every reason to believe that the letter expresses the untrammeled and actual sentiment of the employees of that plant who in normal times number about 12,000 to 14,000.

Mr. President, I also have another letter——

Mr. WAGNER. Mr. President, will the Senator yield at that point?

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from New York?

Mr. TYDINGS. I yield.

Mr. WAGNER. I wish to assure the Senator that the legislation which has been proposed in no way interferes with the workers in any plant who agree or decide upon any plan of representation they choose. The only purpose of the legislation which is proposed is to make the worker free from any interference or coercion in determining what particular form of representation he desires.

Mr. TYDINGS. Mr. President, in that connection the letter I am about to read is very pertinent and I ask the particular attention of the Senator from New York. The letter was written to me by a college classmate of mine who has not reached a great deal of eminence in the Republic Steel Corporation, but he is an employee. The letter is written in a very intimate vein, and I know it is written in candor and honesty. I shall not read it all. This is what he says, in part:

I hesitate to again bother you about labor legislation, but as this question is of such paramount importance to the recovery and well-being of our country, I am again taking the liberty of expressing our views on our President's "labor disputes bill."

As far as employers and employees are concerned, this new act is nothing more nor less than the Wagner bill, as we read it. This great tempest stirred up in the country about the steel strike is one of the greatest pieces of racketeering which I have yet seen. I am going to cite just a few instances to indicate the real sentiment of the majority of the employees in the steel mills. Our Buffalo plant, employing about 3,400 men, voted for the employees' representation plan, which is a vote against labor unions, practically unanimously on Tuesday of this week.

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The exact percentage voting was 98.17. About 2 weeks ago a number of organizers from the Amalgamated Association called a meeting in Madison Hall for the purpose of organizing the Republic Steel plants in Buffalo. The story of their success is a matter of newspaper record, as the only notice taken of its meeting on the part of our employees was that 12 out of the 15 attending voiced their disapproval of unions in general, asked to be left alone, and for the organizers to leave town. On being told by one of the Amalgamated speakers from Youngstown that if they did not have "guts" enough to go on strike they would send a crew up from Youngstown and picket their plant and force them out, one of our workmen told them that they would do so on their own responsibility and that some of them would get badly hurt in the attempt. Our men then left the meeting.

As a result of these activities, the Buffalo newspapers interviewed the employee representatives of our Buffalo plant and published a very favorable report on the fairness and popularity of the representative plan in Buffalo, and also visited our plants on Tuesday, June 12, when our men held their nominations, and again published very favorable reports on the fairness with which these elections were conducted by the workers.

In our Youngstown plant, where the men voted 98.4 percent on nominations, even though literature of all kinds was handed to the men going to work, urging them not to vote, and stickers were supplied them to paste on the ballots to the effect that they were not voting for the "plan", the men still voted as indicated above, and according to the workmen who counted the votes only 3 or 4 stickers were found out of the 5,800 ballots cast. Representatives of Youngstown newspapers, through arrangements which they made through our representatives, were present at this election and reported that a very fair election was being conducted by the workmen, without any interference by people in a supervisory capacity.

In our corporation as a whole over 25,000 men (88.7 percent) voted for the "plan."

* * * * * * *

I am very familiar with the conditions in practically all the steel plants in this country, and I can assure you that the workmen in the mills are being paid as high rates as the companies can afford to pay, they are being fairly dealt with universally, the employees' representation plans are being used justly and fairly, and there is no need having legislation of any kind other than the N. I. R. A., which is now on the statute books, to bring about a better understanding or more harmony than now exists. Trying to force labor unions into the steel mills is bound to lead to trouble and strife of all kinds, as the majority of the men in the mills do not want to be forced into carrying out the wishes or desires of men not particularly interested in their welfare, but who are only trying to build and maintain for themselves lucrative positions as agitators, delegates, and heads of labor unions.

Do not be overly concerned about a steel strike. The men in the mills, with very few exceptions, want to work, are satisfied with their foremen, superintendents, working conditions, rates of pay, etc. It is a miserable shame that conditions are being developed through experimentation which may throw thousands of men out of work and create great suffering in order to create jobs for a few delegates, agitators, and union heads. If the administration would put just a little of the energy which they are expending on the Labor Board in the preservation of law and order; if they would investigate the number of houses dynamited by strikers in the South; if they would investigate the case where one of our workmen was removed from a street car in Alabama [12034] and beaten to death just 4 days ago by strikers, the labor problem and recovery, as far as labor problems are concerned, would be quickly solved.

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Mr. President, I have had one letter read and I have read the other one myself, for the purpose of making this observation. I think on the one hand and in many cases the employers have not permitted, perhaps, those who work for them to express a free and untrammeled opinion. On the other hand, I think the labor unions have tried in many cases to force men to join unions who actually did not want to do so. What I am fearful of is that under the terms of the measure now before us we will open an avenue which will coerce many laboring men to join organizations or not to join, as the case may be, when they ought to have a right to join or not to join whatever organization they see fit.

Mr. SCHALL obtained the floor.

Mr. WALSH. Mr. President, before the Senator from Minnesota proceeds, will he yield to me?

The PRESIDING OFFICER. Does the Senator from Minnesota yield to the Senator from Massachusetts?

Mr. SCHALL. I yield.

Mr. WALSH. I should like to make an observation about the letter which has just been read. The letter which the Senator from Maryland read is similar to hundreds of letters that all Members of the Senate have received. It is undoubtedly true that groups of employees attempt to exercise great pressure on their fellow employees to join a particular union. It is undoubtedly true that even where a majority of the employees have decided upon an independent or company union, a minority of the employees seek to prevent it and even go to the extent of striking.

The whole trouble in the problem is that any remedy which forbids or attempts to prevent a man from striking, any injunction or any law that prevents a man from striking, is a step to inflame, is a law of servitude, and that is the principle we have to keep in mind. It is the difference between freedom and servitude. A man has a right to work or not to work.

Mr. TYDINGS. Mr. President, will the Senator yield?

Mr. WALSH. In a moment. Men have a right to work collectively or not. We cannot prevent strikes unless we attempt to make men work and put a harness on their backs and drive them into the shop. What we can do——

Mr. TYDINGS. Mr. President, will the Senator yield?

Mr. WALSH. In just a moment. What we can do is to create a board or boards in which the public will have confidence, in which the employees and the employers will have confidence, who can hear the disputes and try to adjudicate them. There is nothing in the proposed law that discriminates between a company union and a trade union. There is nothing to compel a man to join any union. There is nothing to compel employees to organize at all. What there

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is in the proposed law is a provision that if a group of employees want to organize they shall be permitted to do so without interference, without coercion, without force upon the part of the employers.

Mr. TYDINGS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Minnesota yield to the Senator from Maryland?

Mr. SCHALL. I yield.

Mr. TYDINGS. The Senator from Massachusetts drew the picture that it is wrong to compel a man to work who does not want to work. It is equally wrong to compel a man to strike who does not want to strike.

Mr. WALSH. No man is compelled to strike who does not want to strike.

Mr. TYDINGS. The Senator knows that when men go to work, quite often the places are picketed because those who do not want to work or have some grievance against the company do not want others to go to work.

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73D CONGRESS
2D SESSION

H. J. RES. 375

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 1934

Mr. BYRNS introduced the following joint resolution; which was referred to the Committee on Labor and ordered to be printed

JOINT RESOLUTION

To effectuate further the policy of the National Industrial Recovery Act

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to further effectuate the policy of title I of the National Industrial Recovery Act, and in the exercise of the powers therein and herein conferred, the President is authorized to establish a board or boards authorized and directed to investigate issues, facts, practices, or activities of employers or employees in any controversies arising under section 7a of said Act or which are burdening or obstructing, or threatening to burden or obstruct, the free flow of interstate commerce.

SEC. 2. Any board so established is hereby empowered, when it shall appear in the public interest, to order and conduct an election by a secret ballot of any of the employees of any employer, to determine by what person or persons or organization they desire to be represented in order to insure the right of employees to organize and to select their representatives for the purpose of collective bargaining as defined in section 7a of said Act and now incorporated herein.

For the purposes of such election such a board shall have the authority to order the production of such pertinent documents or the appearance of such witnesses to give testimony under oath, as it may deem necessary to carry out the provisions of this resolution. Any order issued by such a board under the authority of this section may, upon application of such board or upon petition of the person or persons to whom such order is directed, be enforced or reviewed, as the case may be, in the same manner, so far as applicable, as

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is provided in the case of an order of the Federal Trade Commission under the Federal Trade Commission Act.

SEC. 3. Any such board, with the approval of the President, may prescribe such rules and regulations as it deems necessary to carry out the provisions of this resolution and to assure freedom from coercion in respect to all elections.

3

SEC. 4. Any person who shall knowingly violate any rule or regulation authorized under section 3 of this resolution or impede or interfere with any member or agent of any board established under this resolution in the performance of his duties, shall be punishable by a fine of not more than $1,000 or by imprisonment for not more than one year, or both.

SEC. 5. This resolution shall cease to be in effect, and any board or boards established hereunder shall cease to exist, on June 16, 1935, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 of the National Industrial Recovery Act has ended.

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CONGRESSIONAL RECORD, HOUSE—JUNE 16, 1934
(78 Cong. Rec. 12120)

LABOR BOARDS

Mr. BYRNS. Mr. Speaker, I ask unanimous consent for the present consideration of House Joint Resolution 375, to effectuate further the policy of the National Industrial Recovery Act, which I send to the desk and ask to have read.

The Clerk read the title of the joint resolution.

The SPEAKER. Is there objection?

Mr. MARTIN of Massachusetts. Mr Speaker, I reserve the right to object. Is this the so-called "Wagner substitute bill"?

Mr. BYRNS. This is the bill that we have been reading about in the newspapers in the last 2 or 3 days. The bill, as originally published but not introduced, and which has the support of the administration, was taken under consideration, so the newspapers state, and so I have been told, by a conference of the minority of the Republican Members of the Senate. They suggested one or two amendments, which have been incorporated in this bill, which is an exact copy of the bill introduced by Senator ROBINSON of Arkansas in the Senate, and which I introduced in the House. I understand that the minority of the Senate are agreeable to the passage of the resolution.

Mr. MARTIN of Massachusetts. Does not the gentleman think that we ought to have some explanation of the resolution? It is a very important matter. Has it ever been to any committee in the House?

Mr. BYRNS. No; it has not. I introduced it only yesterday afternoon after the various conferences which were held had agreed upon the bill. I introduced it at the earliest possible moment thereafter.

Mr. MARTIN of Massachusetts. There are a great many people interested in this bill. They were not aware of the fact that it was to come up at this early hour, and I do not think we ought to give unanimous consent at this time. I wish the gentleman would defer his request until a little later.

Mr. BYRNS. I feel that if we are to get away tonight, it is important for the House to take action on this bill now. The gentleman knows that the Senate has under consideration at this moment the housing bill. Of course, no one knows how long that will take in the Senate. It is a complicated measure and ought to be considered by the Senate and passed so that it can go to conference, and the differences, if any, between the House and Senate be composed so as to pass it at the earliest possible moment.

It is important that this bill be passed now so that it can be sent to the Senate and can be taken up by the Senate, and become law. So, I think, it is important the matter should be taken up now.

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Mr. MARTIN of Massachusetts. I do not see how there would be any particular delay by postponing it an hour or so.

Mr. BYRNS. This bill, together with comments about it, has been printed for 2 or 3 days. I do not think there is anybody in this House who is not familiar with the provisions of the bill. Anyone who has read the Washington papers should know about it. It was published in full this morning and it was published yesterday.

Mr. MARTIN of Massachusetts. I have not had an opportunity to read it until just this moment when it was passed to me by the Clerk.

Mr. BYRNS. I understand this bill is acceptable—it is only an understanding—to all Members of the gentleman's party in the Senate. I may be mistaken about it. Senator McNary, who is the leader of the Republican minority in the Senate, is quoted in this morning's paper as saying that the bill is satisfactory.

Mr. O'CONNOR. Will the gentleman yield?

Mr. BYRNS. Certainly.

Mr. O'CONNOR. The gentleman will recall the Railway Labor Act which we passed yesterday. That even goes further than this particular resolution. This resolution is not much different from the Railway Labor Act which passed this House yesterday, except that this resolution is even milder than that. Now, Congress has already provided for the settlement of labor disputes as far as employees of the railroads are concerned. This mild resolution is as to other industries, and surely should not be objected to.

Mr. MAPES. Mr. Speaker, reserving the right to object, and I do not expect to object, I read the draft of this resolution as it appeared in this morning's paper, with as much care as I could. It was the first time, however, that I have been able to see it, and I believe it was the first time it was available. Of course, it is an important piece of legislation. It is the result of weeks of negotiation at the other end of the Capitol. Before unanimous consent is given I should like to have the gentleman from Tennessee explain exactly what the resolution contains, partly for the RECORD and partly to confirm my own conclusions after reading it.

Will the gentleman yield that I may ask him two or three questions, and perhaps we can get at the matter, or what I have in mind, better in that way than in any other way?

Mr. BYRNS. I yield.

Mr. MAPES. In the first place, as I understand it, the life of the resolution is confined to the life of the National Recovery Act?

Mr. BYRNS. June 16, 1935.

Mr. MAPES. The resolution authorizes the President to appoint boards to make investigation of controveries arising out of the National Recovery Act; is that correct?

Mr. BYRNS. Yes.

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Mr. MAPES. In the language of the resolution—

The President is authorized to establish a board or boards authorized and directed to investigate issues, facts, practices, or [12121] activities of employers or employees in any controversies arising out of section 7 (a).

Of the National Recovery Act?

Mr. BYRNS. That is correct.

Mr. MAPES. Is there any provision in the resolution that gives these boards any authority further than to make investigations? Can they put into effect any conclusions of findings or orders which they make, after having made the investigation?

Mr. BYRNS. As I read the bill, it does not, except as carried in the National Industrial Recovery Act. Of course, there is the benefit resulting from publicity.

Mr. MAPES. I agree with the gentleman. The only effect the investigations or findings of such boards can have, as I read the resolution, will be the moral effect and such effect as they may have upon public opinion. Let me ask the gentleman further: In addition to making these investigations, as I understand it, any board so established is empowered, "when it shall appear in the public interest, to order and conduct an election by a secret ballot" of employees to determine who shall represent them in their negotiations with their employers for the purpose of collective bargaining?

Mr. BYRNS. That is true in general terms; yes.

Mr. MAPES. In addition to those two things, does the resolution contain anything except to limit the effect of it to the life of the National Recovery Act?

Mr. BYRNS. That is practically all, as I read the resolution. Of course, there is a provision for the purpose of enabling the board to hold an election and to enforce any orders that it may issue toward holding that election.

Mr. MAPES. Yes; but, as I read the resolution, the only thing it does is to give these boards power to make the investigation referred to and to conduct the elections of employees as mentioned.

Mr. BYRNS. Yes. And to guarantee to the board authority to hold elections, free from coercion either on the part of the employees or the employer, and to insure freedom, in the language of the act, from coercion in respect to those elections.

Mr. MAPES. Yes; I intended to include that in my question.

Mr. O'CONNOR. Will the gentleman yield?

Mr. BYRNS. I yield.

Mr. O'CONNOR. Now, there should not be any mistake about it. Surely, in the second paragraph of section 2 they have the power, necessarily must have it, to issue an order.

Mr. BYRNS. That is understood.

Mr. SABATH. But only as to that particular matter.

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Mr. O'CONNOR. As to that dispute.

Mr. BYRNS. That is involved in the question of the gentleman.

Mr. MAPES. Section 2 relates to election of representatives of employees for the purposes of collective bargaining.

Mr. O'CONNOR. And orders.

Mr. BYRNS. Any order issued under the authority of this section; and this section, as I read it, applies only to the election to which the gentleman has referred.

Mr. MAPES. That is the way I understand it. I wanted confirmation of my understanding by the gentleman from Tennessee.

Mr. BYRNS. Of course, the gentleman understands that while he and I may undertake to construe this act here and now, our construction will have no effect upon the court, if the act ever should reach the courts, or upon the Board in its administration of the act. I have stated to the gentleman frankly my own opinion on the act; and the gentleman stated his.

Mr. MAPES. I understand that, but it did seem to me that we ought to have in the RECORD the expression of someone as to the general content of the legislation before we granted unanimous consent to take it up and pass it.

Mr. SABATH. Mr. Speaker, it is plain and simple; anybody can understand it.

Mr. MAPES. Mr. Speaker, the gentleman from Illinois says it is plain and simple and that anyone can understand it. That may be true if one has had an opportunity to read it but I think a sufficient answer to the statement of the gentleman from Illinois is that probably not half a dozen Members of the House of Representatives have had an opportunity to read the resolution.

Mr. SABATH. The gentleman from Michigan has read it; he understands it, and I am satisfied he knows there can be no misconstruction of the bill.

Mr. MAPES. I may say to the gentleman that it seems to me quite clear; but I may be mistaken, and I wanted to get confirmation of my understanding by the gentleman from Tennessee.

Mr. Speaker, it has been suggested to me that I ask the gentleman from Tennessee this question: There is nothing in the resolution which provides for, or squints at, any compulsory arbitration, is there?

Mr. BYRNS. No; there is nothing in here of that nature, as I read it.

Mr. BLANTON. Mr. Speaker, will the gentleman yield for one observation on the question of legislative intent?

Mr. MAPES. I yield.

Mr. BLANTON. Mr. Speaker, the courts do pay some attention to legislative intent as expressed from the floor at the time legislation is passed. So the observations of the gentleman from Michigan and

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of the gentleman from Tennessee, being expressions of legislative intent, will have some bearing in the future.

Mr. MAPES. Answering the observation of the gentleman from Texas, Mr. Speaker, I realized that; but we are in such a hurry here this morning that I did not want to take the time necessary to make the statement which the gentleman from Texas has made.

Mr. BOLTON. Mr. Speaker, will the gentleman yield?

Mr. MAPES. I yield.

Mr. BOLTON. There seems to be some confusion in the minds of certain parties as to whether this resolution is the resolution that is supposed to have emanated from the White House, or whether this is the resolution that was written by Mr. Green of the American Federation of Labor. Can the gentleman inform us about the matter?

Mr. BYRNS. I may state to the gentleman from Ohio that this resolution is the result of a conference with the President, and that it has administrative sanction and administrative endorsement. It cannot be said that it was prepared by anybody other than the President of the United States.

Mr. BOLTON. But has it the endorsement of the American Federation of Labor?

Mr. BYRNS. I cannot tell the gentleman definitely as to that.

Mr. BOLTON. The reason for my inquiry is because the newspapers have carried statements to the effect that it was not acceptable to the American Federation of Labor.

Mr. BYRNS. I am not informed as to that.

Mr. CONNERY. Mr. Speaker, will the gentleman yield?

Mr. MAPES. I yield.

Mr. CONNERY. Mr. Speaker, answering the gentleman from Ohio, I may say that I just talked with President Green, of the American Federation of Labor, over the telephone. He asked me to state to the leaders of the House and to the Members that while the American Federation of Labor naturally would have preferred the Wagner bill in its original form, that this late in the day they are not going to ask their friends to vote against this bill.

Mr. MARTIN of Oregon. Mr. Speaker, reserving the right to object, for the purpose of asking a question, is it not the gentleman's understanding that this resolution was prepared by the President after consultation with the leaders of both political parties?

Mr. BYRNS. That is my understanding; yes.

Mr. LEHLBACH. Mr. Speaker, reserving the right to object, I want to ask the gentleman from Tennessee this question: Section 3 provides "that any such board may subscribe such rules and regulations as it deems necessary to carry out the provisions of this resolution."

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Does the gentleman agree that this resolution deals with only two specific subjects: Section 1 to make investigation, and section 2 to conduct an election? Consequently, under [**12122**] this resolution there can be issued no rules or regulations enforceable by penalties save for the production of papers and witnesses with respect to an investigation and for the conduct of an election; is this correct?

Mr. BYRNS. Speaking generally, I think that is correct. But I think we should understand that section 1 gives authority to this board or boards to investigate issues, facts, practices, or activities of employers or employees in any controversy arising under section 7 (a) of the National Industrial Recovery Act, or which are burdening or obstructing, or threatening to burden or obstruct, the free flow of interstate commerce. That is section 1. Section 2 relates to the conduct of elections.

Mr. LEHLBACH. This empowers them to conduct an investigation to inquire into the matter, but are they empowered to conduct an election? The disclosures of an investigation would not justify the issuance of rules and regulations save to conduct an election.

Mr. BYRNS. Not so far as this particular resolution is concerned.

Mr. JENKINS of Ohio. Will the gentleman yield?

Mr. LEHLBACH. I yield to the gentleman from Ohio.

Mr. JENKINS of Ohio. May I call attention to line 13, page 2, where it says "any order issued by such a board." I took the gentleman's statement to mean that he holds this board has not authority to do anything except to handle these elections?

Mr. LEHLBACH. Yes.

Mr. JENKINS of Ohio. How does the gentleman interpret the language where it says "any order issued by such a board under the authority of this section may be enforced or reviewed" under the rules and regulations applicable to the Federal Trade Commission. What does that mean?

Mr. LEHLBACH. They may order an election and either side may have it reviewed just as an order of the Federal Trade Commission may be reviewed.

Mr. JENKINS of Ohio. Who reviews it?

Mr. LEHLBACH. I do not know what the provisions are. I think they take it to court.

The SPEAKER. Is there objection to the present consideration of the resolution?

There was no objection.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

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CONGRESSIONAL RECORD, SENATE—JUNE 16, 1934

(78 Cong. Rec. 12041)

SETTLEMENT OF LABOR CONTROVERSIES

The Senate resumed the consideration of the joint resolution (S. J. Res. 143) to effectuate further the policy of the National Industrial Recovery Act.

Mr. ROBINSON of Arkansas. Mr. President, I ask unanimous consent to substitute House Joint Resolution 375 for Senate Joint Resolution 143, as amended, and to consider the House joint resolution at this time. They are identical, with the exception that the House joint resolution does not contain the two amendments which were adopted to the Senate joint resolution this morning, and I will ask to incorporate the amendments referred to in the House joint resolution if consent shall be given.

The VICE PRESIDENT. Is there objection?

There being no objection, the Senate proceeded to consider the joint resolution (H. J. Res. 375) to effectuate further the policy of the National Industrial Recovery Act.

Mr. ROBINSON of Arkansas. Now I move the following amendment:

On page 1, line 11, after the word "commerce", to strike out the period and insert a comma and the following language, being the language of the first amendment adopted this morning:

> The salaries, compensations, and expenses of the board or boards and necessary employees being paid as provided in section 2 of the National Industrial Recovery Act.

I ask for the adoption of the amendment.

The VICE PRESIDENT. The question is on agreeing to the amendment.

Mr. McNARY. Mr. President, on account of the noise in the Hall, the Senator did not make clear to me the purpose of the amendment.

Mr. ROBINSON of Arkansas. I do not think this amendment is necessary, but it has been reported by the Committee on Education and Labor. I think the salaries and expenses will be paid out of the National Industrial Recovery funds without the adoption of the amendment, but, in view of the fact that the committee thought the amendment necessary and reported it and the Senate agreed to it this morning while we were considering the Senate joint resolution, I have moved the amendment to the House joint resolution.

The VICE PRESIDENT. The question is on agreeing to the amendment.

The amendment was agreed to.

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Mr. ROBINSON of Arkansas. I move a further amendment.

On page 2, line 22, after the word "resolution", I move to insert the words "with reference to the investigations authorized in section 1."

The VICE PRESIDENT. Without objection, the amendment is agreed to.

Mr. LA FOLLETTE. Mr. President——

The VICE PRESIDENT. Does the Senator from Arkansas yield to the Senator from Wisconsin?

Mr. ROBINSON of Arkansas. I yield the floor.

Mr. LA FOLLETTE. I reoffer to the pending House joint resolution the amendment in the nature of a substitute which I offered to the Senate joint resolution, and upon that question I ask for the yeas and nays.

Mr. LONG. Mr. President, I want to appeal to my friend from New York and to my friend from Wisconsin not to complicate this matter, because it is going to mean that we are not going to be able to do anything at all for the working people at this session of Congress. I hope my friend from New York, if necessary, will intercede with my friend from Wisconsin not to complicate this matter at all at this late hour. I am in favor of the amendment if it were timely and if it would do any good to consider it.

Mr. LA FOLLETTE. How could it complicate the pending measure simply to take a vote upon this question?

SEVERAL SENATORS. Vote!

Mr. WAGNER. Mr. President, this is really one of the most embarrassing moments of my whole political life. Every Senator knows and I think the public knows that I have devoted myself to the task of preventing strikes and composing differences after strikes occur since early in August, when the President of the United States asked me to leave behind a very pleasant vacation and assume the duties of the chairmanship of the National Labor Board. From then until now I have devoted all my time not spent in the Senate to the work of that Board. From last August until the session began I rarely left Washington except to go where a strike was in progress or was threatened. I might add, although I do not need to, I know, that for this I received no compensation of any kind. Many a night, on one occasion for 3 nights in succession, I remained up until 4 o'clock in the morning with a group of workers and industrialists for the purpose of preventing a strike which I knew would have been a serious impediment to our recovery program. I make these preliminary remarks so that nobody will doubt my devotion to this cause, a devotion which has resulted in some sacrifice of my health.

I want to say a word to the Senator from Maryland [Mr. TYDINGS], who a moment ago protested against a threatened strike and censured

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this proposed legislation as an invasion of the liberty of the worker. As an example of the exercise of freedom of contract he cited the so-called "representative plans" which are in existence in certain industries under the control of large employers. May I briefly explain to the Senate the plan which the Senator from Maryland says protects the freedom of the worker, while he claims that the legislation we propose is intended to deprive the worker of his just freedom? The view of the Senator from Maryland was expressed so energetically—and I know in good faith—that I want him to know the facts as I have obtained them, not from reading a few letters but from actual evidence presented by the very many controversies before the National Labor Board.

How do these representative plans permit freedom of contract and freedom to organize on the part of the workers? First let me say that nearly all these so-called "company-dominated unions" have been organized since the enactment of the National Recovery Act by the same large employers who before the act refused to permit their workers any form of organization for the purpose of collective bargaining. The corporation referred to by the Senator from Maryland, it is true, has had a representative plan for many years, but it has nevertheless possessed the characteristics of the newer ones.

I may say that the proposed legislation does not interfere with the workers if they want a representative plan. If they want one, they should have it. But the question should be decided by the workers and not by the exercise [12042] of the economic coercion which the employer can yield over his employees.

Mr. TYDINGS. Mr. President——

Mr. WAGNER. Let me finish this thought and then I shall be delighted to answer any question I can. How are these company unions, which, it is said, protect the worker, organized? Here is an actual case. I am giving evidence now; I am standing at my machine, working. The foreman walks over to me and says, "Here is your constitution," He goes along throughout the entire shop and says to each worker, "Here is your constitution." The worker takes the constitution and put it in his pocket. He has no alternative. Refusal means the loss of his job. That is the way a company-dominated union is organized. There is no meeting in any large hall; there is no discussion of the provisions of the constitution; there is no request of the worker, "Do you want to join this organization, or would you rather have an outside union?" No. "Here is your constitution."

The Senator from Massachusetts [Mr. WALSH] will bear me out in my statement. A number of these constitutions were presented to the committee. Is there liberty of selection in these constitutions? In the first place they provide that nobody may be chosen as a representative unless he is employed in the plant. In other words, the

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employer wants to be sure that he may always exercise the economic coercion which he has over men who work for him. If the employee dares to be militant in advocating collective bargaining or seeking agreements for higher wages or lower hours, the employer may say, "Now, boys, you had better mind your own business and go back to your machines or out you go." The worker is not permitted, under such a plan, to have an outside organization or an outside individual who may be free from that economic coercion to represent him in his bargaining. Now, what is next?

Mr. COSTIGAN. Mr. President——

Mr. WAGNER. I yield.

Mr. COSTIGAN. Am I to understand the Senator from Maryland to suggest that the condition the Senator from New York has described is in fact industrial liberty?

Mr. WAGNER. It is the industrial liberty to which the Senator from Maryland referred. I am sure, however, that he did not know all the facts; I know he is as strong a friend of the working man as anybody on this floor; I want him to listen to my experience.

Mr. TYDINGS. Mr. President ——

Mr. WAGNER. Will the Senator allow me to finish these remarks in regard to the company union?

Mr. TYDINGS. Of course, if the Senator will not yield to others I do not ask him to yield to me, but inasmuch as he is discussing me I think he ought to yield to me. However, I shall wait.

Mr. WAGNER. I shall be glad to yield to the Senator. The only representative the worker may elect to represent him is somebody in the plant.

Mr. BORAH. Mr. President, is the Senator now speaking about his bill and not the resolution?

Mr. WAGNER. The Senator from Maryland has defended the representative plan as being the ideal plan.

Mr. TYDINGS. Oh, no, Mr. President! That is why I wanted the Senator to yield to me. All I did protest about was that men wanting the representative plan should not be coerced into taking a plan which they do not want. That is all I am protesting about. I am 100 percent for the Senator's argument that the men who do want the other plan ought to have the right to take that plan. I am equally opposed to the men who do want the representative plan being coerced into joining a union which they do not want to join.

Mr. WAGNER. All we can do is to provide by law that the worker shall be free to make his choice. I am trying to show that the worker about whom the Senator is talking is not free to make any choice.

Mr. TYDINGS. In Maryland?

Mr. WAGNER. No. I am speaking about the representative plan the Senator mentioned.

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Mr. WALSH. Mr. President, will the Senator yield?

Mr. WAGNER. I yield.

Mr. WALSH. Does the Senator know of any way to prevent any employee from coercing another employee to join or not to join a union?

Mr. WAGNER. Why, no. But we know there is no possibility that the same coercive power can be exercised by one employee against another that can be exercised by the employer against the employee. If the employee does not do what is wanted by the employer, he does not retain his job. To lump employers and employees together is to bewilder the listener and confuse the situation.

What else happens? Suppose the worker says, "We would like to vote for a union to represent us. We feel that you, Mr. Employer, can hire lawyers and economic experts to prepare a perfect case for you upon all the economic questions which enter into a discussion of hours and wages and other conditions of work. Will you let us have an outside organization, free from economic coercion, which will hire lawyers and economic experts to prepare our case so that at least we may have the equality of bargaining power guaranteed under the Constitution and under a democracy? All we want is freedom. That is all we ask."

The employer answers: "No; you cannot. We drew the constitution, and under it you cannot vote for anybody to represent you except some man working here."

Mr. President, what are we trying to do? All we provide is that the employer must leave the worker alone during an election. The employee says: "You have privileges under the N. R. A. that you never had in all the history of the country. You are free from antitrust laws. You may organize your associations. You may combine for the purpose of exchanging economic information. No employee denies to you the right to organize and to choose your representatives. If he dared to do so, he would lose his job. Let us be as free as you are. If we want to elect an outside representative or an outside union, will you not give us the ordinary American right of voting for that kind of representative?" The employer says "No!"

Mr.TYDINGS. Mr. President, will the Senator give us the names of those employers, because I am citing concrete cases, and I wish the Senator would do so too. I do not mean to say they do not exist, but I should like to know the names of the employers who will not allow the men to have that privilege. I do not say there are none, but I want to know who they are.

Mr. WAGNER. If the Senator will take the trouble to read the testimony at the hearings on the Wagner labor disputes bill he will find, and I am sure members of the committee will bear me out, that there were presented 6 different constitutions of company

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unions organized by 6 of the largest employers in the United States right after the Recovery Act was approved, all having exactly the same provisions.

Mr. TYDINGS. I am not familiar with those constitutions. Do the men have the right to belong to a union and to amend the constitution?

Mr. WAGNER. Oh, no; they cannot belong to a trade union.

Mr. TYDINGS. I asked the Senator if the men who live under the constitution have the right to amend it?

Mr. WAGNER. No; they have not. I am coming to that next. The employers, through the ingenuity of a very skillful lawyer, no doubt, provide that the men may not amend this constitution. This is interesting. They say, "You cannot amend this constitution unless I, the employer, agree to it." Is that liberty?

Mr. TYDINGS. No; it is not.

Mr. WAGNER. No; it is not liberty. I knew the Senator would agree with me.

Mr. TYDINGS. But that is not the point. I will go just as far as the Senator will go in correcting that situation, allowing men to join any union they want to join. My theory is that there may be men who do not want to join the union who will be coerced under the Senator's bill into [12043] joining a union where really they are happy and contented as they are and do not want to be forced to join a union.

Mr. WAGNER. How is that possible?

Mr. TYDINGS. I am only reading the testimony.

Mr. WAGNER. The Senator is arguing against universal suffrage. His argument is that I ought not to have a right to vote because someone might come to me and improperly influence me one way or the other. [Laughter.] That is the argument.

Mr. TYDINGS. I am only arguing that in my own State, where there is the largest employment of men in any single industry, the men have written me as their Senator stating that they fear under this bill they will be compelled or coerced to join a union which they do not want to join. In voicing their protest I feel that I am doing nothing more than they would have me do as their representative.

Mr. WAGNER. Here is all there is to it. We are extending the right to the workers to elect any individual or organization they choose, instead of being restricted. How is that compelling anybody to do anything? The charge of compulsion is a gross misrepresentation that has circled the country.

Let me tell the Senator another thing that is done. There is nothing more advantageous to a plaintiff than to be able to pay the fee of the attorney for the defendant. Then he has both sides. Now, under these constitutions, the employees' representatives are paid by the

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employer. Whenever they take time off to devote to the work of the company union they put in a slip to the employer, who pays the whole bill. As representatives of the public, it is our duty to preserve equality of opportunity and of contract by putting a stop to this unfair practice.

Mr.TYDINGS. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. HARRISON in the chair). Does the Senator from New York yield to the Senator from Maryland?

Mr. WAGNER. I yield.

Mr. TYDINGS. The Senator is more familiar with this matter than I am, because, I think, he was one of the members of the Board or at least had contact with the Board. I am now going to read a paragraph from the letter from which I previously read and which I did not read at that time. The writer of the letter says:

> I cite you these instances to show you the fairness with which the elections are conducted. Our workmen want to be represented by other workmen if they are given the opportunity. The elections referred to above were all made by a secret ballot. The three men receiving the highest number of votes for each zone become candidates in this direct-primary system. Elections are then held to select one man from the three men receiving the highest number of votes.
>
> In the elections which the Labor Board has held over the country nomination is made in all cases by petition. Any 10 signers can place, as a rule, 6 names in nomination. From a Labor Board election experience which we had at our Russellton mine, we know that men are afraid to nominate people other than union men, and candidates will not run for fear of being beaten up, having their houses dynamited, etc. As a matter of fact, some of the men, after having signed petitions, were frightened so badly that they asked to have their petitions withdrawn.
>
> It is my personal belief and opinion that the Labor Board has been much more interested in entrenching the American Federation of Labor in industry in this country than they have in securing fair elections.

I do not mean to say that all union men are dynamiters.

Mr. WAGNER. They say so.

Mr. TYDINGS. Oh, no. The Senator is too fair to say that.

Mr. WAGNER. I will withdraw that statement.

Mr. TYDINGS. What I do want to do is to get, if I can, what the Senator calls an industrial contract. If the conditions pictured in the letter which I have read really exist, and I have no doubt they do, then certainly there is good and bad on both sides of the equation.

Mr. WAGNER. I do not say that there is not good and bad on both sides. All I want is to promote equality.

Mr. TYDINGS. That is what I want to do.

Mr. WAGNER. Then the law will do the rest.

Mr. TYDINGS. But I do not want to have a man coerced into joining a union if he does not want to join it.

Mr. WAGNER. There is nothing in the bill that coerces or permits coercion. It merely gives the worker the right to select an organization instead of an individual, if he wants to do that. That is

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an American right that he ought to enjoy, because what does it profit a man to have so-called "political freedom" if he is made an economic slave?

The Senator suggested something about men being prohibited from striking. I am as devoted to the prevention of strikes as anybody can be. As I said before the Senator from Maryland came into the Chamber, I have devoted my time since last August, day and night, to avoiding strikes, because they should be the last resort. But if men are deprived of that right altogether, as the Senator from Massachusetts [Mr. WALSH] so eloquently said, they are made economic slaves.

Mr. TYDINGS. Nobody approves of that.

Mr. WAGNER. I did not intend to say all of this, but I want the Senate to know my experiences. Now, let me refer to the matter of elections.

We have held over 300 elections. Let me give one typical illustration. We held one in the captive mines in 2 days. We did it without a policeman, without a soldier, and 15,000 men voted on the subject as to whether they wanted a company union or an outside union. Fifteen thousand men cast their ballots as free from disturbance as any election could possibly be, with nobody around except the representatives of the National Labor Board and representatives of both employer and employee.

I ask the Senator not to believe these stories about dynamiting. Who is this worker we are talking about? Is he some enemy of this country? Is there any reason why he, unlike other people, should be shackled in some way? He is a man of flesh and blood like you and me, with hopes and aspirations, who wants to preserve America for himself and for his children. He has fought to protect our Nation in its hour of danger, and with his hands he has built its cities and produced its wealth. All he asks in return is an opportunity to work; an opportunity to earn enough to feed himself and his family, plus a little education and a little leisure and security. That is all.

That is the man for whom I am pleading. I do not ask any undue advantage for him. I simply want to see him get an opportunity in life, because I love this country, which gave me my opportunity, and to which I owe everything I have. For the rest of my life I shall devote myself as best I can to serving my country. I never can repay my country for what it has done for me.

Mr. WALSH. Mr. President, will the Senator yield?

Mr. WAGNER. Yes.

Mr. WALSH. The Senator has stated that the Labor Board has conducted a large number of elections; I think he said over 300.

Mr. WAGNER. Over 300.

Mr. WALSH. Is it not a fact that under existing law the Labor

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Board has no authority to hold these elections, but has been able to do it only by mutual agreement?

Mr. WAGNER. That is true.

Mr. WALSH. And is it not a fact that under the pending joint resolution, whatever board is created will have authority to hold elections such as the Senator's Board has been holding, and prevent such occurrences as the Board has experienced, of refusal on the part of employers to hold elections?

Mr. WAGNER. Exactly.

What has been my difficulty with Mr. Weir? He has made it a personal matter. It was not really a personal matter. Mr. Weir is a very fine gentleman, a great industrialist, a man of the highest character. He has a different philosophy from mine on the subject of labor relationships. All that I asked of him was to have the ballots in such form that the workers might select the representatives they desired, whether an inside or an outside organization, in an election free from any influence or coercion. That is all I asked, and I thought my request was as fair as could be, and I felt [12044] sure he would accept it in behalf of his company; but he chose not to do so.

Mr. SHIPSTEAD. Mr. President——

Mr. WAGNER. A Senator asks me whether there was a strike. There was. We intervened by asking the men to go back, and after 2 days they did so. We told them we would insure them a fair election, which was all they asked. I could not get it for them; but they did go back to work, 10,000 of them, I think.

Mr. SHIPSTEAD. Mr. President, will the Senator yield to me now?

Mr. WAGNER. I yield. I have already said too much.

Mr. SHIPSTEAD. I desire to call the attention of the Senator to this fact, which appears to me very simple and plain:

Is it not just as unreasonable for the company employer to dictate to the employees as to what union they shall belong to as it would be for the members of the union to dictate to the corporation whether or not it shall join the chamber of commerce?

Mr. WAGNER. Exactly; and in the bill as reported by the committee it is provided not only that the employer must not interfere with the employee in selecting his representatives but also that the employee must not interfere with the employer in selecting his representatives.

Mr. WALSH. Or trade associations.

Mr. WAGNER. Or trade associations. We provided that neither side should use coercion against the other. There never has been any serious contention, however, that the employees have interfered with the employers in the selection of the employers' representatives.

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Mr. SHIPSTEAD. No; but it would not be more ridiculous than the position of the employer as regards the union. The unions or the laboring people never have questioned the right of the stockholders of a corporation to choose their own superintendent, and they do not have to choose him among their stockholders. They can get him from any part of the country. It seems to me that the employees should have the same right to select their business agent wherever they can hire him. They want the best business agent or organizer they can get, and they have the same right to choose their own representative that a corporation has.

Mr. WAGNER. Mr. President, it does seem so to me; but there seems to be an opinion, particularly among large employers of labor, that that is not the fact; that they are not entitled to that right. I never have been able to understand this view, but I think many employers are sincere about it. I am not condemning them at all; I just do not agree with their philosophy.

Mr. SHIPSTEAD. That was true of the old-time slave owner. He was sincere.

Mr. WAGNER. Oh, yes. The feudal lords used to say, "Do not stir up these people. Leave them alone. They are happy." I would not buy peace at the price of slavery. Some may, but I shall never subscribe to the proposition that peace is so valuable that we should have it at the expense of liberty.

Mr. NYE. Mr. President, will the Senator from New York yield?

Mr. WAGNER. I am now going to make an appeal. I said at the start that this is a very embarrassing moment for me, because I was going to ask the Senator from Wisconsin to withdraw his amendment.

The Senator knows that there is no one for whom I have a higher regard than I have for him. I can remember that in the early days of the depression, when its full extent had not yet penetrated to the consciousness of many officials, and while even Congress was quite complacent, thinking that prosperity either was here or "just around the corner", the Senator from Wisconsin [Mr. LA FOLLETTE], the Senator from Colorado [Mr. COSTIGAN], and I fought to secure relief for the destitute and a large public-works program to put the unemployed back at work. I never can forget that association; and I know that the heart of the Senator from Wisconsin throbs for the unfortunate and those who need our help. I know how devoted he is to this whole cause. I believe that if this amendment of his were presented as a new proposition it undoubtedly would be adopted.

But I know how many of my colleagues are situated, particularly on this side of the aisle. Like myself, they are following the leadership of the President. The President feels that at this time this temporary measure ought to be passed to relieve an emergency situa-

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tion, and that by next year, through study and experimentation and experience, we shall be able to frame some permanent legislation. Therefore, many of the Senators, on this side of the Chamber particularly, while in sympathy with this legislation as a permanent matter, feel that they ought to follow the President's lead in this situation and, therefore, might cast a vote against this amendment and be put on record as opposing something which the laboring people feel is for the better protection of their rights. I do not feel justified in subjecting the Senators to this embarrassment when there is no chance of passing the measure, and, in addition, jeopardizing the eventual success of the full measure. Therefore, I will ask the Senator to withdraw his amendment at this time. We will fight for it next year, when the country will have become sufficiently educated as to the need for it.

Mr. LA FOLLETTE. Mr. President, the Senator's request is very embarrassing to me.

As I stated before, when I was discussing this substitute, the amendment in large measure, of course, is the work of the Senator from New York. I did not offer it, however, without notifying him that it was my intention to do so.

I wish to make it clear, however, that the embarrassment of other Senators is not the controlling factor in my response to the request of the Senator from New York.

I feel, however, that he has some claim upon this piece of legislation. After all, it is the child of his brain, in large part. How far he has the right to control its disposition in the form of an amendment is a close question.

I was not brought up "to march up the hill and march down again." So far as I know, I have never started a fight in this body and quit. Since the Senator from New York asks me not to press his bill which forms the basis of my amendment, I feel compelled to make this difficult decision in his favor. I withdraw it.

The PRESIDING OFFICER. The Senator from Wisconsin withdraws his amendment.

Mr. LA FOLLETTE. Mr. President, I have another amendment I desire to offer.

The PRESIDING OFFICER. The clerk will state the amendment.

The LEGISLATIVE CLERK. At the end of the joint resolution it is proposed to add a new section, as follows:

> Nothing in this resolution shall prevent or impede or diminish in any way the right of employees to strike or engage in other concerted activities.

Mr. LA FOLLETTE. Mr. President, may I ask either the Senator from Massachusetts or the Senator from Arkansas whether he is in position to accept this amendment?

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Mr. WALSH. Mr. President, I will say to the Senator that the amendment was suggested to me, and I consulted the counsel of the Department of Labor and others. They all inform me that there is absolutely no need of this prohibitive clause against action which would deny the right to strike, because of the fact that the Board provided for would be empowered only to investigate.

Mr. LA FOLLETTE. Mr. President, I agree with the strict construction of the joint resolution, but if that be true, and inasmuch as we have often placed such safeguarding amendments in other legislation, I see no reason why the Senator should not accept this amendment.

Mr. WALSH. I am not refusing to accept it; I am simply stating the fact, that it would have been put in if it had been necessary. In my opinion, it is not necessary, and in the opinion of the legal department which drew the joint resolution it is not necessary. However, I have no objection to it going in.

Mr. LA FOLLETTE. I do not mean to infer any criticism of the Senator or of the committee.

[12045] The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Wisconsin [Mr. LA FOLLETTE]. [Putting the question.] The ayes seem to have it.

Mr. McNARY. Mr. President, there was so much noise permitted by the present occupant of the Chair that I do not know now what has occurred. I should like to have the amendment read and have some explanation of it.

The PRESIDING OFFICER. The clerk will read the amendment proposed by the Senator from Wisconsin.

The LEGISLATIVE CLERK. At the end of the joint resolution it is proposed to add a new section, as follows:

> Nothing in this resolution shall prevent or impede or diminish in any way the right of employees to strike or engage in other concerted activities.

Mr. LA FOLLETTE. Mr. President, may I say to the Senator from Oregon what I said a few moments ago to the Senator from Massachusetts? This joint resolution, I think, under a strict construction of its terms, does not in any way affect the right of labor to engage in collective action. However, often in legislation of similar character safeguarding amendments have been adopted and are upon the statute books. There is grave apprehension, I may say to the Senator, in the minds of some of those who represent the wage earners, that a broad construction of the phraseology of section 1 of the joint resolution may be enlarged to include this power.

The Senator from Massachusetts states that he does not think any such power is involved in the joint resolution, and therefore the committee did not recommend it, but if that be the case, I am ap-

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pealing for the adoption of this amendment in order that certainty may be made double sure.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Wisconsin.

Mr. LA FOLLETTE. I ask for the yeas and nays upon the amendment.

The yeas and nays were ordered, and the legislative clerk proceeded to call the roll.

Mr. FESS (when his name was called). I have a general pair with the senior Senator from Virginia [Mr. GLASS], who is detained from the Senate on official business. I am informed that if present the Senator from Virginia would vote as I intend to vote, and therefore I am permitted to vote. I vote "yea."

Mr. ROBINSON of Arkansas (when his name was called). Announcing my pair with the Senator from Pennsylvania [Mr. REED] and transferring that pair to the Senator from New York [Mr. COPELAND], I vote "yea."

Mr. WALCOTT (after having voted in the affirmative). Mr. President, I should have announced that I have a general pair with the junior Senator from California [Mr. MCADOO], but I am informed that if present he would vote "yea" on this question. Therefore I am at liberty to vote, and I allow my vote to stand.

Mr. ROBINSON of Arkansas. I am asked to announce that the junior Senator from California [Mr. MCADOO] is detained by illness.

I also wish to announce that the Senator from Florida [Mr. TRAMMELL], the Senator from Indiana [Mr. VAN NUYS], the Senator from New York [Mr. COPELAND], the Senator from Virginia [Mr. GLASS], and the Senator from Oklahoma [Mr. GORE] are necessarily absent. If present, these Senators would all vote "yea."

Mr. HEBERT. Mr. President, the Senator from Pennsylvania [Mr. REED] is absent on account of illness, and the Senator from New Hampshire [Mr. KEYES] is necessarily absent from the city. I am not advised how either Senator would vote on this question. The general pair of the Senator from Pennsylvania and its transfer has been stated. The Senator from New Hampshire [Mr. KEYES] has a general pair with the Senator from Indiana [Mr. VAN NUYS].

The result was announced—yeas 86, nays none, as follows:

YEAS—86

Adams	Barkley	Byrd
Ashurst	Black	Byrnes
Austin	Bone	Capper
Bachman	Borah	Caraway
Bailey	Brown	Carey
Bankhead	Bulkley	Clark
Barbour	Bulow	Connally

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YEAS—86—continued

Coolidge	Johnson	Reynolds
Costigan	Kean	Robinson, Ark.
Couzens	King	Robinson, Ind.
Cutting	La Follette	Russell
Davis	Lewis	Schall
Dickinson	Logan	Sheppard
Dieterich	Lonergan	Shipstead
Dill	Long	Smith
Duffy	McCarran	Steiwer
Erickson	McGill	Stephens
Fess	McKellar	Thomas, Okla.
Fletcher	McNary	Thomas, Utah
Frazier	Metcalf	Thompson
George	Murphy	Townsend
Gibson	Neely	Tydings
Goldsborough	Norris	Vandenberg
Hale	Nye	Wagner
Harrison	O'Mahoney	Walcott
Hastings	Overton	Walsh
Hatch	Patterson	Wheeler
Hayden	Pittman	White
Hebert	Pope	

NOT VOTING—10

Copeland	Keyes	Trammell
Glass	McAdoo	Van Nuys
Gore	Norbeck	
Hatfield	Reed	

So Mr. LA FOLLETTE's amendment was agreed to.

* * * * * * *

[12046] The PRESIDING OFFICER. The question now recurs on the passage of the bill.

Mr. NYE obtained the floor.

Mr. HASTINGS. Mr. President, will the Senator yield to me for a moment?

Mr. NYE. I yield.

Mr. HASTINGS. I should like to say that when the last roll call began I had intended to vote against the amendment, not because there was anything in it that particularly changed the bill, but a day or two ago I understood there was an agreement with respect to this joint resolution that, so far as possible, it was to be supported without change. I was undertaking to carry out that agreement, but when I found that no one agreed with that as part of the program I changed my mind.

Mr. NYE. Mr. President, I regret exceedingly that the Senator from Wisconsin [Mr. LA FOLLETTE] has found it necessary to withdraw

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the amendment, the amendment which took the form pretty much of the original of the Wagner bill. In light, however, of the request that was made for its withdrawal, I fail to see how the Senator from Wisconsin could have done otherwise. And I hope as much as I can hope for anything that a new session of the Congress is going to devote itself to the providing of those provisions for labor which will give labor its share of national recovery.

All over this country for months there has been agitation, there has been danger of grave labor uprisings and difficulties. The one thing, Mr. President, that has stayed the hand and mind of those who have felt that grave injustice was being done them under certain operations of N. R. A. has been the hope and expectation that there would be adoption by this Congress of the provisions of the Wagner bill. Now, there is offered in its stead a substitute in the form of a resolution calling for the creation of a board to see that something is done to do what the National Recovery Act assured would be done, namely, give to labor fair play and an equal share of whatever was accomplished in the way of recovery.

Section 7 (a) of the National Recovery Act provides very specifically:

SEC. 7. (a) Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

Every employer, Mr. President, who accepted any part in or responsibility under an approved code knew that section 7 (a) was a part of the thing he was assuming responsibility in or under. And yet we are told that there has been flagrant violation of section 7 (a), so flagrant a violation that we need more legislation to make the employer do what thus far we have failed to make him do under the National Industrial Recovery Act. So, we are asked to adopt this resolution and create a board to do what? Is it fair to answer: to make the administrators of N. R. A. do what the National Industrial Recovery Act requires that they shall have done? Employers signing—placing their signatures to codes, including the provision of section 7 (a) of this act, knowing what their code provided for, now flagrantly violate those provisions.

Why in the world does not the National Industrial Recovery Administration take the code away from those violators? It has taken it

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away from others. The little pants presser has lost his blue eagle because of some little violation of his code. Why, then, is the great employer not deprived of whatever blessing the blue eagle is to him? Why, instead of taking away that blue eagle from him, we continue to let this greedy employer make nothing short of a goose of the Blue Eagle, and then chase labor back here to Congress to get law beyond what has already been written and which ought to be amply sufficient to meet his needs in the present controversy?

We are asked to adopt a resolution which does not do much more than to create a board or boards whose function will be that of striving to protect the interests of labor. I hope that the passage of this resolution will do what its friends think it will do. I hope I am mistaken in my assumption that it will leave labor precisely where it is today so far as relates to its relationship to N. R. A.

Mr. WHEELER. Mr. President, will the Senator yield?

Mr. NYE. I yield.

Mr. WHEELER. do not think there is any doubt but that every one of the Senators who examines the National Industrial Recovery Act would feel that labor was taken care of, and it is only by reason of the interpretations put upon it by the legal department of the N. R. A. that labor has not been able to get its rights under the present N.R.A. act. I am afraid, as is the Senator from North Dakota, that with the passage of this joint resolution they will find themselves in practically the same position they found themselves in before.

Mr. NYE. And do I understand the Senator from Montana to mean that we will be no farther ahead under the joint resolution than we are now?

Mr. WHEELER. Yes.

Mr. NYE. Precisely. I think I am quite in agreement with the Senator from Montana.

Mr. WHEELER. Unless, Mr. President, the N. R. A. officials carry out the provisions of the resolution just adopted better than they did with reference to the old N. I. R. Act, I do not believe that labor will get very much benefit out of this provision.

Mr. NYE. Yes. I point this out to the Senator from Montana. We are creating a board now to give labor what the administrators of the N. R. A. declined for some reason to give them.

There are other provisions in the National Industrial Recovery Act which some employers and some industrialists have flagrantly denied and ignored. There are provisions within the National Industrial Recovery Act protecting the public against the growth or enlargement of monopoly. Section 3 (a) of the National Industrial Recovery Act, in paragraph 2, provides:

> Upon the application to the President by one or more trade or industrial associations or groups the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof represented by the applicant or

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applicants. If the [12047] President finds * * * that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them and will tend to effectuate the policy of this title.

Because men found that provision was being violated, that monopolies were under the code intrenching themselves as they had never been intrenched before, because complaints were made to that effect, a board was appointed to see that the small business industries of the country won fair play, to see that monopolies did not make this thing an instrument to destroy all remaining competition. The board was appointed just as a board is to be appointed to try to give labor the blessings of the labor provisions of the National Industrial Recovery Act.

That board became known as the "National Recovery Review Board." It went to work in March, and after weeks of diligent study, aided by splendid hands and splendid minds, reported to the President that this code, that code, and the other code, 7 or 8 or 10 of them, were aiding monopoly, were fostering monopoly, and were all but eliminating small industrial operators in the country.

What has been the result of that report? It has been followed by all manner of language flowing out of the offices of the National Industrial Recovery Administration, belittling and scorning the committee of men who made those findings and reported them to the President. But, finding and offering criticism as they did, have they been thanked for it? No; they have virtually been invited to close their doors and go home.

I wonder what the result might have been if that Board had found, instead of what it did find, and had reported that those codes were not aiding monopoly, that those codes were not working injury upon small enterprises? I wonder if then the request would have been upon the Board to abandon its work and go home?

I am not going to undertake to answer that question, but I do want to make the point that we are now only authorizing another board such as the National Recovery Review Board, headed by Clarence Darrow. We are naming another board. What is going to happen to that board if it does not find in keeping with the beliefs, the interests, and the opinions of those in whose hands the administration of the National Industrial Recovery Act has been placed? Will it be heeded or asked, as has been the review board, to quit and go home?

Mr. CUTTING. Mr. President——

The PRESIDING OFFICER. Does the Senator from North Dakota yield to the Senator from New Mexico?

Mr. NYE. I am glad to yield.

Mr. CUTTING. I quite agree with everything the Senator has been saying, but it also occurred to me just now, when the Senator

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read the original provisions of section 7 (a), that they were couched in very much stronger language than anything we have in the pending resolution. I believe everyone on the floor of the Senate at the time believed, when we adopted section 7 (a) of the National Recovery Act, that we were in a sense abolishing the scandal of company unions.

As the act has been administered, does not the Senator agree with me that the effect in practice has been to stimulate the company union, because the company union was the only way by which the management of certain corporations could get around the provisions of section 7 (a). If we are now going to enact legislation on this subject without strengthening the former provisions and without stopping up the loopholes, are we not going to find ourselves in a position rather worse than the position in which we are at the present time?

Mr. NYE. I think that finding ourselves in a worse position than we are is quite inevitable. I think we will be reconvening here next January and wondering what in the world ever possessed us to run away from what was so plainly our duty here now, namely to provide for those needs of labor whose needs have been so terribly ignored and stamped upon during these more recent months.

One board, named because N. R. A. was not operating as the law declared it should operate, is about to go out of existence primarily because it has made findings contrary to the belief, the opinion, and the wishes of those in whose hands has been placed the responsibility of administering that law. Have we any right to hope that the appointments made to the new Labor Board or boards are going to be materially different than have been the appointments made in the case of those who are administering the main provisions of N. R. A. today?

The findings of the review board have been, it seems to me, very positive in the conclusion that in those instances where the board has studied the experiences under the code, in those industrial fields where monopoly has ever had any footing, monopoly is more strongly entrenched than it ever was before. There is large complaint in those fields on the part of the smaller operators. In other industrial fields where monopoly has never taken real root, where the field does not lend itself readily to the interests of monopoly, codes are working fairly well and there is pretty general approval on the part of the larger operators and the smaller operators in those fields.

Mr. LEWIS. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from North Dakota yield to the Senator from Illinois?

Mr. NYE. Certainly.

Mr. LEWIS. May I ask the Senator from North Dakota, knowing as I do the attention he has given this matter, whether the condi-

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tion to which he refers in industry is added to by the terms and expressions of the code, or is it his contention that those injustices have resulted from the construction and method of administration of the code?

Mr. NYE. It is my conclusion that they have resulted from the manner of administration by those who administer the codes.

Mr. LEWIS. The able Senator concludes and concedes that the terms of the relief act and the codes being administered would have avoided those injustices if otherwise administered.

Mr. NYE. I am sure of that.

Mr. LEWIS. So, therefore, the evils would rather be in the individuals who administered, and the remedy would be in the removal of the individuals?

Mr. NYE. Quite so; and the necessity now is not that of more law, but is of thorough and detailed administration of existing law.

In the first report made by the Recovery Review Board, if I recall correctly, there were eight codes studied and reviewed. In each and every one of those instances the finding was that great injury was being done the small operator in that field, while monopoly—the larger operator—were enjoying such advantages as had never before been theirs.

* * * * * * *

[12051] Ah, Mr. President, one of these fine mornings there is going to arrive in America a real awakening as to the terrible, frightful advantage which greedy and selfish monopolies have taken of the thing which was presumed to be and which was going to be a blessing upon small industry, a blessing to all the people; and y today inventory reveals that the large measure of blessing which has flown from it has been that which has flown to monopoly itself. Today monopoly, the greedy, selfish interests, flagrantly ignore and deny those sections of the act which require that they play ball fairly with labor. Because they ignore them, labor and labor's friends come for more law to give them what another law assures them and insures them.

What we ought to do and what N. R. A. ought to do with those interests which are ignoring these labor factors is to take the code away from them, take away from them whatever blessing they enjoy under N. R. A., and cease this business of continually letting monopoly make a goose out of the Blue Eagle.

Mr. ROBINSON of Arkansas. Mr. President, I ask for a vote on the joint resolution. It will have to go back to the House, in view of the fact that three amendments have been adopted. I think the debate is over.

Mr. LONG. Let us vote.

Mr. CUTTING. What joint resolution does the Senator mean?

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The PRESIDING OFFICER (Mr. BLACK in the chair). The question is on the engrossment of the amendments and the third reading of House Joint Resolution 325.

Mr. SHIPSTEAD and Mr. CUTTING addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Minnesota desire recognition?

Mr. SHIPSTEAD. No; I will wait until the vote is taken.

Mr. CUTTING. Mr. President, I desire to address the Senate on the joint resolution.

Mr. SHIPSTEAD. I wish to address the Senate for about 10 minutes on another matter.

Mr. McNARY. Mr. President, will the Senator permit a vote on the joint resolution?

Mr. SHIPSTEAD. Very well; I will wait. I shall not delay a vote on the joint resolution.

* * * * * * *

SETTLEMENT OF LABOR CONTROVERSIES

The Senate resumed the consideration of the joint resolution (H. J. Res. 375) to effectuate further the policy of the National Industrial Recovery Act.

Mr. CUTTING. Mr. President, I desire to address the Senate on the joint resolution.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. CUTTING. I regret to delay a vote on this question. What I have to say will be said in a very few moments.

I think the Senate has been placed in an unfortunate situation, and I desire to make a brief protest expressing nothing but my own personal opinion.

I blame no individual for this situation, least of all the senior Senator from Wisconsin [Mr. LA FOLLETTE], who, in my judgment, was placed in a position where he could not possibly have done anything else except withdraw the amendment which he had offered. By any other course of action he would have been held responsible for a defeat of the amendment, which, owing to conditions outside of his control, was inevitable.

I desire to say, however, that I, for my part, cannot accept the theory that any Member of this body can acquire a vested right in a question of public policy. When we present a bill and have it printed, it then becomes a part of the public program before the Senate of the United States.

I appreciate as much as any man in this Chamber the splendid work which the junior Senator from New York [Mr. WAGNER] has done in preparing the so-called "Wagner bill"; but I submit that there were many Members of this body who were equally interested in this

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subject, and who refrained from any active participation because we relied upon the fact that the Senator from New York was in charge of it, and would at the proper time bring it before the Senate. I think that placed us all in a peculiar position, and I am sure the Senator from New York appreciates that situation as acutely as any of us.

The Senator said that it was the program to pass the pending joint resolution as an emergency measure, and that at the next session we could come back and pass permanent legislation along the lines of the original proposal.

Mr. President, the Senator from New York and many of the rest of us are just as much convinced now as we ever were the original Wagner bill represents a sound public policy. Why do we have to postpone it for some 7 months, at the shortest possible period, in order to come back and do the same thing, after all of us know the results of administering the N. R. A. without some amendment to section 7(a) of that act?

The National Recovery Act was always, to my mind, a highly doubtful piece of legislation. I voted for it, as did many other Members of this body, because we refused to accept the anarchic condition in industry which existed prior to that time. There was no other definite proposition before us, and we accepted it rather than by a negative vote to say that we wanted the existing chaos to continue.

[12052] The one chance, in my opinion, for the N. R. A. to have been successful was the building up of the purchasing power of the country; and that meant, in essentials, that wages would have to rise more speedily than prices. We all now that the reverse has been the case, and that as a consequence purchasing power has been diminished rather than increased.

One of the chief reasons for that is that labor, which essentially is equivalent to the consuming public, has not been given the same rights that were given by the administration of the act to the employers. That was not the intent of Congress. Section 7 (a) as originally written shows on its face that it was the intention of this body and the body at the other end of the Capitol to see that labor could be represented by agents of its own choosing. That has not been the case. It has been obvious that section 7 (a) ought to be amended.

In my opinion this joint resolution does nothing of the sort, and from all the discussion I have heard on the subject I believe it is scarcely worth passing.

Now we are going away from here, and we are not coming back until January. We are so anxious to get away—why, I do not know—that we must postpone a question of this enormous importance, and a question in which I believe a majority of the Senate are in accord with the position originally taken by the Senator from New York. We are not only leaving that legislation unsettled; we have before us

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a calendar of more than nine pages, containing at least a dozen measures of major importance. The situation before us, of course, is not the fault of the junior Senator from New York, and I am not blaming it on him; but we all know that within the past few days there has been a kind of bipartisan agreement to get all controversial matters out of the way so that we could get away at the earliest possible date, no matter how many questions might be put over for the next session of Congress.

Why should any of us lend himself to such a program? I do not know how, under the circumstances, one can best express one's opinion on the pending legislation.

Mr. LONG. Mr. President, will the Senator yield? I think the Senator and I have voted together on nearly everything, and I think we pretty well understand about what we can and what we cannot pass; and we are just wasting time.

Mr. CUTTING. Mr. President, I hope I am not wasting a great deal of the Senate's time. I know that this protest will be entirely unavailing. I know that the Senate has made up its mind to adjourn. I know that the same feeling exists at the other end of the Capitol; but I feel that a vote either for or against the pending joint resolution would be subject to complete misinterpretation unless I stated the attitude with which I intend to vote.

I think there are a few little things in this joint resolution which in some measure improve the situation as it exists at present, and if there is to be a record vote, I shall vote in the affirmative. To go home leaving the National Recovery Administration in the condition in which it is now, with 7 more months to go ahead before Congress will meet again, with nothing to improve the situation except what is in this joint resolution, seems to me outrageous. I can see no excuse for it.

No matter who believes differently, I wish to voice my own personal protest before we go. The new deal is being strangled in the house of its friends. We are going away from here when a fight could have put over the major portion of the program which is still on our calendar.

Mr. President, it is too late to revive the fight tonight. I do not intend to do so. The Senator from Louisiana has admonished me that I am wasting the time of the Senate. I do not care to discuss the relative amount of time consumed by the Senator from Louisiana and myself during the present session, but I will say to my friend that I know he feels the same way about the situation which exists as I feel.

Mr. LONG. I do, absolutely.

Mr. CUTTING. I hope that when we return and take up legislation of this sort, we may consider it at the beginning of the session,

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and take up nothing else until these things in the interest of the laborer and of the consumer of this country are taken care of.

We have done a good deal at this session, but most of it has been along the old lines; it has not been in the interest of the common people of the United States, and even though it be at such a late moment in the present session I desire to register my protest.

The VICE PRESIDENT. The question is on the engrossment of the amendments and the third reading of the joint resolution.

The amendments were ordered to be engrossed and the joint resolution to be read a third time.

The joint resolution was read the third time and passed.

On motion of Mr. ROBINSON of Arkansas, the joint resolution (S. J. Res. 143) to effectuate further the policy of the National Industrial Recovery Act was indefinitely postponed.

CONGRESSIONAL RECORD, HOUSE—JUNE 16, 1934

(78 Cong. Rec. 12208)

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate, by Mr. Horne, its enrolling clerk, announced . . . [12209] that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

H. J. Res. 375. Joint resolution to effectuate further the policy of the National Industrial Recovery Act.

(78 Cong. Rec. 12236)

NATIONAL INDUSTRIAL RECOVERY ACT

Mr. BYRNS. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the resolution (H. J. Res. 375) [12237] to effectuate further the policy of the National Industrial Recovery Act with Senate amendments, and agree to the Senate amendments.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

The Clerk read the Senate amendments, as follows:

Page 1, line 11, after the word "commerce", insert a comma and "the salaries, compensation, and expenses of the board or boards and necessary employees being paid as provided in section 2 of the National Industrial Recovery Act."

Page 2, line 22, after the word "resolution", insert "with reference to the investigations authorized in section 1."

Page 3, after line 13, insert:

"SEC. 6. Nothing in this resolution shall prevent or impede or diminish in any way the right of employees to strike or engage in other concerted activities."

Mr. MARTIN of Massachusetts. Will the gentleman explain the amendments?

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Mr. BYRNS. Yes. The first amendment relates to employees and the compensation to be paid to the board or boards which may be appointed by the President, and it simply provides that the compensation and the appointments shall be made in accordance with the provisions set forth in section 2 of the Industrial Recovery Act.

The second amendment refers to the regulation and rules which the bill authorizes the board or boards to adopt, and simply confines those rules and regulations to section 1 of the pending joint resolution, which, as the gentleman recalls, relates to the investigation of the causes, the issues, and the facts involved in any controversy between employer and employee.

Mr. MARTIN of Massachusetts. Neither one is a radical change in the language of the bill as passed by the House.

Mr. BYRNS. No; they are very slight changes.

The third amendment is simply a declaration of a fact which is already conveyed in the resolution, that nothing in the resolution shall be construed as impeding or preventing the right to strike upon the part of employees.

The SPEAKER. The question is on the motion of the gentleman from Tennessee to concur in the Senate amendments.

The motion was agreed to.

On motion of Mr. BYRNS, a motion to reconsider the vote by which the Senate amendments were agreed to was laid on the table.

CONGRESSIONAL RECORD, SENATE—JUNE 18, 1934
(78 Cong. Rec. 12361)

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Chaffee, one of its clerks, announced that the House had * * * agreed to the amendment of the Senate to the joint resolution (H. J. Res. 375) to effectuate further the policy of the National Industrial Recovery Act.

CONGRESSIONAL RECORD, HOUSE—JUNE 18, 1934
(78 Cong. Rec. 12575)

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

Mr. PARSONS, from the Committee on Enrolled Bills, reported that that committee had examined and found truly enrolled bills and joint resolutions of the House of the following titles, which were thereupon signed by the Speaker:

* * * [12576] H. J. Res. 375. Joint resolution to effectuate further the policy of the National Industrial Recovery Act.

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CONGRESSIONAL RECORD, SENATE—JUNE 18, 1934
(78 Cong. Rec. 12367)

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

The message [from the House of Representatives] also announced that the Speaker had affixed his signature to the following enrolled bills and resolutions, and they were signed by the Vice President: * * *

* * * [12368] H. J. Res. 375. Joint resolution to effectuate further the policy of the National Industrial Recovery Act.

CONGRESSIONAL RECORD, HOUSE—JUNE 18, 1934
(78 Cong. Rec. 12577)

BILLS AND JOINT RESOLUTIONS PRESENTED TO THE PRESIDENT

Mr. PARSONS, from the Committee on Enrolled Bills, reported that that committee did on this day present to the President for his approval bills and joint resolutions of the House of the following titles:

* * * [12578] H. J. Res. 375. Joint resolution to effectuate further the policy of the National Industrial Recovery Act.

CONGRESSIONAL RECORD, SENATE—JUNE 18, 1934
(78 Cong. Rec. 12451)

APPROVAL OF BILLS AND JOINT RESOLUTIONS

The President of the United States, subsequent to the final adjournment of the second session of the Seventy-third Congress, informed the Secretary of the Senate that he had approved acts and joint resolutions as follows:

On June 19, 1934:

[12453] H. J. Res. 375. Joint resolution to effectuate further the policy of the National Industrial Recovery Act.

CONGRESSIONAL RECORD, HOUSE—JUNE 18, 1934
(78 Cong. Rec. 12660)

BILLS APPROVED SUBSEQUENT TO SINE DIE ADJOURNMENT

The President of the United States, subsequent to the sine die adjournment of the second session of the Seventy-third Congress, on the following dates approved and signed bills and joint resolutions of the House of the following titles:

On June 19, 1934:

H. J. Res. 375. Joint resolution to effectuate further the policy of the National Industrial Recovery Act.

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[PUBLIC RESOLUTION NO. 44—73d CONGRESS]

[H. J. Res. 375]

JOINT RESOLUTION, To effectuate further the policy of the National Industrial Recovery Act

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to further effectuate the policy of title I of the National Industrial Recovery Act, and in the exercise of the powers therein and herein conferred, the President is authorized to establish a board or boards authorized and directed to investigate issues, facts, practices, or activities of employers or employees in any controversies arising under section 7a, of said Act or which are burdening or obstructing, or threatening to burden or obstruct, the free flow of interstate commerce, the salaries, compensation and expenses of the board or boards and necessary employees being paid as provided in section 2 of the National Industrial Recovery Act.

SEC. 2. Any board so established is hereby empowered, when it shall appear in the public interest, to order and conduct an election by a secret ballot of any of the employees of any employer, to determine by what person or persons or organization they desire to be represented in order to insure the right of employees to organize

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and to select their representatives for the purpose of collective bargaining as defined in section 7a of said Act and now incorporated herein.

For the purposes of such election such a board shall have the authority to order the production of such pertinent documents or the appearance of such witnesses to give testimony under oath, as it may deem necessary to carry out the provisions of this resolution. Any order issued by such a board under the authority of this section may, upon application of such board or upon petition of the person or persons to whom such order is directed, be enforced or reviewed, as the case may be, in the same manner, so far as applicable, as is provided in the case of an order of the Federal Trade Commission under the Federal Trade Commission Act.

SEC. 3. Any such board, with the approval of the President, may prescribe such rules and regulations as it deems necessary to carry out the provisions of this resolution with reference to the investigations authorized in section 1, and to assure freedom from coercion in respect to all elections.

SEC. 4. Any person who shall knowingly violate any rule or regulation authorized under section 3 of this resolution or impede or interfere with any member or agent of any board established under this resolution in the performance of his duties, shall be punishable by a fine of not more than $1,000 or by imprisonment for not more than 1 year, or both.

SEC. 5. This resolution shall cease to be in effect, and any board or boards established hereunder shall cease to exist, on June 16, 1935, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 of the National Industrial Recovery Act has ended.

SEC. 6. Nothing in this resolution shall prevent or impede or diminish in any way the right of employees to strike or engage in other concerted activities.

Approved, June 19, 1934.

LIST OF PETITIONS FILED WITH CONGRESS SUPPORTING OR OPPOSING S. 2926 AND H. R. 8423, 73D CONG. 2D SESS.

Congressional Record, House—March 17, 1934 (78 Cong. Rec. 4755):

3051. By Mr. LINDSAY: Petition of the Association of Employees, Long Lines Department, American Telephone & Telegraph Co., New York, protesting against the passage in its present form of paragraph 4, section 5, title 1, of the Labor Disputes Act now before Congress; to the Committee on Interstate and Foreign Commerce.

3055. By Mr. RUDD: Petition of the Association of Employees, Long Lines Department, American Telephone & Telegraph Co.,

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Plant Branch No. 2, New York City, protesting against the passage in its present form of paragraph 4, section 5, title 1, of the Labor Disputes Act now before Congress; to the Committee on Labor.

Congressional Record, House—March 19, 1934 (78 Cong. Rec. 4876–4877):

3061. By Mr. BOYLAN: Resolution adopted at a meeting of Plant Branch No. 2, of the Association of Employees, Long Lines Department of the American Telephone & Telegraph Co., protesting against the passage in its present form of paragraph 4, section 5, title 1, of the Labor Disputes Act now before Congress; to the Committee on Labor.

3069. By Mr. LINDSAY: Petition of Steel & Tubes, Inc., Brooklyn, N. Y., urging defeat of Senate bill 2926 and House bill 8423; to the Committee on Labor.

3074. By Mr. RUDD: Petition of Steel & Tubes, Inc., Cleveland, Ohio, opposing the passage of Senate bill 2926 and House bill 8423; to the Committee on Labor.

Congressional Record, House—March 20, 1934 (78 Cong. Rec. 4980):

3107. By Mr. LINDSAY: Petition of the Brooklyn and Long Island Automobile Dealers Association, Brooklyn, N. Y., opposing the Wagner bill; to the Committee on Interstate and Foreign Commerce.

3115. By Mr. MEAD: Petition of Association of Employees, American Telephone & Telegraph Co., Buffalo, N. Y., objection to parts of Wagner Labor Disputes Act; to the Committee on Labor.

Congressional Record, House—March 21, 1934 (78 Cong. Rec. 5081):

3154. By Mr. JOHNSON of Texas: Petition of L. D. Oliver, Oliver Chevrolet Co., Groesbeck, Tex.; Fred J. Doering, Mexia Motor Car Co. Mexia, Tex.; Cole Bates, Cole Bates Chevrolet Co., Wortham, Tex, opposing Wagner bill (S. 2926); to the Committee on Labor.

3155. Also, petition of Calkins & Dublin, Inc., Corsicana, Tex., E. W. Ellis & Co., Jackson Bros., Drane & McKee, Beaton Motor Co., R. A. Purifoy, and J. S. Murchison, Corsicana, Tex.; Teague Motor Co., Riley Boyd Motor Co., York Motor Co., and Quality Motor Co., Teague, Tex.; and Brazos Valley Automobile Dealers Association, Bryan, Tex., opposing Wagner bill (S. 2926); to the Committee on Labor.

3161. By Mr. LINDSAY: Also, petition of Association of Employees, Long Lines Department, American Telephone & Telegraph Co., New York City, opposing portions of the Labor Disputes Act; to the Committee on Labor.

3162. By Mr. LINDSAY: Also, telegram from representatives of iron and steel companies of New England, New York, Pennsylvania,

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New Jersey, Delaware, and Maryland, opposing the passage of the Wagner-Connery labor bills; to the Committee on Labor.

3165. By Mr. RUDD: Also, petition of representatives of iron and steel companies of New England, New York, Pennsylvania, New Jersey, Delaware, and Maryland, opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

Congressional Record, House—March 22, 1934 (78 Cong. Rec. 5205):

3178. By Mr. LINDSAY: Also, petition of the Atlantic Service Co., Brooklyn, N. Y., opposing the Wagner-Connery bill; to the Committee on Labor.

3179. Also, telegram from Eberhard Faber Pencil Co., opposing the Wagner-Connery bill; to the Committee on Labor.

3180. Also, petition of the Armstrong Cork Co., Lancaster, Pa., opposing the passage of the Wagner labor bill; to the Committee on Labor.

3181. Also, petition of the Homestead Laundry Corporation, Brooklyn, N. Y., opposing Senate bill 2926 and House bill 8423; to the Committee on Labor.

3183. Also, petition of Gleason-Tiebout Glass Co., Brooklyn, N. Y., opposing the Wagner-Connery bill; to the Committee on Labor.

3191. By Mr. RUDD: Also, petition of the Gleason-Tiebout Glass Co., Brooklyn, N. Y., opposing the Wagner-Connery bills; to the Committee on Labor.

3192. Also, petition of the Armstrong Cork Co., Lancaster, Pa., opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

3194. Also, petition of Eberhard Faber Pencil Co., Brooklyn, N. Y., opposing the passage of the Wagner-Connery bills: to the Committee on Labor.

3195. Also, petition of Lloyd B. Martin, president Atlantic Service Co., opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

Congressional Record, House—March 23, 1934 (78 Cong. Rec. 5291):

3199. By Mr. BEITER: Also, petition of the Radio Workers Federal Labor Union, No. 18479, Buffalo, N. Y., urging favorable consideration of Wagner labor and Connery 30-hour bills; to the Committee on Labor.

3205. By Mr. LINDSAY: Petition of Abraham & Strauss, Inc., Brooklyn, N. Y., opposing the passage of the Wagner-Connery bills (S. 2926 and H. R. 8423); to the Committee on Labor.

3211. Also, petition of Dugan Bros., Inc., Brooklyn, N. Y., opposing the Wagner-Connery bills (S. 2926 and H. R. 8423); to the Committee on Labor.

3212. Also, petition of F. H. Von Damm, 898–908 Grand Street, Brooklyn, N. Y., concerning the Wagner-Connery bills; to the Committee on Labor.

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3215. Also, petition of the Allied Beauticians of America, Inc., Brooklyn, N. Y., opposing the Wagner-Connery bills; to the Committee on Labor.

3216. By Mr. RUDD: Petition of the New York Clothing Cutters Union, Local No. 4, A. C. W. of A., favoring the passage of the Wagner Labor Disputes Act; to the Committee on Labor.

3221. Also, petition of Bakelite Corporation, New York City, opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

3222. Also, petition of F. Weidner Printing & Publishing Co., Brooklyn, N. Y., opposed to the Wagner-Connery bills; to the Committee on Labor.

3223. Also, petition of Dugan Bros., Inc., opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

3224. Also, petition of Abraham & Straus, Inc., Brooklyn, N. Y., opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

3225. Also, petition of the Allied Beauticians of America, Inc., Brooklyn, N. Y., opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

Congressional Record, House—March 24, 1934 (78 Cong. Rec. 5381):

3234. By Mr. LINDSAY: Petition of the Stag Laundry, Inc., Brooklyn, N. Y., urging defeat of the Wagner-Connery bills; to the Committee on Labor.

3236. Also, petition of the Lobley Machine Works, Inc., Brooklyn, N. Y., protesting against the enactment of the Wagner-Connery bills; to the Committee on Labor.

3237. Also, petition of the Sperry Products, Inc., Brooklyn, N. Y., opposing passage of the Wagner-Connery bills; to the Committee on Labor.

[*5382:*] 3244. Also, petition of the Philadelphia Chamber of Commerce, Philadelphia, Pa., urging defeat of the Wagner-Connery bills (S. 2926 and H. R. 8423); to the Committee on Labor.

3246. Also, petition of F. Weidner Printing & Publishing Co., Brooklyn, N. Y., opposing the Wagner-Connery bills; to the Committee on Labor.

3247. Also, petition of Frederick Loeser & Co., Inc., Brooklyn, N. Y., protesting against the adoption of the Wagner-Connery bills (S. 2926 and H. R. 8423); to the Committee on Labor.

3248. Also, telegram from the Bakelite Corporation, New York City, opposing the Wagner-Connery bills; to the Committee on Labor.

3250 By Mr. LINDSAY. Also, telegram from the New York Clothing Cutters Union, Local 4, A. C. W. of A., New York City, favoring the Wagner Labor Disputes Act; to the Committee on Labor.

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3251. Also, petition of Benisch Bros., mausoleums and monuments, Brooklyn, N. Y., opposing the Wagner-Connery bills (S. 2926 and H. R. 8423); to the Committee on Labor.

3256. By Mr. RUDD: Petition of the Stag Laundry, Inc., Brooklyn, N. Y., urging defeat of the Wagner-Connery bills; to the Committee on Labor.

3257. Also, petition of Sperry Products, Inc., Manhattan Bridge Plaza, Brooklyn, N. Y., opposing passage of the Wagner-Connery bill; to the Committee on Labor.

3258. Also, petition of Charles B. Warren, New York City, opposing the passage of the Wagner Trade Disputes Act; to the Committee on Labor.

3262. Also, petition of the Philadelphia Chamber of Commerce, Philadelphia, Pa., opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

3267. Also, petition of Frederick Loeser & Co., Brooklyn, N. Y., opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

3268. Also, petition of Benisch Bros., Brooklyn, N. Y., opposing the Wagner-Connery bills; to the Committee on Labor.

Congressional Record, House—March 26, 1934 (78 Cong. Rec. 5469):

3287. By Mr. JOHNSON of Texas: Petition of J. E. Rittersbacher, president of American Well & Prospecting Co. of Corsicana, Tex., opposing the Wagner bill, S. 2926; to the Committee on Labor.

3291. Also, petition of the Pittsburgh Tube Co., Pittsburgh, Pa., opposing the Wagner-Connery bills; to the Committee on Labor.

3292. Also, petition of the H. Kohnstamm & Co., Inc., New York City, opposing the Wagner labor dispute bill; to the Committee on Labor.

3293. Also, petition of the Pilgrim Laundry, Inc., Brooklyn, N. Y., opposing the Wagner bill; to the Committee on Labor.

3296. By Mr. RUDD: Petition of Harry L. Denzler, Herman M. Dederer, Stanley Waitkus, and Richard R. Roberts, of Brooklyn, N. Y., opposing the passage of the Wagner-Connery bill; to the Committee on Labor.

3298. Also, petition of H. Kohnstamm & Co., Inc., New York City, opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

[*5470:*] 3300. By Mr. RUDD: Also, petition of the Pittsburgh Tube Co., Pittsburgh, Pa., opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

3302. Also, petition of the Hauck Manufacturing Co., Brooklyn, N. Y., opposing the passage of the Wagner-Connery bills, S. 2926 and H. R. 8423; to the Committee on Labor.

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Congressional Record, House—March 27, 1934 (78 Cong. Rec. 5565):

3311. Also, petition of Arthur Weiman and others, employees of the New York Telephone Co., taking exception to paragraph 4, section 5, title I, of the Labor Disputes Act as proposed in the Wagner bill, believing it to be an infringement upon their rights to choose a form of organization for collective bargaining; to the Committee on Labor.

[*5566:*] 3318. By Mr. LINDSAY: Petition of John G. Marshall, Inc., Brooklyn, N. Y., opposing the Wagner-Connery bills; to the Committee on Labor.

3319. Also, petition of C. Kenyon Co., Inc., Brooklyn, N. Y., opposing the Wagner-Connery bills; to the Committee on Labor.

3322. Also, petition of the John J. Dahne Co., New York City, opposing the Wagner bill (S. 2926) in its present form and the Connery 30-hour-week bill (H. R. 8492), and favoring amendment to tariff act (H. R. 8687); to the Committee on Ways and Means.

3324. Also, petition of G. M. Cowenhoven, president National Gauge Corporation, Brooklyn, N. Y., opposing the Wagner-Connery bills in their present form; to the Committee on Labor.

3327. Also, petition of Charles B. Warren, New York City, opposing the Wagner Trade Disputes Act; to the Committee on Labor.

3328. Also, petition of the Pilgrim Laundry, Inc., Brooklyn, N. Y., opposing the Wagner bill; to the Committee on Labor.

3329. Also, petition of the J. B. Mast Co., New York City, protesting against Senate bill 2926; to the Committee on Labor.

3330. Also, petition of the Markon Garment Co., Inc., Elizabeth, N. J., opposing the passage of Senate bill 2926 in its present form; to the Committee on Labor.

3331. Also, petition of the Marine Engineers Beneficial Association, No. 13, Philadelphia, Pa., favoring the passage of House bills 7659, 7979, 8423, and Senate bill 2926; to the Committee on Labor.

3332. Also, petition of the Gair Realty Corporation, Brooklyn, N. Y., opposing the enactment of the Wagner-Connery bill; to the Committee on Labor.

3333. Also, petition of the Metal Hose & Tubing Co., Inc., Brooklyn, N. Y., urging defeat of the Wagner bill; to the Committee on Labor.

3338. By Mr. MUSSELWHITE: Also, petition of the Greater Muskegon Chamber of Commerce, opposing the passage of the Wagner labor-disputes bill (S. 2926); to the Committee on Labor.

3340. Also, petition of the Markon Garment Co., Inc., Elizabeth, N. J., opposing the passage of Senate bill 2926; to the Committee on Labor.

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3344. By Mr. RUDD: Also, petition of the Metal Hose & Tubing Co., Brooklyn, N. Y., opposing the passage of the Wagner bill; to the Committee on Labor.

3345. Also, petition of M. M. Aiken, Brooklyn, N. Y., opposing the passage of the Wagner bill; to the Committee on Labor.

3346. Also, petition of the Gair Realty Corporation, Brooklyn, N. Y., opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

3347. Also, petition of the National Gauge Corporation, Brooklyn, N. Y., opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

3348. Also, petition of the Pilgram Laundry, Inc., Brooklyn, N. Y., opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

Congressional Record, House—March 28, 1934 (78 Cong. Rec. 5692):

3363. By Mr. LINDSAY: Petition of American Rattan & Reed Mfg. Co., Brooklyn, N. Y., protesting against the passage of the Wagner-Connery bills; to the Committee on Labor.

3364. Also, petition of the Spielman Motor Sales Co., Inc., Brooklyn, N. Y., opposing the Wagner labor dispute bills; to the Committee on Labor.

3365. Also, telegram from Crown Cork & Seal Co., Inc., Baltimore, Md., opposing the Wagner labor bill and stock-exchange bill in their present form; to the Committee on Interstate and Foreign Commerce.

3366. Also, telegram from the Torrington Co. of New York, opposing the Wagner-Connery labor dispute bills; to the Committee on Labor.

3367. Also, petition of Metropolitan Builders Association, New York City, opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

3368. Also, petition of the Empire State Silk Label Co., New York City, opposing the Wagner-Connery bills; to the Committee on Labor.

3371. Also, petition of the Ohio Chamber of Commerce, Columbus, Ohio, opposing the Wagner-Connery bills; to the Committee on Labor.

3372. Also, petition of the Bay Ridge Dock Co., Inc., Brooklyn, N. Y., opposing the Wagner-Connery bills; to the Committee on Labor.

3373. Also, petition of Augustus C. Froeb, Brooklyn, N. Y., opposing the Wagner-Connery bills; to the Committee on Labor.

3374. Also, petition of the Associated Cooperage Industries of America, Inc., St. Louis, Mo., opposing the Wagner-Connery bills and the Connery 30-hour week bill; to the Committee on Labor.

3375. Also, petition of the Cork Institute of America, New York City, opposing the Wagner-Connery bills; to the Committee on Labor.

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3380. By Mr. RUDD: Petition of John G. Marshall, Inc., Brooklyn, N. Y., opposing the passage of the Wagner-Connery bill; to the Committee on Labor.

3382. Also, petition of the Torrington Co., of New York, opposed to the Wagner-Connery bills; to the Committee on Labor.

3383. Also, petition of the Crown Cork & Seal Co., Inc., Baltimore, Md., opposed to the passage of the Wagner-Connery bills; to the Committee on Labor.

3384. By Mr. RUDD: Also, petition of the H. L. Judd Co., New York City, opposed to the passage of the Wagner-Connery bills, Fletcher-Rayburn securities bill, and tariff bill; to the Committee on Interstate and Foreign Commerce.

3385. Also, petition of Augustus C. Froeb, Brooklyn, N. Y., stating seven reasons for opposing the Wagner-Connery bills; to the Committee on Labor.

3387. Also, petition of the Ohio Chamber of Commerce, Columbus, Ohio, opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

3389. Also, petition of the Bay Ridge Dock Co., Inc., of Brooklyn, N. Y., opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

3390. Also, petition of the C. Kenyon Co., Inc., New York City, opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

3391. Also, petition of the American Rattan & Reed Manufacturing Co., Brooklyn, N. Y., opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

3392. Also, petition of the J. B. Mast Co., New York City, opposing the passage of Senate bill 2926; to the Committee on Labor.

3398. Also, petition of the Cork Institute of America, New York City, opposing the Wagner-Connery bills; the tariff reciprocity bill, and the national securities exchange bill; to the Committee on Labor.

3399. Also, petition of the Metropolitan Builders Association, New York City, opposing the Wagner-Connery bills; to the Committee on Labor.

3400. Also, petition of the Empire State Silk Label Co., New York City, opposing the Wagner-Connery bills; to the Committee on Labor.

3401. Also, petition of the Associated Cooperage Industries of America, Inc., opposing the Wagner-Connery bills; to the Committee on Labor.

3402. By the SPEAKER: Petition of numerous citizens of Illinois, urging passage of Senate bill 2926 and House bill 8423; to the Committee on Labor.

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Congressional Record, Senate—March 29, 1934 (78 Cong. Rec. 5694):

Mr. WALCOTT presented a memorial signed by Roger E. Case and other citizens of Bristol, Conn., remonstrating against the passage of the bill (S. 2926) to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board and for other purposes, which was referred to the Committee on Education and Labor.

Congressional Record, House—March 29, 1934 (78 Cong. Rec. 5825):

3408. By Mr. BOYLAN: Letter from the Allied Printing Trades Council of Greater New York, representing 35,000 organized printing trades workers in New York City, at their regular monthly meeting unanimously adopted a resolution endorsing the Wagner industrial disputes bill; to the Committee on Labor.

[*5826:*] 3414. By Mr. GOODWIN: Petition of H. E. McCade and others, employees of the New York Telephone Co., of the Monticello and Ellenville section, State of New York, taking exception to paragraph 4, section 5, title 1, of the labor disputes act, as proposed in the Wagner bill, believing it to be an infringement upon their rights to choose a form of organization for collective bargaining; to the Committee on Labor.

3416. Also, petition of A. F. Nullirt and others, employees of the New York Telephone Co., of Sullivan County, N. Y., taking exception to paragraph 4, section 5, title 1, of the Labor Disputes Act as proposed in the Wagner bill, believing it to be an infringement upon their rights to choose a form of organization for collective bargaining; to the Committee on Labor.

3428. By Mr. LINDSAY: Also, petition of the G. R. Kinney Co., Inc., New York City, opposing the Fletcher-Rayburn bill and Wagner labor bill; to the Committee on Labor.

3431. Also, petition of J. & J. Cash, Inc., South Norwalk, Conn., opposing the Wagner-Connery bills; to the Committee on Labor.

3433. Also, petition of Allied Printing Trades Council of Greater New York, endorsing the Wagner industrial disputes bill; to the Committee on Labor.

3435. Also, petition of the Cork Import Corporation, New York City, opposing the passage of the Wagner labor bill; to the Committee on Labor.

3437. Also, petition of the Greenpoint Metallic Bed Co., Inc., Brooklyn, N. Y., opposing the enactment of the Wagner-Connery bills; to the Committee on Labor.

[*5827:*] 3444. By Mr. RUDD: Also, petition of the Greenpoint Metallic Bed Co., Inc., Brooklyn, N. Y., opposing the enactment of the Wagner-Connery bills; to the Committee on Labor.

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3445. Also, petition of J. & J. Cash, Inc., South Norwalk, Conn., opposing the Wagner-Connery bills; to the Committee on Labor.

3448. Also, petition of the Allied Printing Trades Council of Greater New York, favoring passage of the Wagner industrial disputes' bill; to the Committee on Labor.

3449. By Mr. SMITH of West Virginia: Resolution of the Parkersburg Board of Commerce, Parkersburg, W. Va., protesting against the enactment of House bill 8423 and Senate bill 2926, known as the "Wagner-Connery bills"; to the Committee on Labor.

3450. By Mr. SNELL: Petition of the New York Telephone Co. employees relative to Wagner labor disputes' bill; to the Committee on Labor.

Congressional Record, House—April 2, 1934 (78 Cong. Rec. 5877):

3466. By Mr. JOHNSON of Texas: Petition of Mrs. B. L. Walkup, president of American Supply Co., Mexia, Tex., opposing the Wagner bill (S. 2926) and Connery bill (H. R. 8423); to the Committee on Labor.

3468. Also, petition of C. A. Wuensche, Ideal Motor Co., Thorndale, Tex., opposing the Wagner bill (S. 2926); to the Committee on Labor.

[*5878*] 3477. By Mr. LINDSAY: Also, petition of the Permatex Co., Inc., Sheepshead Bay, N. Y., opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

3478. Also, petition of Holden-Leonard Co., Inc., New York City, opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

3504. By Mr. RUDD: Also, petition of the Cork Import Corporation, New York City, opposing the passage of the Wagner labor bill; to the Committee on Labor.

3505. Also, petition of the Permatex Co., Inc., Brooklyn, N. Y., opposing the passage of the Wagner-Connery labor dispute bill; to the Committee on Labor.

3507. Also, petition of the Holden-Leonard Co., Inc., New York City, opposing the passage of the Wagner labor bill; to the Committee on Labor.

[*5879:*] 3524. By Mr. SNELL: Also, petition of employees of the New York Telephone Co., relative to the Wagner bill; to the Committee on Labor.

Congressional Record, House—April 3, 1934 (78 Cong. Rec. 5949):

3530. By Mr. BLOOM: Also, petition of the Cork Institute of America, New York City, opposing the Wagner bill (S. 2926) and the Connery bill (H. R. 8423); to the Committee on Labor.

3531. Also, petition of Metropolitan Builders Association, of New York City, opposing the passage of the Wagner-Connery labor bills (S. 2926 and H. R. 8423); to the Committee on Labor.

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3540. By Mr. GOODWIN: Petition of Timothy J. Hoben and others, of Kingston, N. Y., and vicinity, employees of the New York Telephone Co., taking exception to paragraph 4, section 5, title I, of the labor disputes act as proposed in the Wagner bill, believing it to be an infringement upon their rights to choose a form of organization for collective bargaining; to the Committee on Labor.

[*5950:*] 3550. By Mr. LINDSAY: Also, petition of the Vulcan Proofing Co., Brooklyn, N. Y., opposing the Wagner-Connery bills; to the Committee on Labor.

3551. Also, petition of the Association of Employees, Branch No. 14, Long Lines Department, American Telephone & Telegraph Co., New York City, protesting against the Wagner Labor Disputes Act in its present form; to the Committee on Labor.

3556. By Mr. MILLARD: Petition signed by members of Branch No. 14, Association of Employees, Long Lines Department, American Telephone & Telegraph Co., urging the defeat of the Wagner labor bill; to the Committee on Labor.

3561. By Mr. RUDD: Also, petition of Branch No. 14, Association of Employees Long Lines Department, American Telephone & Telegraph Co., protesting against paragraph 4, section 5, title I, of the Wagner Labor Disputes Act; to the Committee on Labor.

Congressional Record, House—April 4, 1934 (78 Cong. Rec. 6069):

3601. By Mr. BETTER: Also, petition of the Buffalo Chamber of Commerce, Buffalo, N. Y., containing 18 reasons for their opposition to the Wagner labor disputes bill (S. 2926); to the Committee on Labor.

3602. By Mr. BETTER: Also, petition of employees of the accounting, engineering, executive and financial departments, upstate area, New York Telephone Co., Buffalo, N. Y., protesting certain provisions of the proposed Labor Disputes Act; to the Committee on Labor.

3603. By Mr. BOYLAN: Petition signed by 170 members of the Branch Association of Employees of the Long Lines Department, American Telephone & Telegraph Co., New York, N. Y., protesting against the passage of the provision of the Labor Disputes Act which would prevent an organization, of its own free choice, from making any arrangement it so desires with a company; to the Committee on Labor.

3616. By Mr. LINDSAY: Telegram from the Steuben Knitting Co., Inc., New York City, protesting against the Wagner-Connery bills; to the Committee on Labor.

[*6070:*] 3619. Also, telegram from Greenhill & Daniel, Inc., New York City, protesting against the enactment of the Wagner-Connery bills; to the Committee on Labor.

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3621. Also, petition of the Mundet Cork Corporation, New York City, urging defeat of the National Securities Exchange Act of 1934, the Wagner-Connery bill, and the tariff reciprocity bill; to the Committee on Ways and Means.

3622. Also, petition of Frank Associates, Inc., New York City, opposing the Wagner bill (S. 2926), the amendment to the tariff act (H. R. 8687), and the Connery 30-hour week bill (H. R. 8492); to the Committee on Labor.

3623. Also, petition of the Bilt-Rite Baby Carriage Co., Brooklyn, N. Y., opposing the enactment of House bill 8430, Senate bill 2926, and House bill 8423; to the Committee on Ways and Means.

3627. By Mr. RUDD: Petition of the Steuben Knitting Co., Inc., opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

3628. Also, petition of the Mundet Cork Corporation, New York City, opposing the passage of the National Securities Exchange Act, the Wagner-Connery bill, and the tariff reciprocity bill; to the Committee on Interstate and Foreign Commerce.

3630. Also, petition of the Vulcan Proofing Co., Brooklyn, N. Y., opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

3632. Also, petition of Greenhill & Daniel, Inc., New York City, opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

Congressional Record, Senate—April 5, 1934 (78 Cong. Rec. 6071):

Mr. CAPPER presented resolutions adopted by Local Union No. 6615, United Mine Workers of America, of Hume, Mo., and Coffeyville Lodge, No. 54, Brotherhood Railway Carmen of America, of Coffeyville, Kans., favoring the passage of the bill (S. 2926) to equalize the bargaining power of employers and cmployees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes, which were referred to the Committee on Education and Labor.

He also presented the memorial of the board of directors of the Dodge City (Kans.) Chamber of Commerce, remonstrating against the passage of the bill (S. 2926) to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes, which was referred to the Committee on Education and Labor.

Mr. COPELAND presented a resolution adopted by the Butler (Pa.) Chamber of Commerce, protesting against the passage of the so-called "Wagner labor board bill," relative to collective bargaining, which was referred to the Committee on Education and Labor.

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He also presented resolutions adopted by Branch No. 476, Workmen's Circle; Local Union No. 1292, United Brotherhood of Carpenters and Joiners of America, and the Workers' Association, all of Huntington, Long Island, N. Y., favoring the passage of the so-called "Wagner labor board bill," especially in relation to collective bargaining, which were referred to the Committee on Education and Labor.

He also presented a resolution adopted by the Syracuse (N. Y.) Chamber of Commerce, protesting against the passage of the bill (S. 2926) to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes, which was referred to the Committee on Education and Labor.

He also presented a resolution adopted by members of the Architectural Guild of America, New York City, N. Y., favoring the passage of the so-called "Wagner 30-hour workweek bill," and the Wagner labor board bill, which was referred to the Committee on Education and Labor.

Congressional Record, Senate—April 6, 1934 (78 Cong. Rec. 6164):

3648. By Mr. LINDSAY: Also, petition of the Crown Manufacturers Association of America, Washington, D. C., protesting against the Fletcher-Rayburn bill, the tariff bill, and the Wagner labor bill; to the Committee on Interstate and Foreign Commerce.

3659. By Mr. RUDD: Also, petition of the Bilt-Rite Baby Carriage Co., Brooklyn, N. Y., opposing the passage of Senate bill 2926 and House bill 8423; to the Committee on Labor.

3662. Also, petition of Frank Associates, Inc., New York City, opposing the passage of Wagner-Connery bill, the tariff bill, and the Connery 30-hour week bill; to the Committee on Labor.

Congressional Record, House—April 9, 1934 (78 Cong. Rec. 6287):

3673. By Mr. BOYLAN: Also, letter from the Automobile and Vehicle Workers Local Union, No. 18065, New York City, favoring the Wagner bill and the 30-hour week; to the Committee on Labor.

[*6288:*] 3680. By Mr. GOODWIN: Petition of W. E. McQuade and others, employees of the New York Telephone Co., employed in Ulster and Greene Counties, N. Y., taking exception to paragraph 4, section 5, title I, of the Labor Disputes Act as proposed in the Wagner bill, believing it to be an infringement upon their rights to choose a form of organization for collective bargaining; to the Committee on Labor.

3682. By Mr. LINDSAY: Petition of Associated Industries of Missouri, St. Louis, opposing the passage of the Wagner-Connery bills, Senate bill 2926 and House bill 8423; to the Committee on Labor.

3687. Also, petition of the Brooklyn Chamber of Commerce,

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Brooklyn, N. Y., opposing Senate bill 2926 and House bill 8423, the Wagner-Connery bills; to the Committee on Labor.

3689. Also, petition of the Aerovox Corporation, Brooklyn, N. Y., opposing the Wagner bill; to the Committee on Labor.

3700. Also, petition of Brooklyn Eastern District Terminal, Brooklyn and Long Island City, N. Y., opposing the Wagner labor dispute bill, the unemployment insurance bill, and the stock-exchange regulation bill, and favoring Coordinator Eastman's proposed bill for the regulation of motor and water carriers; to the Committee on Labor.

3701. Also, petition of the American Agricultural Chemical Co., New York City, opposing the Wagner Labor Disputes Act (S. 2926 and H. R. 8423); to the Committee on Labor.

[*6289:*] 3723. Also, petition of the Brooklyn Chamber of Commerce, Brooklyn, N. Y., opposing the passage of the Wagner-Connery bills (S. 2926 and H. R. 8423); to the Committee on Labor.

3724. Also, petition of the Aerovox Corporation, Brooklyn, N. Y., opposing the passage of the Wagner bill; to the Committee on Labor.

3726. Also, petition of the American Agricultural Chemical Co., New York City, opposing the passage of the Wagner-Connery bills; to the Committee on Labor.

Congressional Record, House—April 11, 1934 (78 Cong. Rec. 6451):

3773. By Mr. BEITER: Petition of the Radio Workers Federal Labor Union, No. 18739, Tonawanda, N. Y., urging support of the Wagner labor and Connery 30-hour week bills; to the Committee on Labor.

[*6452:*] The PRESIDENT pro tempore laid before the Senate a memorial of several citizens of Muskogee, Okla., remonstrating against the passage of the bill (S. 2926) to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes, which was referred to the Committee on Education and Labor.

Congressional Record, Senate—April 13, 1934 (78 Cong. Rec. 6530):

Mr. COPELAND also presented resolutions adopted by the Chambers of Commerce of Williamson, W. Va., and Cincinnati, Ohio, protesting against the passage of the bill (S. 2926) to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes, which were referred to the Committee on Education and Labor.

He also presented a resolution adopted by members of Radio Workers' Federal Union, No. 18739, of Tonawanda, N. Y., favoring the passage of the so-called "Wagner labor bill" and the "Connery 30-hour work week bill", which was referred to the Committee on Education and Labor.

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Congressional Record, Senate—April 14, 1934 (78 Cong., Rec. 6608):

The VICE PRESIDENT laid before the Senate a letter in the nature of a petition from Walter Beachler, Sr., and Walter Beachler, Jr., of Frontier, Wyo., praying for the passage of the bill (S. 2926) to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes, and also other legislation in the interest of labor, which was referred to the Committee on Education and Labor.

Mr. WALSH introduced the following resolution:

Resolved, That the Massachusetts Press Association go on record as opposed to the provisions of the Wagner bill on which hearings are being held before the Senate Committee on Education and Labor and that the Massachusetts Senators and Representatives be informed of this action on the part of the newspaper publishers of Massachusetts.

Congressional Record, House—April 16, 1934 (78 Cong. Rec. 6692):

3925. By Mr. RUDD: Also, petition of the board of directors of the Foundry Equipment Manufacturers Association, Cleveland, Ohio, opposing the passage of the Wagner-Connery Labor Disputes Act; to the Committee on Labor.

Congressional Record, Senate—April 17, 1943 (78 Cong. Rec. 6713):

Mr. ASHURST introduced a letter from the editor of the Arizona Daily Star opposing the Wagner labor bill.

"The sixth piece of legislation is the Wagner labor bill. The making of every business in the country, regardless of its character, subject to the terms of this bill is a gross invasion of American rights. Labor has an inalienable right to organize and to strike, but neither labor nor the American Government has a right to force every business in America employing two or more people to accept organized labor as represented by the American Federation of Labor. This bill will enable the American Federation of Labor to grow into an organization stronger than the Government itself, I think, therefore, the bill should be defeated."

Congressional Record, House—April 17, 1934 (78 Cong. Rec. 6791):

3978. By Mr. RUDD: Also, petition of the Automobile and Vehicle Workers Local Union, No. 18065, New York City, favoring the Wagner-Connery bill and also the Connery 30-hour-week bill; to the Committee on Labor.

Congressional Record, House—April 18, 1934 (78 Cong. Rec. 6895):

4014. By Mr. LINDSAY: Also, petition of United Upholsterers' Union of New York, Local 44, New York City, urging support of the Wagner-Connery disputes bill and the Wagner-Lewis bill; to the Committee on Labor.

4018. By Mr. RUDD: Petition of United Upholsterers' Union of New York, Local No. 44, New York City, favoring the passage of the Wagner-Connery disputes bill; to the Committee on Labor.

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[*6896:*] 4021. By Mr. THOMASON: Also, petition of residents of Crane County, Tex., expressing approval of the Wagner labor bill; to the Committee on Labor.

Congressional Record, House—April 19, 1934 (78 Cong. Rec. 6975):

4043. By Mr. BOYLAN: Also, letter from the Central Union Labor Council of Greater New York, representing over 200,000 organized in what is known as the "union label trades," unanimously endorsing the Wagner-Lewis unemployment insurance bill and the Wagner-Connery Disputes Act; to the Committee on Labor.

4047. Also, letter from the United Upholsterers' Union, Local No. 44, New York City, N. Y., favoring the Wagner-Connery Disputes Act; to the Committee on Labor.

Congressional Record, House—April 19, 1934 (78 Cong. Rec. 6977):

4077. By Mr. RUDD: Petition of the Shoe Manufacturers' Board of Trade of New York, Inc., Brooklyn, N. Y., opposing the passage of the labor disputes bill; to the Committee on Labor.

4078. Also, petition of M. H. Renken Dairy Co., Brooklyn, N. Y., opposing the passage of the Connery 30-hour bill, the Wagner labor disputes bill, and the unemployment reserves bill; to the Committee on Labor.

Congressional Record, Senate—April 20, 1934 (78 Cong. Rec. 6979):

Mr. LEWIS (for Mr. TYDINGS): He also presented a memorial of citizens of Baltimore, Md., remonstrating against the passage of the bill (S. 2926) to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes, which was referred to the Committee on Education and Labor.

Congressional Record, House—April 20, 1934 (78 Cong. Rec. 7099):

4125. By Mr. LINDSAY: Petition of Rand McNally & Co., New York City, opposing the Wagner labor bill; to the Committee on Labor.

4131. By Mr. RUDD: Petition of Rand McNally & Co., New York City, opposing the passage of the Wagner disputes bill; to the Committee on Labor.

Congressional Record, House—April 21, 1934 (78 Cong. Rec. 7105):

4138. By Mr. RUDD: Petition of the Upholsters, Carpet, and Linoleum Mechanics' International Union of North America, New York City, favoring the Wagner-Connery disputes bill; to the Committee on Labor.

[*7106:*] The VICE PRESIDENT: He also laid before the Senate a resolution of Local Union No. 936, International Brotherhood of

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Firemen and Oilers, of Nashville, Tenn., favoring the passage of the bill (S. 2926) to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes, which was referred to the Committee on Education and Labor.

[*7107:*] Mr. COPELAND: He also presented resolutions adopted by members of New York Division No. 9, Order of Sleeping Car Conductors, and Seafarers' Council of the Port of New York, of New York City, favoring the passage of legislation providing for the settlement of disputes between employers and employees and to establish a national labor board, which were referred to the Committee on Education and Labor.

He also presented a resolution adopted by Stone Masons' Union No. 78, of New York City, favoring the passage of Senate bill 2616, providing for unemployment insurance, and Senate bill 2926, providing for the settlement of disputes between employers and employees, and to establish a national labor board, which was referred to the Committee on Finance.

Congressional Record, House—April 23, 1934 (78 Cong. Rec. 7191):

4147. By Mr. BOYLAN: Also, letter from the United Umbrella Workers Union, Local No. 19164, American Federation of Labor, New York City, favoring the Wagner-Connery Disputes Act; to the Committee on Labor.

[*7192:*] 4166. By Mr. LINDSAY: Also, petition of the United Umbrella Workers Union, Local No. 19164, American Federation of Labor, New York City, favoring the passage of the Wagner-Connery bill; to the Committee on Labor.

4169. Also, petition of the Central Union Label Council, New York City, favoring the Wagner-Lewis unemployment insurance bill and the Wagner-Connery Disputes Act; to the Committee on Labor.

4171. Also, petition of Upholsterers, Carpet, and Linoleum Mechanics International Union of North America, New York City, favoring the Wagner-Connery bill and the Wagner-Lewis bill; to the Committee on Labor.

4176. By Mr. RUDD: Petition of the United Umbrella Workers' Union, Local No. 19164, American Federation of Labor, New York City, favoring the passage of the Wagner-Connery Disputes Act; to the Committee on Labor.

Congressional Record, Senate—April 25, 1934 (78 Cong. Rec. 7252):

Mr. CAPPER: He also presented petitions and papers in the nature of petitions from Local Union No. 918, United Brotherhood of Carpenters and Joiners, of Manhattan; Local Unions No. 40 and No. 125, Amalgamated Meat Cutters and Butcher Workmen of North America,

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of Wichita; Local Union No. 1587, of Hutchinson, Local Union No. 1224, of Emporia, and Local Union No. 1445, of Topeka, all of the United Brotherhood of Carpenters and Joiners of America; Bricklayers and Masons' Union, No. 18, of Kansas City, and The Order of Railroad Telegraphers, of Humboldt, all in the State of Kansas, praying for the passage of the bill (S. 2926) to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes, which were referred to the Committee on Education and Labor.

Congressional Record, House—April 25, 1934 (78 Cong. Rec. 7377):

4208. By Mr. BOYLAN: Letter from the Shoe Manufacturers' Board of Trade, Brooklyn, N. Y., opposing the passage of Senate bill 2926, known as the "Labor Disputes Act"; to the Committee on Labor.

4210. Also, letter from the Whitestone Association, Local No. 1, New York City, unanimously favoring the passage of the Wagner-Connery Disputes Act; to the Committee on Labor.

Congressional Record, House—April 25, 1934 (78 Cong. Rec. 7378):

4225. By Mr. LINDSAY: Also, petition of the Whitestone Association, Local No. 1, New York City, favoring the Wagner-Lewis bill and the Wagner-Connery bill; to the Committee on Labor.

4233. By Mr. RUDD: Petition of the Whitestone Association, Local No. 1, Long Island, N. Y., favoring the passage of the Wagner-Lewis bill and the Wagner-Connery bill; to the Committee on Labor.

Congressional Record, House—April 26, 1934 (78 Cong. Rec. 7505):

4282. By Mr. BOYLAN: Also, letter from Rand McNally & Co., New York City, opposing the Wagner Disputes Act; to the Committee on Labor.

Congressional Record, Senate—April 27, 1934 (78 Cong. Rec. 7508):

Mr. CAPPER presented the petition of Local Union No. 11, Bricklayers, Masons, and Plasterers' International Union, of Emporia, Kans., praying for the passage of the bill (S. 2926) to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a national labor board, and for other purposes, which was referred to the Committee on Education and Labor.

Congressional Record, Senate—April 30, 1934 (78 Cong. Rec. 7632):

The VICE PRESIDENT: He also laid before the Senate a resolution adopted by the South Carolina Federation of Textile Workers, favoring the passage of the so-called "Wagner bill," being the bill (S. 2926) to equalize the bargaining power of employers and employees,

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to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes, which was referred to the Committee on Education and Labor.

Congressional Record, House—April 30, 1934 (78 Cong. Rec. 7728):

4363. By Mr. FORD: Also, resolution adopted by Marine Engineers' Beneficial Association, No. 97, urging support of Wagner-Connery bill; to the Committee on Labor.

Congressional Record, Senate—May 1, 1934 (78 Cong. Rec. 7729):

Mr. CAPPER presented the petition of Local Union No. 397, Brotherhood of Painters, Decorators, and Paperhangers, of Hutchinson, Kans., praying for the passage of the so-called "Wagner-Connery bill," being the bill (S. 2926) to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes, which was referred to the Committee on Education and Labor.

Congressional Record, House—May 1, 1934 (78 Cong. Rec. 7877):

4388. By Mr. BLOOM: Also, petition of Local No. 1 of the Whitestone Association, urging the passage of the Wagner-Lewis bill and the Wagner-Connery bill; to the Committee on Labor.

4389. By Mr. FISH: Petition of 85 residents of Dutchess and Orange Counties, N. Y., opposing paragraph 4, section 5, title I, of the Labor Disputes Act, proposed by Senator Robert F. Wagner, and to provisions of bill relating to rights of employees to organize for collective bargaining; to the Committee on Labor.

Congressional Record, Senate—May 8, 1934 (78 Cong. Rec. 8264):

The VICE PRESIDENT also laid before the Senate a resolution adopted by Moving Picture Machine Operators Local No. 249, International Alliance of Theatrical Stage Employees, of Dallas, Tex., favoring the passage of the bill (S. 2926) to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes, which was referred to the Committee on Education and Labor.

Mr. CAPPER presented the petition of Local No. 19367, Federal Labor Union, of Hutchinson, Kans., praying for the passage of the bill (S. 2926) to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes, which was referred to the Committee on Education and Labor.

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Congressional Record, Senate—May 18, 1934 (78 Cong. Rec. 9070):

COMPANY UNIONS—WORKING CONDITIONS OF EMPLOYEES

Mr. WAGNER presented a resolution in the nature of a petition adopted at the annual session of the New York East Conference of the Methodist Episcopal Church, held in the Central Methodist Episcopal Church, Brooklyn, N. Y., composed of approximately 300 ministers, which was referred to the Committee on Education and Labor and ordered to be printed in the Record as follows:

Whereas in recent months there has been a rapid growth in employer-dominated company unions and these unions have become a serious menace to the rights of the workers to organize into independent unions and bargain collectively through representatives of their own choosing, rights which the social creed of the Methodist Episcopal Church declares employees should have, we petition our representatives in the Congress of the United States to enact legislation which will make it illegal for a corporation or company to intimidate, coerce, or unfairly influence their employees in any way to join an employer initiated, financed, or controlled organization dealing with wages, hours, and grievances relating to conditions of work.

Congressional Record, House—May 21, 1934 (78 Cong. Rec. 9207):

4684. By Mr. Beiter: Petition of the Greater East Side Democratic Association, Inc., Buffalo, N. Y., endorsing the Wagner labor disputes bill (S. 2926); to the Committee on Labor.

Congressional Record, House—May 24, 1934 (78 Cong. Rec. 9553):

4779. By Mr. LINDSAY: Also, petition of the Metal Polishers', Buffers' and Electro Platers' Union No. 44, of Newark, N. J., regarding the Wagner-Connery Disputes Act; to the Committee on Labor.

Congressional Record, House—May 28, 1934 (78 Cong. Rec. 9787–9788):

4793. By Mr. KRAMER: Resolution adopted by the Amalgamated Association of Street & Electric Railway Employees of America, on May 22, 1934, requesting the passage of the Wagner-Connery bill; to the Committee on Labor.

Congressional Record, House—May 29, 1934 (78 Cong. Rec. 9923):

4839. By Mr. LUNDEEN: Petition of the Minneapolis Central Labor Union, urging the enactment of the Wagner-Connery Disputes Act; to the Committee on Labor.

Congressional Record, House—May 30, 1934 (78 Cong. Rec. 10066):

4855. By Mr. LINDSAY: Petition of the Brooklyn Chamber of Commerce, Brooklyn, N. Y., opposing Senate bill 2926 and House bill 8423 as modified and presented to the Senate on May 26, 1934; to the Committee on Labor.

4858. By Mr. LINDSAY: Also, petition of Richey, Brown & Donald, Maspeth, N. Y., opposing consideration of the amended

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Wagner labor disputes bill at this session of Congress; to the Committee on Labor.

4860. By Mr. RUDD: Petition of the Brooklyn Chamber of Commerce, Brooklyn, N. Y., opposing the passage of Senate bill 2926 and House bill 8423 in their present form; to the Committee on Labor.

Congressional Record, Senate—May 31, 1934 (78 Cong. Rec. 10068):

Mr. COPELAND also presented a resolution adopted by the Greater East Side Democratic Association, of Buffalo, N. Y., endorsing the bill (S. 2926) to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes, which was ordered to lie on the table.

Congressional Record, House—May 31, 1934 (78 Cong. Rec. 10173):

4868. By Mr. LINDSAY: Also, petition of the National Association of Manufacturers, Washington, D. C., concerning the Wagner labor-disputes bill (S. 2926); to the Committee on Labor.

Congressional Record, House—June 1, 1934 (78 Cong. Rec. 10296):

4894. By Mr. LINDSAY: Also, petition of the Sheldon-Foster Supply Co., Brooklyn, N. Y., opposing the Wagner labor-disputes bill; to the Committee on Labor.

4895. Also, petition of the National Packing Box Factory, James H. Dykeman, Inc., Brooklyn, N. Y., opposing the Wagner labor-disputes bill (S. 2926); to the Committee on Labor.

4896. By Mr. LINDSAY: Also, petition of the William H. Strang Warehouses, Inc., Brooklyn, N. Y., opposing the Wagner labor-disputes bill; to the Committee on Labor.

4897. Also, petition of the Domestic Laundry, Brooklyn, N. Y., opposing the Wagner labor-disputes bill; to the Committee on Labor.

4898. Also, petition of the American Mining Congress, Washington, D. C., opposing the Wagner labor-disputes bill and the Connery 30-hour-week bill; to the Committee on Labor.

4900. Also, telegram from the Brooklyn Savings Bank, David H. Lanman, president, Brooklyn, N. Y., opposing the Wagner bill (S. 2926); to the Committee on Labor.

4902. Also, petition of the Carl H. Schultz Corporation, E. C. McCullough, president, Brooklyn, N. Y., opposing the Wagner labor-disputes bill, as amended; to the Committee on Labor.

4903. Also, petition of the Namm Store, Brooklyn, N. Y., opposing the Wagner labor-disputes bill; to the Committee on Labor.

4904. Also, telegram of the Brooklyn Borough Gas Co., Mary E. Dillon, president, Coney Island, N. Y., opposing the Wagner labor-disputes bill (S. 2926); to the Committee on Labor.

4907. By Mr. RUDD: Also, petition of the Carl H. Schultz Corpo-

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ration, Brooklyn, N. Y., opposing the passage of the Wagner disputes bill; to the Committee on Labor.

4909. Also, petition of the Sheldon-Foster Supply Co., Brooklyn, N. Y., opposing the passage of the Wagner labor-disputes bill; to the Committee on Labor.

4910. Also, petition of the Namm Store, Brooklyn, N. Y., opposing the passage of the Wagner disputes bill; to the Committee on Labor.

4911. Also, petition of the American Mining Congress, Washington, D. C., opposing the passage of the Connery 30-hour-week bill, also opposing the Wagner labor-disputes bill; to the Committee on Labor.

4912. Also, petition of the William H. Strang Warehouses, Inc., Brooklyn, N. Y., opposing the passage of the Wagner disputes bill; to the Committee on Labor.

4913. Also, petition of the Brooklyn Savings Bank, Brooklyn, N. Y., opposing the Wagner bill (S. 2926); to the Committee on Labor.

4914. Also, petition of the Domestic Laundry, Brooklyn, N. Y., opposing the Wagner labor-disputes bill; to the Committee on Labor.

Congressional Record, House—June 6, 1934 (78 Cong. Rec. 10671):

4995. By Mr. LINDSAY: Petition of the Triangle Ink & Color Co., Inc., Brooklyn, N. Y., opposing Senate bill 2926; to the Committee on Labor.

4996. Also, petition of W. D. Huntington, New York City, urging consideration of the revised Wagner labor-disputes bill in the next session of Congress; to the Committee on Labor.

4999. Also, petition of the Jacobs Bros. Co., Inc., Brooklyn, N. Y., opposing the passage of the Wagner labor bill; to the Committee on Labor.

5000. Also, petition of the Callahan Can Machine Co., Inc., Brooklyn, N. Y., opposing the passage of the Wagner labor-disputes bill; to the Committee on Labor.

5001. Also, petition of the Gleason-Tiebout Glass Co., Brooklyn, N. Y., opposing the Wagner labor bill (S. 2926); to the Committee on Labor.

5002. Also, petition of the Burton-Dixie Corporation, S. R. Vannaman, superintendent, Brooklyn, N. Y., opposing the passage of the Wagner labor bill (S. 2926); to the Committee on Labor.

5003. Also, petition of the Burton-Dixie Corporation, Frank Buck, eastern sales manager, Brooklyn, N. Y., protesting against the passage of Senate bill 2926; to the Committee on Labor.

5004. Also, petition of the Burton-Dixie Corporation, F. O. Swanson, production manager cotton felt division, Brooklyn, N. Y., opposing the passage of the Wagner labor bill (S. 2926); to the Committee on Labor.

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5005. Also, petition of Francis Brewster, vice president, Asia, New York City, opposing the Wagner labor bill; to the Committee on Labor. (10672).

5006. Also, petition of the Durable Goods Industries Committee, Washington, D. C., opposing the enactment of the Wagner labor disputes bill at this session of Congress; to the Committee on Labor.

5009. By Mr. RUDD: Petition of the Brooklyn Eastern District Terminal, Brooklyn, N. Y., opposing the Wagner labor disputes bill; to the Committee on Labor.

5010. Also, petition of Francis Brewster, vice president, Asia, New York City, opposing the Wagner labor bill in its present form; to the Committee on Labor.

5011. Also, petition of the Jacobs Bros. Co., Inc., Brooklyn, N. Y., opposing the Wagner labor board bill; to the Committee on Labor.

5012. Also, petition of the Burton-Dixie Corporation, Frank Buck, eastern sales manager, Brooklyn, N. Y., opposing the passage of the Wagner labor bill (S. 2926); to the Committee on Labor.

5013. Also, petition of the Seabrook Bedding Co., Inc., Brooklyn, N. Y., opposing the passage of the Wagner Labor bill (S. 2926); to the Committee on Labor.

5016. Also, petition of the Callahan Can Machine Co., Inc., Brooklyn, N. Y., opposing the new Wagner disputes bill; to the Committee on Labor.

5017. Also, petition of the Manufacturers Trust Co., Brooklyn, N. Y., opposing the new Wagner disputes bill; to the Committee on Labor.

[*10672:*] 5018. By Mr. RUDD: Also, petition of the Gleason-Tiebout Glass Co., Brooklyn, N. Y., opposing the Wagner disputes bill; to the Committee on Labor.

5019. Also petition of the Scranton & Lehigh Coal Co., Brooklyn, N. Y., opposing the passage of the new Wagner disputes bill; to the Committee on Labor.

Congressional Record, House—June 7, 1934 (78 Cong. Rec. 10768):

5023. By Mr. LINDSAY: Petition of the National Gauge Corporation, G. M. Cowenhoven, president, Brooklyn, N. Y., opposing the passage of the Wagner labor-disputes bill (S. 2926); to the Committee on Labor.

5024. Also, petition of Norman Winnall, of Brooklyn, N. Y., opposing the Wagner bill (S. 2926); to the Committee on Labor.

5025. Also, petition of the Broadway Merchants' Chamber of Commerce, Inc., Brooklyn, N. Y., opposing the Wagner bill (S. 2926); to the Committee on Labor.

5026. Also, petition of H. S. Chardavoyne, Inc., Brooklyn, N. Y., urging postponement of the Wagner labor bill until the next session of Congress; to the Committee on Labor.

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5027. Also, petition of Scranton & Lehigh Coal Co., George J. Patterson, president, Brooklyn, N. Y., opposing the amended Wagner labor disputes bill; to the Committee on Labor.

5028. Also, petition of the Burton-Dixie Corporation, Keith Wallace, sales manager, bedding division, Brooklyn, N. Y., opposing the passage of the Wagner labor bill (S. 2926); to the Committee on Labor.

5029. Also, petition of the Kroger Grocery & Baking Co., Cincinnati, Ohio, opposing the amended Wagner labor bill; to the Committee on Labor.

5030. Also, petition of Edward F. Caldwell & Co., Inc., New York City, opposing the passage of the Wagner labor disputes bill (S. 2926); to the Committee on Labor.

5033. Also, petition of Holland Laundry, Inc., Brooklyn, N. Y., opposing the passage of the Wagner labor bill (S. 2926); to the Committee on Labor.

5034. Also, telegram from the Torrington Co. of New York, opposing the Wagner bill; to the Committee on Labor.

5035. Also, petition of the Peoples National Bank of Brooklyn, N. Y., opposing the Wagner bill (S. 2926); to the Committee on Labor.

5036. Also, petition of the Cooking & Heating Appliance Manufacturing Industry, Washington, D. C., opposing the Wagner labor disputes bill (S. 2926); to the Committee on Labor.

5037. Also, petition of the Burton-Dixie Corporation, E. F. Rusboldt, manager bedding division, Brooklyn, N. Y., opposing the Wagner bill (S. 2926); to the Committee on Labor.

5038. By Mr. LINDSAY: Also, position of the New York Towboat Exchange, New York City, opposing the Wagner labor bill (S. 2926); to the Committee on Labor.

5039. Also, petition of the National Association of Pattern Manufacturers, Chicago, Ill., opposing the Wagner labor bill (S. 2926); to the Committee on Labor.

5041. By Mr. RUDD: Also, petition of the Kroger Grocery & Baking Co., Cincinnati, Ohio, opposing the passage of the Wagner disputes bill; to the Committee on Labor.

5042. Also, petition of the National Association of Pattern Makers, Chicago, Ill., opposing the new Wagner disputes bill; to the Committee on Labor.

5043. Also, petition of the Cooking and Heating Appliance Manufacturing Industry, Washington, D. C., opposing the new Wagner disputes bill (S. 2926); to the Committee on Labor.

5044. Also, petition of Edward F. Caldwell & Co., New York City, opposing the new Wagner disputes bill; to the Committee on Labor.

5045. Also, petition of the Holland Laundry, Brooklyn, N. Y., opposing the passage of the Wagner disputes bill; to the Committee on Labor.

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5046. Also, petition of the Peoples National Bank, Brooklyn, N. Y., opposing the new Wagner disputes bill; to the Committee on Labor.

5047. Also, petition of the Torrington Co. of New York, protesting against the passage of the new Wagner disputes bill; to the Committee on Labor.

[*10769:*] 5048. By Mr. RUDD: Also, petition of the New York Tow Boat Exchange, New York City, opposing the passage of the Wagner bill (S. 2926); to the Committee on Labor.

5058. By Mr. GOODWIN: Petition of W. S. Wilson, of Hudson, N. Y., opposing the National Industrial Act; to the Committee on Labor.

Congressional Record, House—June 8, 1934 (78 Cong. Rec. 10909):

5061. By Mr. GOODWIN: Petition of W. G. Skelly, Republican national committeeman for Oklahoma, opposing the Wagner labor disputes bill; to the Committee on Labor.

5062. Also, petition of the National Association of Pattern Manufacturers, Chicago, opposing the passing of the Wagner Labor Disputes Act (S. 2926); to the Committee on Labor.

5063. Also, petition of the Cooking and Heating Appliance Manufacturing Industry, Washington, D. C., opposing the passing of the labor disputes bill, Senate bill 2926; to the Committee on Labor.

5066. By Mr. LINDSAY: Also, telegram from the Crown Cork & Seal Co., Inc., New York City, opposing the passage of the Wagner labor bill; to the Committee on Labor.

5067. Also, petition of the Armstrong Cork Co., Lancaster, Pa., opposing the Wagner labor bill (S. 2926); to the Committee on Labor.

5068. Also, petition of the Bacon Coal Co., Brooklyn, N. Y., opposing the Wagner labor bill; to the Committee on Labor.

5069. By Mr. LINDSAY: Also, petition of C. H. Kohnken, of Brooklyn, N. Y., opposing the Wagner labor disputes bill; to the Committee on Labor.

5072. By Mr. RUDD: Petition of Norman Winnall, of Brooklyn, N. Y., protesting against the passage of the Wagner bill (S. 2926); to the Committee on Labor.

5073. Also, petition of the Triangle Ink & Color Co., Inc., Brooklyn, N. Y., opposing the passage of the Wagner labor-disputes bill (S. 2926); to the Committee on Labor.

5074. Also, petition of H. S. Chardavoyne, Inc., Brooklyn, N. Y., urging consideration of the Wagner labor bill at the next session of Congress; to the Committee on Labor.

5075. Also, petition of the National Gauge Corporation, G. M. Cowenhoven, president, Brooklyn, N. Y., opposing the passage of the Wagner labor bill (S. 2926); to the Committee on Labor.

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5076. Also, petition of the Crown Cork & Seal Co., Inc., New York City, opposing the passage of the new Wagner disputes bill; to the Committee on Labor.

5077. Also, petition of the Broadway Merchants' Chamber of Commerce, Inc., Brooklyn, N. Y., opposing the new Wagner disputes bill (S. 2926); to the Committee on Labor.

5078. Also, petition of the Armstrong Cork Co., Lancaster, Pa., opposing the new Wagner disputes bill; to the Committee on Labor.

5079. Also, petition of the Bacon Coal Co., Brooklyn, N. Y., opposing the passage of the new Wagner disputes bill; to the Committee on Labor.

5080. Also, petition of William W. Fitzhugh, Inc., Brooklyn, N. Y., opposing the passage of the new Wagner disputes bill; to the Committee on Labor.

5082. Also, petition of Hunterspoint Lumber & Supply Co., Inc., Long Island City, N. Y., opposing passage of the Wagner bill (S. 2926); to the Committee on Labor.

5083. Also, petition of C. H. Kohnken, of Brooklyn, N. Y., opposing the Wagner labor-disputes bill (S. 2926); to the Committee on Labor.

Congressional Record, House—June 9, 1934 (78 Cong. Rec. 11003):

5084. By Mr. RUDD: Petition of the Progress Shoe Co., Brooklyn, N. Y., opposing the passage of the new Wagner disputes bill; to the Committee on Labor.

5085. Also, petition of the Chamber of Commerce of the State of New York, favoring a further study of the Wagner bill; to the Committee on Labor.

5086. Also, petition of the Brooklyn Real Estate Board, opposing the passage of the new Wagner disputes bill; to the Committee on Labor.

5088. Also, petition of open-shop section of the New York Employing Printers Association, opposing the Wagner disputes bill; to the Committee on Labor.

Congressional Record, House—June 11, 1934 (78 Cong. Rec. 11106):

5093. By Mr. LINDSAY: Also, petition of the Brooklyn Real Estate Board, Brooklyn, N. Y., opposing the Wagner disputes bill; to the Committee on Labor.

5094. Also, petition of open-shop section of New York Employing Printers Association, opposing the Wagner labor bill; to the Committee on Labor.

5096. Also, petition of the Chamber of Commerce of the State of New York, favoring further study of the Wagner labor bill; to the Committee on Labor.

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5097. Also, petition of the Sunrise Coal Co., Inc., Richmond Hill, N. Y., opposing the Wagner amended labor disputes bill, S. 2926; to the Committee on Labor.

5098. Also, petition of the American Institute of Warehousing, Inc., Brooklyn, N. Y., opposing the passage of the Wagner labor disputes bill; to the Committee on Labor.

5099. By Mr. RUDD: Petition of the Progress Shoe Co., Inc., Brooklyn, N. Y., opposing the Wagner disputes bill; to the Committee on Labor.

5100. Also, petition of the Sunrise Coal Co., Brooklyn, N. Y., opposing the passage of the Wagner amended labor disputes bill; to the Committee on Labor.

5101. Also, petition of the American Institute of Warehouses, Inc., Brooklyn, N. Y., opposing the Wagner disputes bill; to the Committee on Labor.

5102. Also, petition of Frank M. Strang, Inc., Brooklyn, N. Y., opposing the Wagner disputes bill; to the Committee on Labor.

5103. Also, petition of Brooklyn Fireproof Storage, Inc., Brooklyn, N. Y., opposing the Wagner disputes bill; to the Committee on Labor.

5104. Also, petition of the Kings County Warehouses, Brooklyn, N. Y., opposing the Wagner disputes bill; to the Committee on Labor.

5105. Also petition of Charles D. Strang, Inc., Brooklyn, N. Y., opposing the Wagner disputes bill; to the Committee on Labor.

[*11107:*] 5115. By the SPEAKER: Also, petition of the Rayon Textile Workers' Union, Local 2032, supporting the Wagner labor bill; to the Committee on Labor.

5118. Also, petition of the Illinois Steel Co., South Chicago, Ill., voicing the opinion of 10,000 employees to the Wagner bill; to the Committee on Labor.

5119. Also, petition of the Havana Chamber of Commerce, Havana, Ill., opposing the Wagner national labor-disputes board bill; to the Committee on Labor.

Congressional Record, House—June 13, 1934 (78 Cong. Rec. 11426):

5132. By Mr. LINDSAY: Also, petition of Post & McCord, Inc., A. J. Post, president, New York City, opposing the enactment of the Wagner labor-disputes bill (S. 2926); to the Committee on Labor.

5133. Also, petition of the Tisdale Coal Co., Inc., Astoria, Long Island, N. Y., opposing the amended Wagner labor-disputes bill; to the Committee on Labor.

5134. By Mr. LINDSAY: Also, petition of the Pilgrim Laundry, Inc., Brooklyn, N. Y., opposing the Industrial Adjustment Act; to the Committee on Labor.

5138. By Mr. RUDD: Petition of the Tisdale Coal Co., Inc., Astoria, Long Island, N. Y., opposing the Wagner disputes bill; to the Committee on Labor.

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5139. Also, petition of the Pilgrim Laundry, Inc., Brooklyn, N. Y., opposing the Wagner disputes bill; to the Committee on Labor.

5140. Also, petition of Post & McCord, steel construction, New York City, opposing the Wagner disputes bill; to the Committee on Labor.

Congressional Record, House—June 14, 1934 (78 Cong. Rec. 11561):

5146. My Mr. LINDSAY: Petition of the Sterling Die Casting Co., Inc., Brooklyn, N. Y., opposing the passage of the new Wagner labor disputes bill (S. 2926); to the Committee on Labor.

5147. Also, telegram of Edward J. Volz, president International Photoengravers Union, New York City, urging passage of the housing bill, the Connery 30-hour week bill, and amended Wagner labor disputes bill; to the Committee on Labor.

5149. Also, petition of the Somerce & Conzen Coal Corporation, Brooklyn, N. Y., protesting the passage of the amended Wagner labor disputes bill; to the Committee on Labor.

5151. By Mr. RUDD: Petition of the International Photoengravers Union, New York City, favoring the passage of the housing bill, Connery 30-hour bill, and amended Wagner labor disputes bill, as may be amended by sponsors, prior to adjournment; to the Committee on Labor.

5153. Also, petition of the Sterling Die Casting Co., Inc., Brooklyn, N. Y., opposing the passage of the Wagner labor disputes bill; to the Committee on Labor.

5154. Also, petition of the Somers & Conzen Coal Corporation, Brooklyn, N. Y., opposing the passage of the Wagner labor disputes bill; to the Committee on Labor.

5156. Also, petition of Richard Knight, Forest Hills, Long Island, N. Y., opposing the Wagner labor disputes bill; to the Committee on Labor.

Congressional Record, Senate—June 15, 1934 (78 Cong. Rec. 11602):

The VICE PRESIDENT also laid before the Senate a telegram in the nature of a petition from Theatrical Stage Employees, Local No. 4, signed by Thomas Murtha, secretary, New York City, N. Y., praying for the passage of Senate bill 2926, the labor disputes bill, which was ordered to lie on the table.

He also laid before the Senate a telegram, in the nature of a petition, from E. E. White, secretary-treasurer United Rubber Workers Council, on behalf of the council of Akron, Ohio, praying for the passage of Senate bill 2926, the labor disputes bill, as proposed to be amended, and also the so-called "Connery 30-hour-week work bill", which was ordered to lie on the table.

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Congressional Record, Senate—June 15, 1934 (78 Cong. Rec. 11939):

5160. By Mr. FOCHT: Petition of Local Union, No. 1851, United Textile Workers of America, praying support of Wagner bill; to the Committee on Labor.

5172. By Mr. RUDD: Petition of the Stone Mason's Union, No. 47, B. M. & P. I. U. of America, 96 Wilson Avenue, Brooklyn, N. Y., favoring the passage of the Wagner disputes bill (S. 2926); to the Committee on Labor.

Congressional Record, House—June 16, 1934 (78 Cong. Rec. 12338):

5178. By Mr. LINDSAY: Also, telegram from Edward F. Caldwell & Co., Inc., V. F. VonLoosberg, president, New York City, urging vote against substitute for Wagner labor bill; to the Committee on Labor.

5179. Also, petition of F. Weidner Printing & Publishing Co., Brooklyn, N. Y., opposing the new Wagner labor disputes bill; to the Committee on Labor.

5183. By Mr. RUDD: Petition of the F. Weidner Printing & Publishing Co., Brooklyn, N. Y., opposing the passage of the Wagner disputes bill; to the Committee on Labor.

5184. Also, petition of Michaels Bros., Brooklyn, N. Y., opposing the Wagner disputes bill; to the Committee on Labor.

5186. Also, petition of Edward F. Caldwell & Co., Inc., V. F. VonLoosberg, president, New York City, opposing the substitute for the Wagner labor bill; to the Committee on Labor.

Congressional Record, House—June 18, 1934 (78 Cong. Rec. 12662):

5201. By Mr. CADY: Petition of H. Jordan, president Federal Union, No. 18,737, Lansing, Mich., on behalf of 7000 organized men and women of that city, urging favorable action during the present session on the Wagner labor disputes bill and the Connery 30-hour-week bill; to the Committee on Labor.

CONGRESSIONAL RECORD, SENATE—JANUARY 10, 1935 (79 Cong. Rec. 265)

ADDRESS BY DONALD RICHBERG RELATIVE TO RECOVERY MEASURES

Mr. LEWIS. Mr. President, I tender and ask to have printed in the CONGRESSIONAL RECORD the address of Hon. Donald Richberg, Executive Director of the National Emergency Council, Town Hall, Washington, D. C., January 6, 1935, touching the bills that are now presented before the Senate under the designation of recovery measures.

There being no objection the address was ordered to be printed in the RECORD, as follows:

As the story appears in the Old Testament there were three afflictions visited upon Job. First, there came a depression which made him poor; second, came

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boils which made him ill; and finally, came three friendly economists who nearly drove him insane explaining that it was good for him to suffer and that any complaint or effort to change conditions showed a lack of faith in the wisdom and justice of the Almighty.

There is a very long and interesting debate recorded between Job and the three economists which Job won by a very clever strategy. First he asked three questions which no economist has ever been able to answer:

1. "How hast thou helped him that is without power?"
2. "How savest thou the arm that hath no strength?"
3. "How hast thou counseled him that hath no wisdom?"

Then he completed the rout of his opponents by praying that the Almighty would answer him directly, and that his adversary would write a book.

Of course, as soon as the economists started writing books, it became evident to any man with a logical mind, like Elihu, the lawyer, that they had no answers for Job's questions. It was also made clear that they had no remedy for the depression or the boils—in fact they didn't know what had caused either one. Yet they condemned Job, not because he didn't try to cure himself, but because he didn't cheerfully accept depressions and boils as inevitable products of economic laws which were decreed by the inscrutable wisdom of the Creator and well understood by all sound economists.

This attitude of Job's self-righteous friends kindled the wrath of Elihu, who was also annoyed at Job for trying to justify his own do-nothing policy, instead of justifying the Lord for letting things happen to a man who wouldn't help himself, who just tore his clothes, shaved his head, and sat in the ashes scraping his skin.

So Elihu, like a good lawyer, reproved his client vigorously for not recognizing that the laws were just and the administration of justice was perfect and that as a good citizen he should not complain or criticize the law. If Job were energetic and resourceful he would go to work making new laws and interpreting old laws, so that not only would the law be perfect and just but also it would help him to get rid of depressions and boils and to make money and enjoy good health.

About this time, when Job must have been considerably confused by all the economic and legal advice he had been getting, a voice came out of the whirlwind and said:

"Who is this that darkeneth counsel by words without knowledge? Gird up now thy loins like a man; for I will demand of thee, and answer thou Me."

And then a revelation came to Job of the vastness of life and its possibilities and of the tremendous achievements of mankind which cannot be prognosticated or explained by thousands of volumes of dry statistics and dull theorizing—deeds which are inspired by the great gift of imagination and accomplished by the courage and faith and comradeship which clothe human efforts with the dignity of a purpose that may be called divine.

In the light of this revelation Job bowed down before his Creator, saying: "I know that Thou canst do everything." There might have come to Job in that moment the vision of a long line of future economists who, generation after generation, would seek to prove that things could not happen which were going to happen or had already happened, and to prove that the ordained way of life must continue to be cruel and mean and selfish because they had not the imagination with which to see how the world could change and how things which were wrong today could be made right tomorrow.

Anyhow it is recorded that Job repented of having talked so much about things he did not understand and about things that were, as he said, "too wonderful for me." He girded up his loins and worked his way out of the depression. The economists made a burnt offering of their books, which were poetically described as seven bulls and seven rams. Job prayed for them and under divine

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inspiration he established the Job Foundation for Economic Research—so that his adversaries could go on writing books. And with that gentle humor which even survived boils and depressions he had engraved above the entrance: "No doubt but ye are the people; and wisdom shall die with you."

What a beautiful lesson has been written in the Book of Job for those wise men of every age who, always pointing out what is wrong and never finding out what is right, "darkeneth counsel by words without knowledge."

Two years ago the people of the United States were coasting down the road to ruin. Industry was stagnant, agriculture was prostrate, our banking system was on the verge of collapse. There was intolerable unemployment, which had been increasing for years. Uncounted millions of our people were destitute and had already suffered or were facing loss of homes and every other hold upon economic security.

Of what value were constitutional guaranties of liberty to citizens denied an opportunity to earn a living? Of what value were the protections of law and order to those who had no property and no means of livelihood to be protected? It was becoming apparent to millions of long-suffering men and women that a government must do more than merely preserve an existing order; that it must do more than merely sanction whatever economic system happened to develop. A government must make sure that a sound economic system is developed, because the political freedom and security of a people depend upon their economic freedom and security.

The national administration, coming into power in the spring of 1933, was compelled to find quick measures of relief from dangers which were not underestimated then by those most anxious to belittle and to forget them now. It was necessary to act at once to change conditions for which there were no precedents, by methods for which there could be no precedents.

The same combination of destructive forces had brought about a political revolution in many other nations and thereby had created a military dictatorship through which an economic order could be reestablished. The supreme problem in America less than 2 years ago was to find the means of exerting a political power great enough to control the forces of disintegration while still preserving the fundamental principles and processes of self-government.

In the histories of the future how little argument will survive over the merits and demerits of every action taken, every device employed, every Federal agency created in the spring of 1933. How petty will appear in retrospect the partisan attacks and smart witticisms of clever and learned critics, in contrast with the gigantic fact that America rose out of the depths of the depression with practically no civil disorder and with the governments of the States and the United States still functioning under their constitutional safeguards of individual liberty and social security.

There is the record of a civic victory which, in the long view of history, will loom greater than most of the triumphs of military genius on the decisive battlefields of the world. Today we are handicapped in many ways in any effort to appraise the value of the recovery program. In the first place, it is difficult for human beings to measure the worth of men or policies near at hand.

As Gerald Massey wrote:

> "To those who walk beside them, great men seem
> Mere common earth; but distance makes them stars."

In the same way laws and political policies need time and distance, and aging to acquire the power and majesty of noble institutions. A good many harsh things were said by highly intelligent people about the Constitution of the United States when it was first submitted for approval and while it was being subjected to various explanations and interpretations by its sponsors.

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Indeed, the Supreme Court of the United States and a great many other courts have been busily interpreting provisions of that Constitution for nearly 150 years, and nobody is quite sure what they all mean, even now. So perhaps the fact that section 7 (a) of the National Industrial Recovery Act has had to be interpreted somewhat frequently in the last year only indicates that in time this brief statement of a profoundly important principle may be as well understood and enforced as the constitutional guaranty of "due process of law."

The gravest difficulty, however, in a contemporaneous appraisal of the recovery program lies in the effort to evaluate each new Federal agency and each separate policy of each agency by itself; and in the confessed inability of most critics even to see the program as a whole. The plain fact is that there are so many factors involved in the reconstruction of a political economic system that it is impossible to plan and administer a host of activities so that every effort will be in harmony with a cooperative advance all along the line.

The separate objectives of a thousand pressure groups within our own borders, the influence upon our domestic economy of the failures and successes of industrial and political programs of other nations, all produce kaleidoscopic changes in the economic pattern from day to day—which would make a mockery of any plans of recovery and reconstruction which might be prepared with the scientific precision of an engineer's blueprint.

The present administration recognized on the one hand the futility of continuing a wishful reliance on laissez faire, and on the other hand the folly of trying to plan in advance all the details of a national progress through a maze of ever-changing conditions to a predetermined goal. As in every era, when delayed evolution accumulates the speed and confusion of revolution, the master of public affairs has been found in the man who does not fear to do the first things first, and to adopt the obvious common-sense remedy for an obvious evil, without waiting for erudite scholars and cautious statesmen to perfect a complete and [266] consistent program of political economy, which human wisdom cannot devise and human ability cannot execute.

Over 70 years ago a great President was guiding this Nation through another crucial period. Then as now many voices clamored for a fixed policy and a rigid program; and James Russell Lowell wrote a few sentences which we might wisely apply to the conditions of today. He wrote:

"Mr. Lincoln's policy was a tentative one and rightly so. He laid down no program which must compel him to be inconsistent or unwise, no cast-iron theorem to which circumstances must be fitted as they rose, or else be useless to his ends. Mr. Lincoln, as it seems to us in reviewing his career, though we have sometimes in our impatience thought otherwise, has always waited, as a wise man should, till the right moment brought up all his reserves. One would be apt to think, from some of the criticisms made on Mr. Lincoln's course * * * that the chief object of a statesman should be rather to proclaim his adhesion to certain doctrines than to achieve their triumph by quietly accomplishing his ends. In our opinion, there is no more unsafe politician than a conscientiously rigid doctrinaire, nothing more sure to end in disaster than a theoretic scheme of policy that admits of no pliability for contingencies.

"Mr. Lincoln's perilous task has been to carry a rather shaky raft through the rapids, making fast the unrulier logs as he could snatch opportunity, and the country is to be congratulated that he did not think it his duty to run straight at all hazards, but cautiously to assure himself with his setting-pole where the main current was, and to keep steadily to that. * * * Whatever were his wishes, it was no less duty than policy to mark out for himself a line of action that would not further distract the country, by raising before their time questions which plainly would soon enough compel attention and for which every day was making the answer more easy * * *. While every day was bringing the

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people nearer to the conclusion which all thinking men saw to be inevitable from the beginning, it was wise in Mr. Lincoln to leave the shaping of his policy to events. In this country, where the rough and ready understanding of the people is sure at last to be the controlling power, a profound common-sense is the best genius for statesmanship. Hitherto the wisdom of the President's measures has been justified by the fact that they have always resulted in more firmly uniting public opinion. One of the things particularly admirable in the public utterances of President Lincoln is a certain tone of familiar dignity, which, while it is perhaps the most difficult attainment of mere style, is also no doutbful indication of personal character. There must be something essentially noble in an elective ruler who can descend to the level of confidential ease without forfeiting respect, something very manly in one who can break through the etiquette of his conventional rank and trust himself to the reason and intelligence of those who have elected him. No higher compliment was ever paid to a nation than the simple confidence, the fireside plainness, with which Mr. Lincoln always addresses himself to the reason of the people."

It has been my purpose thus far to indicate that the test of the recovery program of the administration must be found in the effects of that program as a whole rather than in a meticulous analysis of the theoretical objectives and apparent results of each item in that program. I know of nothing more ludicrous than the efforts of those who, having criticized practically every measure and its administration, then find themselves faced with the unhappy choice of either denying the obvious fact of a vast improvement in the condition of the country—or trying to demonstrate that all good results have come in spite of unsound political policies and that we would be much better off if none of the new-deal measures had been tried.

The actual and definite effect of some of these supposedly retarding measures can be summed up rapidly:

A banking system which was in a state of collapse has been restored to health and public confidence. Over 50,000,000 bank accounts are now insured.

An agricultural population which was mostly bankrupt, generally despairing, and in certain areas on the verge of forcible resistance to tax collections and foreclosures, has been rehabilitated to a remarkable degree. Prices of basic commodities previously declining below cost of production have been raised to about the desirable level of prewar parity.

In the fields of industry, starvation wages, excessive hours of work, child-labor, and cut-throat practices have been largely eliminated in businesses employing millions of wage earners and investments of billions of dollars. Between four and five million workers have been reemployed in either part-time or full-time jobs. Additional and improved employment has relieved the distress of other millions who were previously employed on part-time work at utterly inadequate wages.

Through Federal relief of financial pressures, over 1,500,000 homes in cities and in rural areas have been saved from foreclosure. More than $5,000,000,000 have been disbursed in loans and other advances by the R. F. C. that have saved thousands of corporate institutions and protected the investments and savings of uncounted millions of our people.

In the relief of destitution, between 3,000,000 and 6,000,000 families have been maintained through Federal aid, which has furnished the means of subsistence continually for between 12,000,000 and 20,000,000 men, women, and children. Through public works and the Civilian Conservation Corps, over a million men have been directly given useful, self-respecting employment.

In this summary report of benefits conferred by some of the major Federal activities in relief, recovery, and reconstruction, there is no mention made of scores of other contributions to the advancement of the general welfare, no mention

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of extensive planning and research and administrative betterments of public services which are producing permanent economic and social gains.

Nor will I ask to evaluate the benefits conferred generally on 125,000,000 people who have been released from living in the nightmare of increasing unemployment, profitless labor, and spreading destitution all around them, and whose economic security has been restored and strengthened by new and powerful safeguards.

It has been my purpose only to sum up the obvious and undeniable benefits conferred directly upon millions of farmers, millions of wage earners, millions of property owners, and millions of the unemployed, easing their crushing burdens, relieving thier intolerable distress, and replacing their desparate fears with hope and confidence.

Over at the Job Foundation for Economic Research, worthy scholars who have been studying statistics, charts, and diagrams, and analyzing, under microscopes, the detailed workings, the methods and objectives of every part of the recovery program may shake their puzzled heads in a mournful unison of disapproval. They have been rereading Adam Smith and Ricardo and perhaps a revised edition of Malthus, and the earlier, but not the later writings of John Stuart Mill. They have again dusted off the iron law of wages and patched up the ill-balanced scales of supply and demand.

Somehow the logic of events is running contra to the logic of their theories. Physical scientists will agree that people cannot lift themselves by their boot straps. But by human cooperation in production, and exchange, and finance, such miracles are commonplace. Theoretically, if you devaluate the dollar, prices should rise; but they don't rise. Theoretically, if you increase wages, prices should rise; but they don't rise. When Jones lends Smith $10, no more buying power or wealth has been created; but in practical effect a purchasing power of about $20 may have been made out of $10.

Theoretically, the political economy of a nation should be determined by the predictable operation of so-called "economic" laws, but it is, in fact, determined by the unpredictable currents of the emotions, as well as the physical needs, of masses of human beings. These emotions proceed from a constant conflict between fleshly appetites and spiritual strivings; and under their stimulus men fight and prey upon each other, work together and help each other, build churches in the midst of slums, hospitals in the breeding grounds of pestilence, and temples of peace on the edge of every battlefield.

It is a part of the wisdom of a leader of democracy to yield and to appeal to logic and illogic, to reason and emotion as necessity demands. He may not presume to know just what the people ought to do, but he makes it his business to know just what the people want to do. And in the long run he will find that, in helping people to do what they want to do, he is, like Job, fulfilling the purposes of divine Providence.

We are making steady progress toward economic recovery in this country today because the Government of the United States is trying to aid the masses of the people to do what they want to do. In the cities they don't want to starve; they don't want charity; they do want to earn a living by useful work. On the farms they don't want to work for nothing; they don't want to work only for the tax collector and the mortgage holder and the commission merchant. They want to work for themselves and to get a fair price for their products.

So the Government has undertaken in a simple, straightforward way to help the farmer get a fair price and to help the city worker get a fair wage; and to help all able-bodied idle workers get employment. The Government is trying to do this job in a way not only conforming to its legal powers but also conforming to the traditions of American life and the desire of the American people to preserve individual liberty and democratic institutions of self-government.

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Accordingly the Government must place its main reliance upon bringing about a better cooperation in the conduct of private enterprises—within each enterprise, within each trade or industry and between trades and industries. To just the extent, however, that such cooperation cannot be voluntarily obtained, or if obtained, proves ineffective to meet existing needs, there is imposed a greater burden and responsibility of planning, direction and control of production and exchange by the Government.

The simple fact—unqualified by political or economic theory—is that work must be provided for the working population of a nation. An equally simple fact is that there must be a continuing exchange of work products, which calls for the continuing intelligent adjustment of production and consumption.

When it was apparent that private initiative had failed to develop the cooperative power to meet these needs—so that private property under private direction would provide a reasonable continuity of employment for all those who must work in order that they might live—then it became necessary for the Government to undertake temporarily to provide relief or work for the idle while attempting to bring about the necessary reorganization and coordination of private enterprises to meet fully their responsibilities in the competitive capitalistic economy which most of the American people desire to preserve.

Now, if we are to give a fair trial to our effort to develop successfully, and to avoid a radical change of, our economic system, we need to concentrate our attention on a few fundamental difficulties in the way of eliminating the worst evils and retaining the chief advantages of competitive private industry, by cooperative processes.

[267] In all the welter of doubting and debate over political and economic theories and programs, only a fanatic would attempt to define one problem whose solution is most essential to economic recovery.

Weighty issues of fiscal and monetary policy must be settled. Problems of agricultural adjustment and of industrial reemployment must be solved; and every problem presented to the N. R. A. or the A. A. A. carries with it a score or more of related problems of vital significance.

Despite these difficulties, I should like to point out, in the maze of debatable issues, one problem which everyone will agree is at least of critical importance and in regard to which there is perhaps more talk and less constructive action than any other.

The Agricultural Adjustment Administration has frequently emphasized the fact that agricultural recovery depends upon a substantial increase of industrial production and the reemployment of several million workers in trade and industry. It needs no elaborate statistics to demonstrate that the burdens of relief from destitution and relief from financial pressures would be largely lifted by an expanding industrial production, particularly in the heavy industries. This does not mean that slums would disappear, that top-heavy railroad financial structures would be made secure, that inflated real-estate values would be reestablished, that farm and city mortgage payments could be easily met, or that all the pressing questions of social and economic security would be answered, merely by the reemployment of idle workers in the production of durable goods.

If we had a vast expansion in this industrial field, there would still remain the fundamental need of maintaining a balance between agricultural and industrial activity, a balance between production and consumption, a balance between exports and imports, a balance between credit extensions and ability to pay. In a word, a general business revival will not mean a lasting recovery unless with our reviving energies and financial powers we go to work to reconstruct our economic system, so that it will be self-improving instead of self-destructive.

The rehabilitation of our deteriorated industrial plants and transportation systems and the construction of better housing for several million families would

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provide work directly and indirectly for all our able-bodied unemployed. During their employment the service trades and consumption goods industries would prosper. Farmers would make more money. Investments in private corporations, in mortgages, in municipal bonds, would become more valuable; land values and rents would rise.

But—with the experience of other booms behind us—let us look ahead and ask how the vast debts created in any new period of credit expansion would be paid? In the boom period of 1921 to 1929 we spent seven billions improving the railroads, and other billions in building concrete highways and motor vehicles and all the accessories of motor transportation which would take traffic from the railroads. We had to stop building finally because we could not use all the facilities we had built.

In this same period we built office buildings, apartments, and hotels utterly beyond our existing ability to use them. We expanded industrial plants in the same reckless way, until we had provided the means of producing more than we could then absorb. This expanding process also reduced the number of workers necessary to operate our industrial machine, so that when we stopped employing men to build additions to our industrial plant we had an unemployment problem of millions of dislocated workers on our hands and a financial problem of billions of dollars invested in properties that could not possibly earn a return.

Thus all thoughtful men realize that in the end the continuity and steady advance of prosperity depends very largely upon maintaining a balance between production and consumption which depends considerably upon the equitable distribution of the rewards of huge cooperative enterprises. Where there is a balance of power between economic interests and where fair competition is maintained, we may have a continuing adjustment of prices or wages to approximate economic justice. I am willing to pay tribute to the economic theory that only through fair competition in a free market can we determine what is a fair price. It is one of my principal objections to State socialism that it can provide no safe measure of a fair price and a fair wage.

But if we are to obtain a balanced competitive economy it seems to be inescapable logic that a continuing balance of the economic powers of competing interests must be developed and maintained. If control through an overwhelming economic or political power is vested in any one economic interest, we have the evils and tyrannies inherent in fascism, communism, or any form of State socialism. But at the same time, through preserving the irresponsibility of a competitive system, we have not gained the responsibility which under State socialism would be imposed upon the Government.

The primary control of trade and industry, under our present economic system, goes automatically to those who use money and property for the establishment of a private business designed to produce profits, out of which compensation will be obtained for the use of property and the services of management. The entire responsibility for the preservation and use of property, and for the meeting of pay-roll obligations to labor, rests upon management. Those who accept this responsibility must be allowed the power to fulfill their obligations. Of course, a different situation would be presented if a group of workers were engaging in a cooperative enterprise, accepting the risks of loss and inability to pay wages. In that case the sharing of control would conform to the principle that only those who accept the responsibilities of management should exercise the powers of management.

If, however, the workers in an enterprise have no voice in the determination of terms and conditions of employment, there will exist a lack of economic balance, which will continually menace the stability of the economic system. Such a condition results not only in a lack of balance between the conflicting interests of employer and employee, but also a lack of balance between producing and

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purchasing power; because the worker's ability to influence his wage gives him also some control over his purchasing power. It is inevitable in a competitive system that each producer will seek to reduce his labor costs and to increase the profits of ownership and management. Thereby producers in the aggregate reduce mass purchasing power and increase capital investments, while at the same time they diminish the possibility of the profitable use of capital and gradually prepare the way for a break-down in production and exchange, a depression of business, and the necessary wiping out of capital values, which have been unduly inflated by this process.

Therefore, it was recognized as one of the most important requirements of the National Industrial Recovery Act, to provide for strengthening the collective power of the wage earners by protecting the freedom of their association for mutual aid and for the creation of an adequate power of collective bargaining.

It is my earnest conviction that there is nothing more necessary to the improvement of our industrial system and the maintenance of a balanced economy than the adequate organization of labor, free from any control by representatives of the competing economic interest of ownership and management.

There are many difficulties in the way of realizing the objectives of section 7 (a) of the National Industrial Recovery Act, but chief among these are, first, the unwillingness of many employers of labor to give up an existing advantage in power to protect and to promote self-interest, and, second, the traditional suspicion and hostility of labor organizations to accepting the obligations and fulfilling the responsibilities that must go with the power to determine the success or failure of private enterprise.

In my opinion, the solution of these difficulties and the establishment of a sound policy of labor relations, which will be acceptable alike to progressive-minded employers and labor organizations, are absolutely vital to a real and lasting industrial recovery.

There are many employers today who are thoroughly reconciled to collective bargaining, who are entirely willing to maintain cooperative relations with independent labor organizations, if they could be assured that, having relinquished a measure of control over their enterprises, they could rely upon a full acceptance of their responsibilities by the labor organizations with which they made agreements.

The acceptance of such responsibilities by labor organizations would necessarily include these understandings: First, when satisfactory relations had been established by contract they would not be destroyed, either because of differences between their members and other employers, or because of internal dissensions among the employees themselves, or because of a temporary inability to agree upon the extension or interpretation of an existing contract. These assurances would not mean giving up the fundamental right to strike against a particular employer because of differences with that employer which could not be adjusted. They would involve the making of every reasonable effort to arrive at an agreement and the willingness ordinarily to submit unsettled controversies to at least a temporary determination through some impartial agency.

There is no question that many existing labor organizations would guarantee the continuity of peaceful labor relations if they could receive corresponding assurances from employers, such as: First, that no effort would be made by an employer or his agents to interfere with their freedom of association, selection of their representatives, and unembarrassed advocacy of their interests. Second, that free access would be given to all the pertinent facts regarding the conduct and profitableness of the enterprise in which the employees are engaged. Third, that the employer would not seek to modify his contractual relations under pressures from other employers; and that he also would use every reasonable effort to arrive at agreements or submit unsettled issues to an impartial adjudication.

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There are today some groups of employers and some labor organizations that have no faith in, and are unwilling to enter into, genuine cooperative labor relationships. There are employers whose self-willed determination to rule or ruin their own affairs, regardless of the general welfare, is a serious obstacle to any lasting improvement of our economic system. There are labor organizations so imbued with theories of class interest, so unwilling to accept responsibilities to the general welfare, that they cannot be expected to join in good faith in a cooperative program. But I venture to believe that the vast majority of employers and employees are sick and tired of industrial warfare; that they are genuinely willing to share the responsibilities of cooperation in the peaceful adjustment of all the conflicting interests of management and labor.

It seems to me that public opinion might easily be mobilized in support of a labor policy, under which the use of economic or physical coercion would be outlawed in the relations of employers and employees.

The Federal Government and the States have provided means for the extension of governmental aid to those who desire to maintain the continuity of employment and to provide for the peaceful adjustment of all conflicts of interest. Only the arbitrary refusal of one party to use these opportunities should justify [268] coersive efforts by the other. If we are not able to move definitely, as a matter of public policy, in this direction, we face the strong probability of a greater intensity in industrial conflicts, more bitter uses of violence and coercion on both sides, and increased demands for the exercise of governmental power to compel an end of industrial warfare. We also face the grave difficulty of bringing about any lasting industrial recovery so long as this vital measure of cooperation cannot be achieved.

The forceful organization of labor, the herding of unwilling men either into company unions by employer coercion, or into independent unions by intimidation cannot establish those free and voluntary associations necessary for cooperative action to protect the worker-consumer interests.

The employer who seeks to control the organization of workers by fraud or coercion is, whether he knows it or not, working toward a Fascist economy—a political control of industry in behalf of property interests. The labor organization that attempts by force and violence to compel workers to accept the discipline of an organization to which they do not wish to belong, is, whether it knows it or not, working toward a Communist economy—a political control of industry by labor interests.

The sequence of events should be obvious—the compulsions of force can never be exerted under any government without in some way receiving the sanction of the government. Our constitutional guaranties of liberty are not being maintained when one economic interest is permitted to exploit another by coercive means. So that the struggle for coercive power must be in the end a struggle to control the government.

Time and your patience will not permit me to elaborate this theme. What I have said, however, will permit me to state one far-flung conclusion without reviewing all the premises: We are engaged in a political struggle as fundamentally important as the revolutionary movements of 150 years ago that swept away autocracies and laid the foundations of the democratic governments of the nineteenth century. There is a great emotional current moving in the direction of a new resort to the forceful organization of masses of people under the control of militant, ruthless minorities—political and economic dictatorships that openly deride the idealism of liberty and individual advancement—and that set the standard of social progress through a disciplined service to the State—which means in fact service to the programs of a professional ruling class.

Here in the United States we are engaged in one of the major conflicts between the opposing theories of individual liberty and social discipline. If we are to

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uphold the traditional idealism of our Republic, we must qualify our competitive freedom by the restraints inherent in any cooperative enterprise. Otherwise the increasing intensity of ruthless competition will be very easily and rapidly transformed into actual warfare—such as we have seen develop all too often out of industrial struggles. And out of warfare will come as always the triumph of organized force and the enthronement of a power intolerant of the freedom of democratic institutions.

No groups will play a greater part in determining the destiny of America than the organizations of employers and employees, who may either draw us all closer together in their desire and ability to cooperate for the common good or may drive us all apart in making war upon each other for the advancement of their immediate special interests. Having questioned the wisdom of some economists, let me pay tribute to the ultimate wisdom of one by ending with a quotation from John Stuart Mill, who wrote, regarding employers and employees, this suggestion:

"Both these classes must learn by practice to labor and combine for generous or at all events for public and social purposes, and not, as hitherto, solely for narrowly interested ones."

In that education lies our greatest hope of achieving economic security and freedom.

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74TH CONGRESS
1ST SESSION

S. 1958

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15 (calendar day, FEBRUARY 21), 1935

Mr. WAGNER introduced the following bill; which was read twice and referred to the Committee on Education and Labor

A BILL

To promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DECLARATION OF POLICY

SECTION 1. Equality of bargaining power between employers and employees is not attained when the organization of employers in the corporate and other forms of ownership association is not balanced by the free exercise by employees of the right to bargain collectively through representatives of their own choosing. Experience has proved

that in the absence of such equality the resultant failure to maintain equilibrium between the rate of wages and the rate of industrial expansion impairs economic stability and aggravates recurrent depressions, with consequent detriment to the general welfare and to the free flow of commerce. Denials of the right to bargain collectively lead also to strikes and other manifestations of economic strife, which create further obstacles to the free flow of commerce.

It is hereby declared to be the policy of the United States to remove obstructions to the free flow of commerce and to provide for the general welfare by encouraging the practice of collective bargaining, and by protecting the exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or other mutual aid or protection.

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17 DEFINITIONS

18 SEC. 2. When used in this Act—
19 (1) The term "person" includes one or more indi-
20 viduals, partnerships, associations, corporations, legal repre-
21 sentatives, trustees, trustees in bankruptcy, or receivers.
22 (2) The term "employer" includes any person acting
23 in the interest of an employer, directly or indirectly, but
24 shall not include the United States, or any State or political
25 subdivision thereof, or any person subject to the Railway

1 Labor Act, as amended from time to time, or any labor
2 organization, or anyone acting in the capacity of officer or
3 agent of such labor organization.
4 (3) The term "employee" shall include any em-
5 ployee, and shall not be limited to the employees of a par-
6 ticular employer, unless the Act explicitly states otherwise,
7 and shall include any individual whose work has ceased as a
8 consequence of, or in connection with, any current labor
9 dispute or because of any unfair labor practice, and who has
10 not obtained any other regular and substantially equivalent
11 employment, but shall not include any individual employed
12 as an agricultural laborer, or in the domestic service of any
13 family or person at his home, or any individual employed
14 by his parent or spouse.
15 (4) The term "representatives" includes any indi-
16 vidual or labor organization.
17 (5) The term "labor organization" means any or-
18 ganization of any kind, or any agency or employee represen-
19 tation committee or plan in which employees participate
20 and which exists for the purpose, in whole or in part, of
21 dealing with employers concerning grievances, labor dis-
22 putes, wages, rates of pay, or hours of employment.
23 (6) The term "commerce" means trade or com-
24 merce, or any transportation or communication relating
25 thereto, among the several States, or between the District

1 of Columbia or any Territory of the United States and any
2 State or other Territory, or between any foreign country and
3 any State, Territory, or the District of Columbia, or within
4 the District of Columbia or any Territory, or between points
5 in the same State but through any other State or any Terri-
6 tory or the District of Columbia or any foreign country.

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(7) The term "affecting commerce" means in commerce, or burdening or affecting commerce, or obstructing the free flow of commerce, or having led or tending to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order of the

President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183).

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created as an independent agency in the executive branch of the Government a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

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SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation,

6

or employment. The Board shall appoint such employees, and, without regard for the provisions of the civil-service laws or the Classification Act of 1923, as amended, appoint and fix the compensation of an executive secretary, assistant executive secretaries, and such attorneys, special experts, examiners, and regional directors, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist; and all pending investigations and proceedings of the old Board, and all proceedings in the courts pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), to which the old Board is a party, shall be continued by the Board in its discretion. All orders made by the old Board pursuant to said Public Resolution Numbered 44 shall continue in effect unless modified, superseded, or revoked by the Board after due notice and hearing. All employees of the old Board shall be transferred to and become employees of the Board at their present grades and salaries, without acquiring by such transfer a permanent or civil-service status. All rec-

7

ords, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferrred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

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SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this

Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

(b) The Board shall have authority and is directed to study the activities of such boards and agencies as have been or may be hereafter established by agreement, code, or law to deal with labor disputes, and to receive from such boards reports of their activities.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organiza-

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tion: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the majority of the employees in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other condi-

tions of employment: *Provided*, That any individual employee or group of employees shall have the right at any time to present grievances to their employer through representatives of their own choosing.

(b) The Board shall decide whether, in order to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (d) is based in whole or in part upon facts

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certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (f) or 10 (g), and thereupon the decree of the court

enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise, except as provided in section 11.

(b) The Board may, in its discretion, defer its exercise of jurisdiction over any such unfair labor practice in any case where there is another means of prevention provided for by agreement, code, law, or otherwise, which has not been utilized. But in any case where the Board has so deferred, the Board may at any time thereafter institute proceedings under this Act in order to assure the effectuation of the policy of this Act and the development of a uniform body of administrative interpretation and practice with respect to unfair labor practices as defined herein.

(c) Whenever there is a charge or the Board shall have reason to believe that any person has engaged in or is engaging in any such unfair labor practice, the Board, or

any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than three days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the

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hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer and to appear in person or otherwise and give testimony at the place and time fixed in the complaint, and to invoke the compulsory process of the Board in summoning witnesses in its behalf. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to appear in the said proceeding to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(d) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged

in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including restitution, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dissolving the said complaint.

(e) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(f) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any circuit court of appeals of the United States within any circuit wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, or the Court of Appeals of the District of Columbia, for the enforcement of such order and for appropriate tem-

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14

porary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and shall make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its

15

member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(g) Any person aggrieved by an order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the

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unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified

16

by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (f), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and shall in like manner make and enter a decree enforcing, modifying or setting aside, in whole or in part, the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(h) The commencement of proceedings under subsection (f) or (g) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(i) When granting appropriate temporary relief or restraining order, or making and entering a decree enforcing, modifying, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes" (U. S. C., title 29, secs. 101–115).

(j) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

17

SEC. 11. The several District Courts of the United States are hereby invested with jurisdiction to prevent and restrain any unfair labor practice affecting commerce; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, but solely at the request of the National Labor Relations Board, to institute proceedings in equity to prevent and restrain any such unfair labor prac-

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tice, in the judicial district wherein such unfair labor practice occurred or wherein the person complained of resides or transacts business. Such proceedings may be by way of petition setting forth the case and praying that such violation be enjoined and that such affirmative action, including restitution, be required as will effectuate the policies of this Act. When such person shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearings and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

ARBITRATION

SEC. 12. (a) The Board shall have power to act and to appoint any person, agent, or agency to act as arbitrator in labor disputes, when parties agree to submit the whole or any part of a labor dispute to the arbitration of the

Board or its appointees. A provision in a written contract or a written agreement to submit to the arbitration of the Board or its appointees, when accepted by the Board after the dispute has arisen, shall be valid and irrevocable as to the parties to the agreement, save upon such grounds as exist at law or in equity for the revocation of any contract. If any party fails, neglects, or refuses to perform under such contract or submission, the Board, its agents or appointees, may nevertheless, in the discretion of the Board, proceed to hear the case ex parte, and the Board, its agents or appointees, shall have the power to issue an award applicable to the submitting parties.

(b) The Board shall make and publish, pursuant to section 6 (a), rules for the conduct of arbitrations, and an agreement to submit to the arbitration of the Board, or its appointees or its agents, shall be deemed consent to the proceeding being conducted in accordance with such rules then obtaining unless otherwise specified in the arbitration contract or submission. An agreement to submit to the Board shall authorize the Board to appoint agents to take evidence, and in the discretion of the Board, to render a decision in the name of the Board on the findings thus presented, unless otherwise specified in the agreement. The Board may, however, in its discretion, render a decision on testimony taken before its agents.

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19

(c) In any case in which an award has been made, the Board shall file the award in the clerk's office of the United States District Court that has been agreed upon by the parties, or, in default of such agreement, that of the district wherein the labor dispute arose or the Supreme Court of the District of Columbia. Notice of the filing shall be personally served or sent by registered mail to each submitting party. Unless a petition to impeach the award on the grounds hereinafter set forth shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment in accordance with the terms of the award: *Provided,* That no employee individually, and no group of employees collectively, shall be compelled to render labor or services without their consent.

(d) A petition for the impeachment of any award may be filed not more than ten days after the communication of notice of the filing of the award to the submitting parties. Notice of filing of such petition shall be served personally or sent by registered mail to each submitting party. The petition shall be sustained by the court only on one or more of the following grounds:

1. That the proceedings were not substantially in conformity with the provisions of the arbitration agreement or rules adopted for the conduct of the arbitration.

20

2. That an arbitrator or member of the Board participating in the award was guilty of fraud or corruption; or that a party to the award practiced fraud or corruption which affected the result: *Provided,* That partisanship known, or which by the exercise of due care should have been known, by a party prior to the arbitration proceeding, shall not constitute fraud of which he may avail himself within the meaning of this section.

(e) The court shall not set aside an award on the ground that it is invalid for uncertainty. In such case the court shall suspend action pending its resubmission of said award to the Board for interpretation.

(f) Where there was an evident material miscalculation of figures, or an evident material mistake in the description of any person, thing, or property referred to in the

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award, or where the arbitrators have awarded on a matter not submitted to them, unless it is a matter affecting the merits of the decision on the matters submitted or where the award is imperfect in the matter of form not affecting the matter of the controversy, the court shall modify and correct the award so as to effect the intent thereof and promote justice between the parties, and thereupon shall enter judgment in accordance with subsection (c).

21

(g) The court shall construe every award with a view to favoring its validity. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but that a part of the award is valid, the court shall nevertheless enter judgment upon such part or parts of the award as are valid unless such part or parts are inseparable from the remainder of the award, in which case the entire award shall be vacated.

(h) If the petition for impeachment of the award is not sustained, the court shall enter judgment in accordance with the terms of the award, and in accordance with subsection (c). Where a petition for the impeachment of an award is granted, the award shall be vacated, and the court shall remand the arbitration to the Board, which may, in its discretion, accept the case for resubmission to arbitration in accordance with the terms of the original agreement or with such modifications as the Board deems fit, or it may refuse to take any further action regarding it.

INVESTIGATORY POWERS

SEC. 13. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9, section 10, and section 12 (in any arbitration affecting commerce)—

22

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue sub-

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penas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, and the Supreme Court of the District of Columbia,

upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place

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24

of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 14. Any person who shall willfully assault, resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of

25

duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. 15. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 16. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., title 15, sec. 707 (a)), as amended from time to time, or of section 77 (b), paragraphs (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto"

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(48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall apply.

SEC. 17. If any provision of this Act, or the application of such provision to any person or circumstance, shall be

held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 18. This Act may be cited as the "National Labor Relations Act."

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CONGRESSIONAL RECORD, SENATE—FEBRUARY 21, 1935

(79 Cong. Rec. 2368)

NATIONAL LABOR RELATIONS BOARD

Mr. WAGNER. Mr. President, I ask unanimous consent to introduce what may be called the "national labor relations bill", which is designed to clarify the provisions of section 7 (a) of the National Industrial Recovery Act and to invest a permanent national labor relations board with adequate powers for their enforcement. It embodies, in perfected form, the main provisions of the labor-disputes bill which I introduced last year. In view of the wide-spread currency of misleading propaganda in connection with that measure, and the general interest in it, I ask unanimous consent that the bill may be printed in the RECORD, along with a brief explanation which I am submitting.

The VICE PRESIDENT. Without objection, it is so ordered.

The bill (S. 1958) to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes, was read twice by its title, referred to the Committee on Education and Labor, and ordered to be printed in the RECORD, as follows:

(The bill is not here reprinted, it appears at p. 1295.)

[2371] The explanatory statement submitted by Mr. WAGNER was ordered to be printed in the RECORD, as follows:

SENATOR WAGNER'S STATEMENT REGARDING NATIONAL LABOR RELATIONS BILL

The recovery program has sought to bestow upon the business man and the worker a new freedom to grapple with the great economic challenges of our times. We have released the business man from the undiscriminating enforcement of the antitrust laws, which had been subjecting him to the attacks of the price cutters and wage reducers—the pirates of industry. In order to deal out the equal treatment upon which a just democratic society must rest, we at the same time guaranteed the freedom of action of the worker. In fact, the now famous section 7 (a), by stating that employees should be allowed to cooperate among themselves if they desired to do so, merely restated principles that Congress has avowed for half a century.

Congress is familiar with the events of the past 2 years. While industry's freedom of action has been encouraged until the trade association movement has blanketed the entire country, employees attempting in good faith to exercise their liberties under section 7 (a) have met with repeated rebuffs. It was to check this evil that the President in his wisdom created the National Labor Board in August 1933, out of which has emerged the present National Labor Relations Board.

The Board has performed a marvelous service in composing disputes and sending millions of workers back to their jobs upon terms beneficial to every interest. But it was handicapped from the beginning, and it is gradually but surely losing its effectiveness, because of the practical inability to enforce its

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decisions. At present it may refer its findings to the National Recovery Administration and await some action by that agency, such as the removal of the Blue Eagle. We all know that the entire enforcement procedure of the N. R. A. is closely interlinked with the voluntary spirit of the codes. Business in the large is allowed to police itself through the code authorities. This voluntarism is without question admirable in respect to provisions for fair competition that have been written by industry and with which business is in complete accord. But it is wholly unadapted to the enforcement of a specific law of Congress which becomes a crucial issue only in those very cases where it is opposed by the guiding spirits of the code authorities. Secondly, the Board may refer a case to the Department of Justice. But since the Board has no power to subpena records or witnesses, its hearings are largely ex parte and its records so infirm that the Department of Justice is usually unable to act. Finally, the existence of numerous industrial boards whose interpretations of section 7 (a) are not subject to the coordinating influence of a supreme National Labor Relations Board, is creating a maze of confusion and contradictions. While there is a different code for each trade, there is only one section 7 (a), and no definite law written by Congress can mean something different in each industry. These difficulties are reducing section 7 (a) to a sham and a delusion.

The break-down of section 7 (a) brings results equally disastrous to industry and to labor. Last summer it led to a procession of bloody and costly strikes, which in some cases swelled almost to the magnitude of national emergencies. It is not material at this time to inquire where the balance of right and wrong rested in respect to these various controversies. If it is true that employees find it difficult to remain acquiescent when they lose the main privilege promised them by the Recovery Act, it is equally true that employers are tremendously handicapped when it is impossible to determine exactly what their rights are. Everybody needs a law that is precise and certain.

There has been a second and even more serious consequence of the break-down of section 7 (a). When employees are denied the freedom to act in concert even when they desire to do so, they cannot exercise a restraining influence upon the wayward members of their own groups, and they cannot participate in our national endeavor to coordinate production and purchasing power. The consequences are already visible in the widening gap between wages and profits. If these consequences are allowed to produce their full harvest, the whole country will suffer from a new economic decline.

The national labor relations bill which I now propose is novel neither in philosophy nor in content. It creates no new substantive rights. It merely provides that employees, if they desire to do so, shall be free to organize for their mutual protection or benefit. Quite aside from section 7 (a), this principle has been embodied in the Norris-LaGuardia Act, in amendments to the Railway Labor Act passed last year, and in a long train of other enactments of Congress.

There is not a scintilla of truth in the wide-spread propaganda to the effect that this bill would tend to create a so-called "labor dictatorship." It does not encourage national unionism. It does not favor any particular union. It does not display any preference toward craft or industrial organizations. Most important of all, it does not force or even counsel any employee to join any union if he prefers to deal directly or individually with his employers. It seeks merely to make the worker a free man in the economic as well as the political field. Certainly the preservation of long-recognized fundamental rights is the only basis for frank and friendly relations in industry.

The erroneous impression that the bill expresses a bias for some particular form of union organization probably arises because it outlaws the company-dominated union. Let me emphasize that nothing in the measure discourages

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employees from uniting on an independent- or company-union basis, if by these terms we mean simply an organization confined to the limits of one plant or one employer. Nothing in the bill prevents employers from maintaining [2372] free and direct relations with their workers or from participating in group insurance, mutual welfare, pension systems, and other such activities. The only prohibition is against the sham or dummy union which is dominated by the employer, which is supported by the employer, which cannot change its rules or regulations without his consent, and which cannot live except by the grace of the employer's whims. To say that that kind of a union must be preserved in order to give employees freedom of selection is a contradiction in terms. There can be no freedom in an atmosphere of bondage. No organization can be free to represent the workers when it is the mere creature of the employer.

Equally erroneous is the belief that the bill creates a closed shop for all industry. It does not force any employer to make a closed-shop agreement. It does not even state that Congress favors the policy of the closed shop. It merely provides that employers and employees may voluntarily make closed-shop agreements in any State where they are now legal. Far from suggesting a change, it merely preserves the status quo.

A great deal of interest centers around the question of majority rule. The national labor relations bill provides that representatives selected by the majority of employees in an appropriate unit shall represent all the employees within that unit for the purposes of collective bargaining. This does not imply that an employee who is not a member of the majority group can be forced to enter the union which the majority favors. It means simply that the majority may decide who are to be the spokesman for all in making agreements concerning wages, hours, and other conditions of employment. Once such agreements are made the bill provides that their terms must be applied without favor or discrimination to all employees. These provisions conforms to the democratic procedure that is followed in every business and in our governmental life, and that was embodied by Congress in the Railway Labor Act last year. Without them the phrase "collective bargaining" is devoid of meaning, and the very few unfair employers are encouraged to divide their workers against themselves.

Finally, the National Labor Relations Board is established permanently, with jurisdiction over other boards dealing with cases under section 7 (a) or under its equivalent as written into this bill. Nothing could be more unfounded than the charges that the Board would be invested with arbitrary or dictatorial or even unusual powers. Its powers are modeled upon those of the Federal Trade Commission and numerous other governmental agencies. Its orders would be enforceable not by the Board, but by recourse to the courts of the United States, with every affected party entitled to all the safeguards of appeal.

The enactment of this measure will clarify the industrial atmosphere and reduce the likelihood of another conflagration of strife such as we witnessed last summer. It will stabilize and improve business by laying the foundations for the amity and fair dealing upon which permanent progress must rest. It will give notice to all that the solemn pledge made by Congress when it enacted section 7 (a) cannot be ignored with impunity, and that a cardinal principle of the new deal for all and not some of our people is going to be supported and preserved by the Government.

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CONGRESSIONAL RECORD, SENATE—MARCH 8, 1935

(79 Cong. Rec. 3183)

THEORY OF COLLECTIVE BATGAINING—ADDRESS BY FRANCIS BIDDLE

Mr. WAGNER. Mr. President, I ask unanimous consent to have printed in the RECORD a very instructive and very able address delivered by Francis Biddle, Chairman of the National Labor Relations Board, before the Community Forum at Carnegie Lecture Hall, Pittsburgh, Pa., March 4, 1935, on the Theory of Collective Bargaining.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

H. G. Wells says, in his Experiment in Autobiography: "We are waking up to the fact that a planned world-state governing the complex of human activities for the common good, however difficult to attain, has become imperative, and that until it is achieved the history of the race must be now inevitably a record of catastrophic convulsions. * * * No real going back to the old, comparatively stable conditions of things is possible. * * * We are, therefore, impelled to reconstruct the social and economic organization until the new conditions are satisfied."

I take it that an essential premise of the new deal is that our American world here about us can be planned; and that we cannot go back to the old condition of things. Planning involves stabilization. Thus, in industry an attempt was made from within to eliminate cutthroat competition and outlaw unfair trade practices. Monopoly, where monopoly was desirable, was to be permitted under the watchful eye of the Government.

There are perhaps few economic theories with which most of us could agree. To swing right, to swing left, is hardly the definition of a plan. Nor is the itch to change any more than the desire to stay inert—and let nature take its course—more than a very simple description of emotion. The words radical and conservative hardly more than describe a state of mind. They do not chart a direction in which we should go—or stay. Yet some general economic formulas are acceptable, even in the welter of prophecies and convictions. One such theory I shall take today as a starting point of my discussion. Simply, it may be stated as follows: Our domestic consumers' market in the past 5 years has been gradually drying up. The national income between 1929 and 1934 has been cut in half. We do not produce too much to consume, measured in terms of need; but our national income cannot absorb goods on a scale large enough to keep our vast plants running at capacity, or to put men back to work on anything like a predepression basis. Our problem then is to increase consumption, to broaden buying power. The alternative of curtailing production, except as a temporary emergency, is hardly calculated to create wealth.

How to increase the national income?

At this point, roughly speaking, two schools of thought divide. The first, its emotional outlook largely determined by its own easy comfort, fixed in the naive faith that a "comparatively stable condition of things" can again be achieved if the Government will only let business alone, uses the simple watchword of "recovery." Recovery first, reform afterward. Lower wages, and business men can sell at a profit. Profit will tempt capital. Take away the restrictions and the profit motive, regulated by the ordinary law of supply and demand, will stimulate business activity. New factories will spring up. The unemployed will go back to work. The inevitable course of nature will have its way.

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As a general rule, that is the ready philosophy of a majority of American business men. Their most cogent argument is historical. It has always worked this way, and it will, therefore, work again.

But those who believe that reform is essential before recovery, can be heard to question the method as well as the ideal. What kind of recovery do we want? Even in 1929 the national per capita income was definitely inadequate for a decent living. Production then was as inadequate from the point of view of need as it was overexpanded from the consideration of the adequacy of the national income to consume. Overconcentration of wealth was a historic phenomenon accentuated during the great boom; a tendency which progressively increased in the lean years. As wealth shriveled it also concentrated. The vicious circle closed in on a shrinking market.

And the process, accelerated since the Great War, has been going on for years. In 1849 the wage earners' share in each dollar created by manufacture was 51 percent; in 1919, 42 percent; and in 1933, 36 percent. In other words, the share going to profits and overhead and other costs has increased from 49 percent to 64 percent over the 84-year period. On the other hand, between 1919 and 1933 the average worker's producing capacity almost doubled; production per worker per hour in our manufacturing industries increased 71 percent, while their share, as I have said, dropped 6 percent.

The new deal—a new economic way of thinking—was based, partially at least, on a conviction that to sustain our economic structure, wealth must be more quickly and evenly distributed. None of us question that the wealth is there—the natural resources, the huge plant, the manpower, the technological skill. How to spread it? For to sustain the very structure itself, top-heavy with maldistribution, the fruits of field and factory must be more widely consumed.

I believe that in the 2 years that have passed we have come to realize these truths, to hold them self-evident: that prosperity must have a broad basis; that it cannot balance on the apex of the pyramid: that we cannot drift back into good times; that lower real wages tighten the circle of economic destruction; that the profit motive, uncontrolled, will not distribute wealth; that we have been for many generations interfering artificially with the natural law of supply and demand, so that it no longer works, if indeed it ever did work in a society maintained by the haphazard balancing of everyone's individual striving for advantage: that a few must be content with less if indeed they are to get anything at all: that the future, the very present, in fact, demands an economy consciously controlled to the desired end.

How then should these controls be exercised?

A definite attempt of our people to exercise control through its Government found expression in N. R. A. It is easy now, when the start has been made, when the first difficulties have been put behind us, to say that N. R. A. has broken down, that it should be scrapped. We forget its lasting achievements—the virtual abolition of child labor, the elimination of competitive excesses in many fields, the increase of employment and pay rolls in many industries, resulting from codes. I do not believe that the social philosophy behind the N. R. A. will be abandoned. Other or modified social controls will undoubtedly be found. And perhaps we can find the reason for failure in those fields where failure has existed.

The theory of code structure was that industry would police itself. Minimum prices and wages were to be fixed by industry from within itself, instead of being forced on us by an inexperienced Government.

One basic clause written into all codes was the famous section 7 (a), a declaration of the right to organize and bargain collectively. But it was hardly more than the bold declaration of a right. Rights are not self-enforcing. If hours of work, wages, and basic working conditions had been the subjects of collective bargaining in code making; if labor, as well as industry, had written the codes and been equally

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represented on the code authorities; if the provisions of the codes then could and would have been enforced, I believe that today we should have had higher wages, a broader market, and more basic economic improvement. I believe in reform, therefore, because it builds a sounder recovery.

In these last 2 years the banks have been saved and are sound, even if they do comparatively little business. Corporations are again figuring in black instead of red. The return from income taxes has increased. The combined index of business activity (Annalist) stood at 75 in December 1934, as against 69 in December 1933. The factory employment index (Bureau of Labor Statistics) was 79 for 1934, as against 75 for the year before. (The index of 100 is the 1923–25 average.) The Bureau's combined factory and nonmanufacturing index of average earnings from pay rolls was 101 in 1934, as against 94 in 1933.

The demand for consumers' goods has not kept pace with these apparent signs of improved conditions. Heavy industry is still at a standstill. Unemployment is almost as great as ever. In December, according to the survey of current business of the Department of Commerce, "over 19,000,000 persons, or about 15 percent of the total population, were receiving Federal relief, the largest total for any period since the present program has been in effect." The report on the operation of the National Industrial Recovery Act, just issued by the Research and Planning Division of N. R. A., shows unemployed in December 1934 of 10,830,000, as against 10,613,000 in December 1933. The basic market, the broad consumers' market, on which the whole system rests, in spite of the vast priming poured in by the Government, appears to be at a standstill. Without that priming the process of shrinkage would continue with far more disastrous results.

[3184] How about wages? Factory workers in 25 industries, according to the Bureau of Labor Statistics, averaged $20.71 a week in December 1934, as against $18.50 a week in December 1933. Common labor averaged $0.40 an hour in December 1934 as against $0.38 an hour in December 1933. In short, there was an increase of a little over 10 percent in the weekly wages of factory workers, and of 5 percent in the hourly wage rate of unskilled labor. But the cost of living in the same period has gone up about 5 percent, in which the largest increase is food—about 10 percent. Therefore, in the past year there has been substantially no change in the earnings of factory workers and unskilled labor.

What has happened to profits over the same period? In 1932, instead of any profit there was a loss in manufacturing business of 5.8 percent per share; in 1933, with an increased production of 19 percent, a small profit, nearly 1 percent on capital stock was realized. From figures thus far available it would appear that in 1934, with an increase of 4 percent in production, this profit has been further substantially lifted. According to a business survey in the New York Times the average dividends of 600 companies rose through 1934 to $1.27 a share as against $1.11 the year before. In December 1934, $231,000,000 was paid in dividends as against $191,000,000 in December 1933. The total market value of shares listed on the New York Stock Exchange increased almost a billion dollars in the year.

The N. R. A. report makes the following comparison of profits between 1926 and 1934:

"Even more startling is the light placed upon the lot of those receiving dividends and interest by historical comparison. Although pay rolls in December 1934 were only about 60 percent of the total in 1926, dividends and interest were 150 percent of their total in 1926. In short, the income enjoyed by those who received dividends and interest was 50 percent higher than in 1926, even though the national income has declined nearly 40 percent since that date and volume of production has declined by one-third. Rough as the compilations are, clearly

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the recipients of profits have not failed to enjoy their proportionate share of the increase in industrial recovery."

Nor would it seem that the machinery of codes has effected any real redistribution of income. In some industries, the report finds, earnings have increased, whereas they have decreased in others. And any redistribution effected is often merely among the workers themselves. Thus, although female workers in the cotton-textile industry in the North enjoyed a real income in October 1934, higher by 7 percent than in July 1933; and in the South a real income higher by 16 percent—nevertheless the real income of the best paid two-thirds of the male wage earners in the North was smaller in October 1934 than in July 1933; and the upper 10 percent had a real income 8 percent smaller. The real income of the upper three-fifths of such workers in the South was also less in October than in July; and the upper one-tenth had 10 percent less real income (Bureau of Labor Statistics).

Profit rests on large-scale production which cannot live on the small market of the few wealthy, but must be absorbed in the vast and general market of the masses. To buy, the many must have the means. Consumption is the ultimate test of wealth. The few can consume only on a limited and vicarious scale. We have thought of consumption in terms of need and desire. But there is plenty of demand in that sense. "Demand", in the sense used when we speak of "supply and demand", involves the ability to pay as well as the desire to consume. It is the demand that can find satisfaction only through money; and, for an overwhelming majority of us, out of what we earn.

It cannot be denied that where collective bargaining exists, where unions are well-established and recognized, real wages are higher, and work more regular. Moreover, any tendency of minimum rates fixed by codes toward pulling down the higher wage scale in a given industry would, of course, be checked by collective bargaining. If it were otherwise, if collective bargaining and unions meant lower wages and longer hours, we should have for them the enthusiastic support of employers of labor. But we do not. Employers are, not unnaturally, afraid of increased wage costs if the union is recognized. But without increased wages we cannot have the broad market necessary to absorb the fruits of large-scale production.

There is, too, another factor involved, in considering the need for an increased wage income to workers. We have come to believe that unemployed men must be supported by the State where private charity is unavailing. If the base market is broadened by absorbing the unemployed under the demand of increased production stimulated by mass purchasing power, and higher wages, profits may be less. But so, too, will taxes. For a vast share of taxes, very much the greatest part today, goes into supporting the unemployed. It is a definite choice. You can't have your cake and eat it. Employers can have their profits taxed to be turned back by the Government through the medium of a dole paid to the unemployed, or they can forego some of the profits—get less but keep more—by paying higher wages. I can think of no alternative between a dole existence and a wage existence. If that is true, there can be no choice if we are to be free men.

For freedom to work and to live decently no longer means the theoretical freedom of a man to make a contract with the steel corporation. There is no freedom of contract where power is all on one side and the choice is to take what you get or starve. Mr. John Lewis, with half a million miners behind him, can make a contract, because he, too, with this vast power of collected labor, can say, "Take it or leave it." The forces are balanced; the game is even.

There are two theories about the relationship of capital and labor. One is the partnership theory, the other the class-war theory. The first insists that since both employer and men depend for their living on the success of the business they are necessarily partners and must cooperate to a common end. The boss and his

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workmen, under this conception, are the members of the partnership. Employers like this theory because it puts them in a position to object—with logic if you accept the definition—to any form of strike, agitation, unionization in fact, which interferes with the relationship.

The other approach is exactly the opposite. Class war, so it runs, is an inevitable result of our economic system. The interest of employer is absolutely opposed to the interest of his men. He is after as much profit as he can squeeze out of his men; they are alone interested in the highest wages they can get out of the business.

A little thinking will show that both these generalities are partly true; that each taken alone is misleading; that together they are not only not inconsistent but complementary. For the interest of each partner in any partnership agreement is to get all he can out of the business. If one gets more the other must get less. But that does not mean they cannot agree on the share of each, on the theory that their joint endeavor, mutually regulated, will be more satisfactory to both in the long run.

There is, however, one real flaw in the argument that the relationship is one of partnership, which is usually overlooked. A partnership is the result of agreement and presupposes equality of bargaining. This condition does not, as we have already said, apply to an individual seeking a job. The partnership is created as the result of an agreement. Thus it becomes fair to describe the relationship as a partnership only after an agreement has been entered into by the parties from some equality of bargaining power. Such agreements are collective bargaining agreements, signed by employer and union, and are real partnerships, which carry with them the joint good will and spirit of team play of real partnerships.

Therefore if employers are sincere in their insistence that labor is a partner of capital; if they wish to work in cooperation with their employees instead of in continual struggle with them; if, in a word, they wish peace and not industrial war, they will say frankly, "We wish to bargain in groups; we will not exploit our labor by hiring individuals, but will honestly and sincerely treat labor as an actual and not merely as a nominal partner in the joint enterprise." Industry, instead of welcoming the Wagner bill, is preparing to fight it on all sides. It is a bill primarily intended to bring about by collective bargaining that true partnership of which I have spoken. And yet on February 23 the Journal of Commerce characterized it as founded "upon the theory that there is a perpetual conflict between employer and employee." But the truth is that most employers do not want to treat labor on a basis of equality. They want neither alternative—free contracts or industrial war—because they are embedded in the passing doctrine that a workman should take what he can get. They do not mind occasionally "improving" his lot, if the improvement comes from the top down—the old gesture of charity. But free men hate charity as much as they cherish independence. So that collective bargaining has come to mean industrial freedom to American workmen.

This inconsistency runs through the whole concept adopted by industry. Thus in its now famous "platform for recovery" the National Association of Manufacturers for the United States frankly expresses its view that the same principles need not be applied when dealing with industry as are called for in labor disputes. What is sauce for the goose is evidently not sauce for the gander, according to the association, which shies at the majority rule applied to employees. The desired result "demands that employer and employee be free to bargain collectively or individually"; and that we should "recognize the equal right of minorities or individuals to bargain for themselves, directly or through representatives of their own selection." All very well for employees. But no such limitation to collective bargaining should, according to the "platform," affect industry. For industry the

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majority rule is often advisable. The "platform," a little later, says: "Under appropriate safeguards the approved competitive practices and prohibitions submitted by the properly defined majority of a group, trade, or industry should be binding on the minority." The Wagner bill, in section 9 (a), provides: "Representatives designated * * * by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees * * *." The parallel is not without interest.

That is why company unions, however effective for handling individual grievances, cannot bargain collectively in any selective sense of the words. They don't and they are not intended to. The classic statement of such intent is a letter quoted in the Supreme Court's decision in 1930 in the case of the Texas & New Orleans Railway. The railway's vice president wrote the president explaining that to bargain collectively with a labor union under Government board arbitration proceedings would cost wage increases amounting to $340,000, while to bargain "with our own employees" might cost only $75,000. To this blunt dollar-and-cents end, the railway formed and fostered a company union "of our own employees." A man inside his shop is not free to bargain for his fellows. If he presses his bargaining too hard, he loses his job. But the trade-union representative is paid by the union to do the union's bargaining—not by an employer whom he is trying to convince. Of course, employers dislike outside interference, and like to sneer at "walking delegates." He cannot dominate them by the [3185] most effective means which every employer has, and is loath to give up—the fear of the man's losing his job.

I do not underestimate racketeering in organized labor. It exists, unfortunately, as it exists in politics, in industry, among lawyers, and with bankers and brokers. Leadership is a crying need in this field as in the others. And I am convinced that there are today in our country employers who have some vision of the new industrial democracy that is bound to come, that is growing, here at our feet, inexorably; who will, perhaps, be leaders side by side with the leaders of labor. For with power grows responsibility. Democratic tradition cannot be built on the fear of consequences. It must be grounded in faith and courage and patience. If the faith is not justified, our institutions are, indeed, of no value. For ultimately men and not theories determine the achievements of our civilization.

COMPARISON OF S. 2926 (73D CONGRESS) AND S. 1958 (74TH CONGRESS) SENATE COMMITTEE PRINT

[NOTE.—Figures in brackets indicate page numbers in original, thus [4].]

MARCH 11, 1935.

MEMORANDUM COMPARING S. 1958, SEVENTY-FOURTH CONGRESS, FIRST SESSION, A BILL INTRODUCED BY SENATOR WAGNER ON FEBRUARY 21, 1935, TO CREATE A NATIONAL LABOR RELATIONS BOARD, AND FOR OTHER PURPOSES, WITH THE BILL REPORTED BY SENATOR WALSH ON MAY 26, 1934, AS A SUBSTITUTE FOR S. 2926, SEVENTY-THIRD CONGRESS, ALSO INTRODUCED BY SENATOR WAGNER

SECTION 1

This is an entirely new declaration of policy, much longer and with a rather different economic theory than the declaration of policy in last year's bill.

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SECTION 2

The term "employer" is now defined to include an employer who has a very small staff of workers. Last year the bill specifically exempted "any person employing less than 10 employees." (See p. 24, line 24, of last year's bill.)

Last year the term "labor organization" was strictly limited to an organization which existed for the purpose of dealing with employers concerning hours, wages, or working conditions. This year the term "labor organization" has been broadened in the bill to include an organization that deals with employers concerning grievances as well as wages, rates of pay or hours of employment. The importance of this is that an employer is now not permitted to organize a shop committee to present grievances on questions of safety and other minor matters even though he does not use such shop committee as a subterfuge for collective bargaining on the essential points of wages and hours. In other words, the present draft is intended to outlaw certain types of personal administration commonly used by employers and not hitherto felt to be obnoxious.

The term "affecting commerce" on page 4, lines 7 to 11, of the bill is new; but the substance of this provision was included in last year's draft in different places in the bill.

SECTION 3

This section in general is taken from section 4 of last year's draft. The name of the Board is now "The National Labor Relations Board"; whereas, last year it was called "The National Industrial Adjustment Board." This change seems to be justified since the new bill is intended to carry on the work of the present National Labor Relations Board, serving pursuant to the President's Executive order.

In last year's draft the National Labor Relations Board was made a part of the Department of Labor. In this year's draft (see p. 5, line 5) the Board is created as an independent agency of the executive branch of the Government.

In last year's draft the Board consisted of 3 Government members and a panel of 6 employer members and another panel of 6 worker members. In this year's draft the Board consists of three impartial Government members. The smaller board, strictly nonpartisan in character, has worked out remarkably well in connection with recent labor disputes, and by now labor and management agree with the Government experts in believing that a small impartial board is better than a board with panels representing respectively workers and employers.

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SECTION 4

Section 4 (a) is drawn from section 5 of the old bill but with several important changes.

In last year's bill the employees of the Board were made subject to the Classification Act of 1923 as amended. That was done in order that the salaries for the employees would be in line with those paid in other depart- [2] ments of the Government and would not be set either unduly high or with complete disregard of the comparable positions in the service of the United States. For no good reason, this year the bill on page 6, lines 3–6, proposes to exempt from the classification act an executive secretary, assistant executive secretaries, attorneys, special experts, examiners, and regional directors—in other words, everyone outside of the stenographic and messenger services.

Last year the only persons excluded from the civil service laws were attorneys and examiners. (See last year's bill, p. 30, lines 5–6.) This year it is proposed to exempt from civil-service requirements and other tests of competitive fitness not merely the attorneys and examiners, but also an executive secretary, assistant executive secretaries, special experts, and regional directors. In other words, again everyone except those on the stenographic and messenger staffs are to be selected on other than a merit basis.

Last year the Board was authorized to establish regional or local boards providing they were uncompensated. (See last year's bill, p. 30, line 9.) This year it is proposed to allow the Board to establish in various districts in the country paid regional boards.

In this year's bill, page 6, line 22, it is provided that all employees of the present National Labor Relations Board shall be transferred to and become employees of the new National Labor Relations Board. This is a provision that was not to be found in last year's bill, although it was in the Executive order abolishing Senator Wagner's National Labor Board and establishing Mr. Garrison's National Labor Relations Board.

SECTION 5

This section is substantially the same as section 6 of last year's bill.

SECTION 6

Section 6 (a) is substantially the same as section 7 of last year's bill.

But section 6 (b) is an entirely new matter intended to give the National Labor Relations Board the sort of administrative and advisory power now vested in the Secretary of Labor. The present practice is for the Secretary of Labor to study and report to the President on the activities of boards and agencies that deal with labor

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disputes. It is now proposed that this function of advising the President shall be vested in the National Labor Relations Board. Indeed the language is so broad that as it now reads section 6 (b) would give to this new Board the power to study and receive reports from the Secretary of Labor in her capacity as conciliator, from the Conciliation Service of the Department of Labor, and from theNational Mediation Board, set up to deal with railway labor disputes.

SECTION 7

Section 7 of this year's bill is drawn from section 3 (1) of last year's bill, although the form has been somewhat changed.

SECTION 8

The first unfair labor practice is a little broader than the first unfair labor practice in section 3 of last year's bill (last year's bill, p. 26, line 24). In last year's bill it was made unfair to interfere with or coerce employees in their rights. This year it is made unfair also to "restrain" them. The addition of the word "restrain" seems to have no very great practical consequence.

The second unfair labor practice corresponds with last year's third unfair labor practice, but there are several differences. In last year's bill it was made unfair for an employer to administer a labor organization; this year it is made unfair for an employer either to form or administer a labor organization. In last year's bill it was made unfair for an employer to contribute financial support to a labor union; in this year's bill it is made unfair for an employer to contribute financial or other support to a labor organization. In last year's bill employees were allowed to confer either with themselves or with their representatives or with an employer without loss of time or pay; in this year's bill an employee loses his pay, if during working hours he confers [3] with his fellow workers or his representatives. (The obvious purpose of this is to make it unlawful to have shop-committee meetings during working hours—it is questionable whether this a [sic] justifiable purpose.) In last year's bill the rules and regulations were to be prescribed by the Secretary of Labor; in this year's bill they are to be prescribed by the Board.

The third unfair labor practice of this year's bill is virtually the same as the fourth unfair labor practice of last year's bill. But there is this difference, which is of great consequence. In last year's bill it was stipulated in the proviso that a closed-shop contract might validly be made as to new employees. In this year's bill it is stipulated that a closed-shop contract is lawful even if it affects people who are already employed.

The fourth unfair labor practice in this year's bill (p. 9, lines 16–18) is new.

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SECTION 9

Section 9 (a) is from section 10 (a) of last year's bill (old bill, p. 40, line 17, et seq.). In last year's bill, however, the Board was given discretion as to whether or not to apply majority rule; but in this year's bill majority rule is made mandatory, not permissive. Moreover, in last year's bill, although minorities were given the right to present their grievances, they were not given the right to have a separate set of representatives in a situation in which a majority had been selected.

Section 9 (b) is derived from the second part of section 10 (a) of last year's bill (old bill, p. 40, line 12; p. 40, line 15).

Section 9 (c) is derived from the first part of section 10 (a) of last year's bill (old bill, p. 40, line 2; p. 40, line 12). The changes are merely verbal and intended to simplify confusing language.

Section 9 (d) is a new provision intended to make it clear that when the Board orders an election, persons affected by that order cannot come into court until after the election has been held and the Board directs that the employer take some action based upon the results of that election. At the present time employers are in a position where they can bring court proceedings to enjoin an election even though they have not been directed to take any action based upon the result of a poll. It seems wiser to limit employers as this bill does to complaining about elections only if the elections are made the basis of some order directed against them.

SECTION 10

The first sentence of section 10 (a) is derived from section 8 (a) of last year's bill. It, however, is supplemented by a second sentence, which is intended to make it clear that although other agencies may be established by code, agreement, or law to handle labor disputes, such other agencies can never divest the National Labor Relations Board of jurisdiction which it would otherwise have. The motive for writing in this section can best be understood by referring to the President's letter to Mr. Biddle in regard to the case of *Jennings* v. *The San Francisco Call Bulletin*. In that case it will be remembered that although the National Labor Relations Board thought it could decide a case in the newspaper industry, the President suggested that the Board should not take jurisdiction over any such case, since there had been provided by code a labor board supposedly competent to hear labor disputes in the newspaper industry.

Section 10 (b) carries out the same thought as the second sentence in section 10 (a). The substance of it was not in last year's bill.

Section 10 (c) of this year's bill (new bill, p. 11, line 23) is very different from section 8 (b) of last year's bill, from which it is drawn in part (old bill, p. 32, lines 9–23). The theory of last year's bill was that

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the Secretary of Labor would more or less act as a prosecuting officer and present cases to the Board for its judicial decision. For that reason, in last year's bill the complaint against an employer was to be prepared by the Secretary of Labor and then heard by the Labor Board. In this year's bill the theory is entirely different, and the draftsman has given to the National Labor Relations Board both the power to act as prosecutor and the power to act as judge. The Board issues the complaint and the Board hears it.

[4] In this year's bill, at page 12, line 6, it is provided that not more than 3 days may elapse between the time the complaint is issued and the time that the employer must answer it. This is a new and, it seems not altogether reasonable limitation of time for an employer to prepare a case brought against him.

Moreover, in this year's bill, page 12, line 8, it is provided that a complaint directed against an employer may be amended by any agent of the Board, even after all the evidence in the case is closed. This is drastic.

Section 10 (d) of this year's bill is drawn from section 8 (c) of last year's bill. It is specifically stated, however, that the Board may order the employer to make "restitution" (this year's bill, p. 13, line 5). The objective of this provision seems entirely desirable, but it would be better to state specifically that the Board may order an employer to reinstate a discharged worker and to give him compensation for the time that he has lost through unlawful discharge.

Section 10 (d) also provides on page 13, line 9, that the Board may make a specific finding if the employer is not guilty of the unfair labor practice with which he is charged. This is a new and, it appears, reasonable addition to last year's bill.

Section 10 (e) is substantially the same as section 8 (d) of last year's bill.

Section 10 (f) is drawn from section 8 (e) of last year's bill. There is one difference of great importance. In last year's draft, when an order of the Board had been issued, it was provided that proceedings to enforce it could be brought in the circuit court of appeals for the circuit in which the employer resided or in which the unfair labor practice occurred (old bill, p. 33, lines 22–23). In this year's bill it is provided that the orders of the Board may be enforced not merely in the circuit where the employer resides or the unfair labor practice occurred, but also in the Court of Appeals for the District of Columbia. (See new bill, p. 13, line 24; and also p. 15, line 20.) That has the very undesirable result of making an employer defend an action in the District of Columbia if the Board chooses to bring its suit there, even though the employer may reside in Spokane or New Orleans.

Under section 10 (f), and also under section 10 (g), of the present bill (see new bill, p. 14, line 17; and p. 16, line 6), a court is authorized to issue a temporary injunction the moment that the record of the

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National Labor Relations Board is presented to it. This seems a desirable addition to last year's provisions.

Section 10 (b) [sic] is derived from section 8 (e) of last year's bill.

Section 10 (i) is derived from section 8 (g) of last year's bill.

Section 10 (j) is derived from section 8 (h) of last year's bill.

SECTION 11

This is a new section, which seems to be objectionable on several different grounds. In the first place, it makes it possible for any person who feels aggrieved to rush into court at once without going through the administrative remedies provided for by the machinery of the National Labor Relations Board. If an individual can go to court in this way, often cases will come up for decision which have been very badly prepared. Moreover, the court will not have the benefit of preliminary administrative determination. Furthermore, there will be an increasing temptation to courts to establish diverse rulings rather than to confine themselves to passing upon the uniform interpretations handed down by a single administrative agency.

SECTION 12

Section 12 is for the most part the same as section 9 of the old bill. In several technical respects it has been improved to make it clear what the rights of the parties are when they submit a case for voluntary arbitration by the National Labor Relations Board. This section, although it occupies a great deal of space in the bill, probably will not be resorted to very frequently.

SECTION 13

Section 13 (1) is derived from section 11 (1) of last year's bill. But it is stipulated that in addition to having the right to subpena persons and documents, the Board shall have the right to have access to the books to copy evidence. This is a section of the law borrowed from the Securities and Exchange [5] Commission Act and may be justified on the ground of precedent. However, the first effect of this language is to indicate that even without a subpena an employer can be forced to disclose his records to agents of the Board. Of course, as a matter of fact, the employer, if he were advised of his legal rights, would not disclose his records without a subpena; but an uninformed employer may be intimidated by the unnecessarily broad language of the first few lines of section 13.

Section 13 (2) of the present bill provides that for refusal to obey a subpena an employer may be brought not only into the district court of the district where he resides or where he committed a contempt, but also in the Supreme Court of the District of Columbia. In other words, an employer can be told under this act, "If you don't

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produce this document, we will bring you into the District of Columbia courts and ask you to explain the reason" (new bill, p. 22, line 24). This is a tremendous burden to put upon an employer residing at some distance from Washington.

Section 13 (3) is derived from section 11 (3) of last year's bill.

The first part of section 13 (4) comes from section 8 (1) of last year's bill. The second part of section 13 (4) comes from section 11 (4) of last years' bill. However, for no apparent reason, it is now provided that anyone who takes a deposition is entitled to a fee even though the person taking it is an employee of the Board. (In last year's bill, p. 43, line 2, it was made clear that an employee of the Board was not entitled to any fee for taking a deposition.)

Section 13 (5) is new.

Section 13 (6) is taken from section 11 (5) of last year's bill.

SECTION 14

Section 14 is the same as section 12 of last year's bill.

SECTION 15

Section 15 is derived from Public Resolution 44, Seventy-third Congress (48 Stat. 1183).

SECTION 16

Section 16 is derived from section 15 of last year's bill.

SECTION 17

Section 17 is derived from section 16 of last year's bill.

SECTION 18

The name of the Board is derived from the present Board, established by Executive Order No. 6763, dated June 29, 1934.

It is interesting to note that the following two sections of last year's bill are not incorporated in this year's bill.

SECTION 13 (P. 43, LINES 19–24)

The Board shall at the close of each fiscal year make a report in writing to Congress stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed."

SECTION 5 (D) (P. 31, LINES 5–11)

The Board may request and the Secretary of Labor may direct from time to time the officers and employees of the Department of Labor to render services and furnish information and otherwise to aid the Board in the performance of

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its duties, insofar as such assistance can be made available under the appropriations and other legal obligations of the Department of Labor.

[6] NATIONAL MEDIATION BOARD,
Washington, April 4, 1935.

Hon. DAVID I. WALSH,
Chairman Committee on Education and Labor,
Senate Building, Washington, D. C.

MY DEAR SENATOR: In accordance with your request at the close of the hearing on Senate bill 1958, I am sending you herewith a summary of the Railway Labor Act as amended, and a statement comparing this act with the bill.

If I can be of any further service in this matter, please do not hesitate to call on me.

Sincerely yours,

WM. M. LEISERSON, *Chairman.*

SUMMARY OF RAILWAY LABOR ACT (PUBLIC, NO. 257, 69TH CONG., APPROVED MAY 20, 1926

AMENDMENTS (PUBLIC, NO. 442, 73D CONG., APPROVED JUNE 21, 1934)

Section 1 defines the terms "carrier", "commerce", "employee", "representative", and other terms used in the act.

Section 2 states the general purposes of the act:

1. To avoid interruption to commerce.

2. To forbid any limitation upon freedom of association among employees.

3. To provide for complete independence of carriers and employees in the matter of self-organization.

4–5. To provide for prompt and orderly settlement of labor disputes.

First: Duty is imposed on all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions.

Second: Imposes duty on carriers and employees to consider, and if possible, to decide all disputes in conference between representatives designated and authorized so to confer.

Third: Prohibits interference, influence, or coercion by either party over the designation of representatives by the other.

Fourth: Guarantees right of employees to organize and bargain collectively through representatives of their own choosing, and establishes the right of the majority of any craft or class of employees to determine who shall be the representative of the craft or class.

Fifth: Outlaws any labor contracts requiring employees to join or not to join a labor organization.

Sixth to eighth, inclusive: Details regarding procedure.

Ninth: Authorizes National Mediation Board to settle disputes among employees as to who are duly designated and authorized representatives. The Board must investigate such disputes, may hold elections, or use any other appropriate method of determining the

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choice of the majority, and certify such choice to the employees who are parties to the dispute and also to the carrier.

Tenth: Provides penalties and enforcement by Federal district attorneys.

Section 3 establishes a national railroad adjustment board with headquarters in Chicago, for hearing and deciding individual grievances and all such disputes as arise out of the interpretation or application of collective agreements between carriers and employers. The board is made up of 18 representatives of carriers [sic] and 18 representatives of the employees, and is divided into 4 divisions, each having jurisdiction over different classes of railway employees. If the board is deadlocked or unable to reach a decision, provision is made for the appointment of a referee. Decisions are final and binding on both parties.

Section 4 establishes the national mediation board composed of three neutral persons appointed by the President and confirmed by the Senate.

Section 5 defines the functions of the national mediation board. Aside from its duty to settle representation disputes among employees as described above, the board is authorized to act as mediator in all such labor disputes involving changes in rates of pay, rules, or working conditions as cannot be adjusted by the parties in conference. Also authorizes the board to mediate any other disputes not referable to the railroad adjustment board. This adjustment board [7] has jurisdiction over all disputes which can be settled by applying the provisions of an existing agreement. All other disputes are to be mediated by the national mediation board.

Section 6 provides that 30 days' written notice of any intended changes in agreements shall be given both by the carriers and the representatives of the employees, and pending the determination of such changes, the carrier is prohibited from altering rates of pay, rules, or working conditions.

Sections 7 to 9 provide for voluntary arbitration. Whenever the national mediation board finds it impossible to settle a labor dispute by mediation, it is required that they urge the parties to establish voluntary boards of arbitration for final settlement of the dispute. The nature of the voluntary arbitration agreement that is to be signed is described in this section, and the appointment of the board, as well as its procedure, is provided for.

Section 10 provides for emergency boards of three neutral persons to be appointed by the President of the United States in cases where one or both parties refuse to arbitrate and where a strike is threatened. If the national mediation board finds and reports to the President that such a threatened strike will seriously interrupt commerce, the President is authorized to declare an emergency and appoint an emer-

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gency board to investigate the dispute. After the creation of such a board, and for 30 days after the board has made its report to the President, the status quo must be maintained.

COMPARISON OF RAILWAY LABOR ACT WITH SENATE BILL 1958

From the above summary it is evident that the Railway Labor Act is concerned primarily with the settlement of labor disputes and with the mediation of such disputes. The National Mediation Board is given no authority to enforce the law. Enforcement is made a duty of Federal district attorneys, penalties are provided for, and the Federal courts handle the questions of violations of law.

S. 1958 does not deal with the mediation of labor disputes. Presumably this is to be left to the conciliation service of the Department of Labor and other mediation and conciliation services of the Government. The bill concerns itself only with the legal right to organize and to bargain collectively, and with the prohibitions against the employer from in any way interfering with this right.

Whereas the Railway Labor Act makes the protection and enforcement of this right a duty of the district attorneys and the courts, S. 1958 proposes to create a National Labor Relations Board to perform this function in the first instance.

Presumably, this different procedure is proposed because of the absence of fully developed labor organizations among the employees in the industries covered by the bill. On the railroads, the employees are strongly organized in independent national unions with trained and experienced officers and large treasuries. These organizations are in a position to hire attorneys, prepare evidence, proceed to Federal district attorneys, and then push their cases through the courts. The embryo organizations in the industries covered by this bill are in no position to protect their own rights, and apparently that is the reason that the procedure of the Federal Trade Commission law is followed. The interferences with the right of employees to organize and bargain collectively are made unfair labor practices and the quasi-judicial tribunal, the National Labor Relations Board is created to investigate and to hear such cases of interference, with authority to issue cease and desist orders after the manner of the Federal Trade Commission. These orders are then subject to review by the courts. There is reason to believe that just as the small business man is handicapped in having his rights protected under the Sherman antitrust law and needs the Federal Trade Commission to act in the first instance, so the individual employees and small, weak organizations of employees are handicapped in protecting their rights freely to organize. It is assumed that the employees also need a quasi-judicial board to protect them in their rights.

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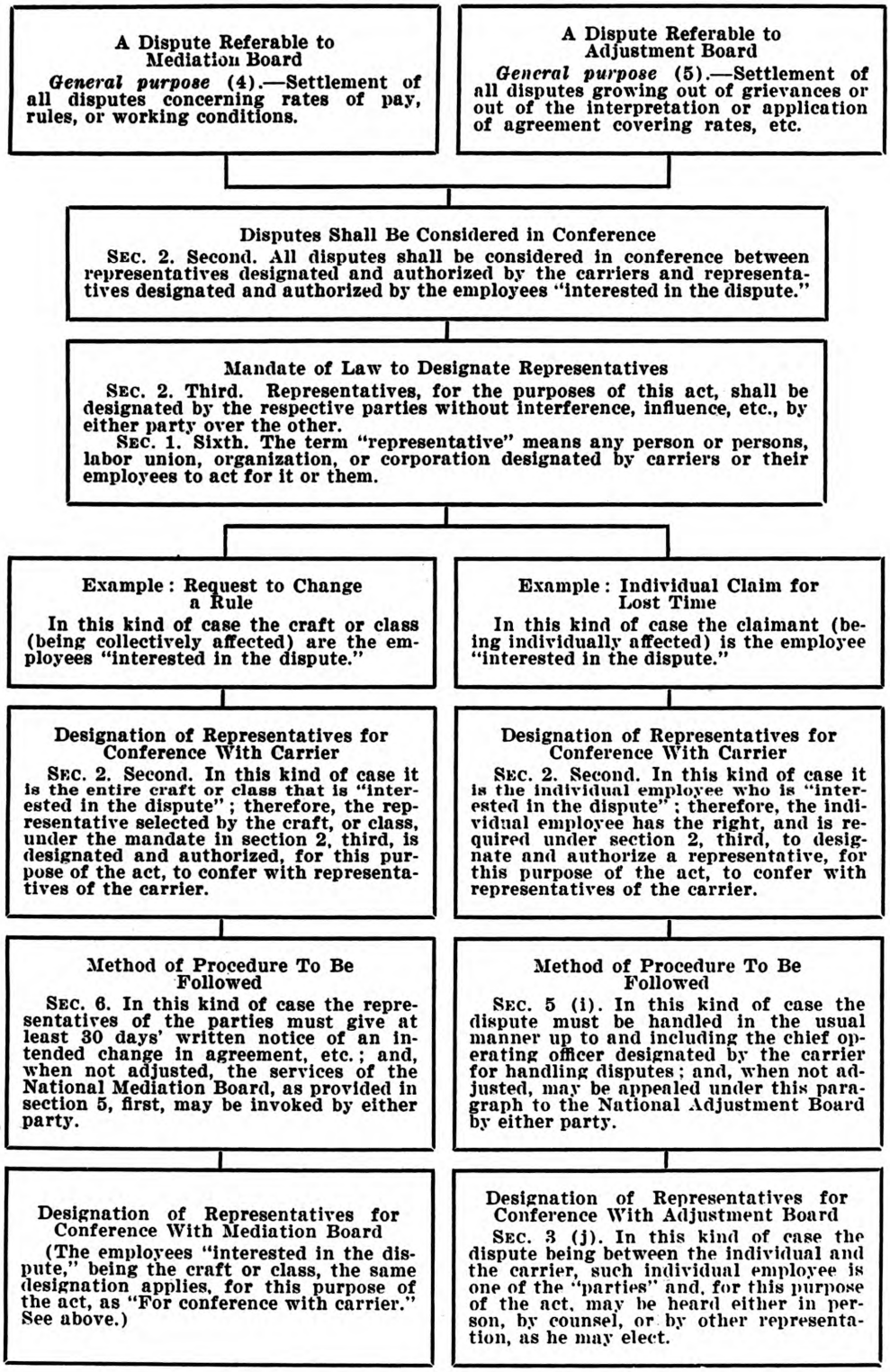
[8] PROCEDURE UNDER RAILWAY LABOR ACT AS AMENDED



Prepared for National Mediation Board by Robert F. Cole, mediator.

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AMENDMENTS

[9] *Francis Biddle*

Section 8: Add a new subsection 5, as follows:

To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

Lloyd K. Garrison

Section 8 (2): In lines 21 and 23, strike the words

subject to rules and regulations made and published by the Board, pursuant to section 6 (a).

Section 8 (3): Substitute for the present language in the parenthesis on lines 9 to 11 the following:

which exists for the principal purpose of negotiating collective agreements, and which is not established, maintained, or assisted by any action defined in this act as an unfair labor practice.

Miss Perkins

Section 2 (3): Strike the words

but shall not include any individual employed as an agricultural laborer.

Section 2 (5): Page 3, line 21, for "dealing" substitute "bargaining collectively."

Section 2 (5): Strike the period at end of subdivision and add "or conditions of work."

Section 2 (6): Page 3, line 23, insert after "trade", the term "traffic."

Section 2 (11): Page 4, line 25, insert after "order", the words "Numbered 6763."

Section 3 (a): Page 5, lines 4 and 5, for "as an independent agency in the executive branch of the Government", substitute, "in the Department of Labor."

Section 4 (a): The amendment strikes lines 1 to 11 on page 6, and substitutes the following:

or employment. The Board with the approval of the Secretary of Labor shall appoint such employees, and, without regard for the provisions of the civil-service laws but with the approval of the Secretary of Labor shall appoint an executive secretary and such attorneys as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, and such agencies as may be provided for by agreement, code or law. But nothing in this act shall be construed to authorize the Board to appoint persons to engage in mediation, conciliation, or statistical work, when the services of such persons may be obtained from other bureaus or divisions in the Department of Labor.

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Section 6 (b): Strike this subsection.

Section 9 (a): Strike lines 1 to 4, and substitute the following:

tions of work or employment: *Provided,* That nothing in this section shall deprive any individual employee or group of employees of the right at any time to present grievances to their employer.

Section 9 (b): Page 10, line 5, insert after "decide" the phrase "in each case."

Section 10 (a) and (b): Strike the present subsection (a) and (b), and substitute the following:

SEC. 10 (a). The Board is empowered to deal, as hereinafter provided, with any person engaging in any unfair labor practice (listed in section 8) affecting commerce.

(b) In cases in which another means of dealing with an unfair labor practice or question of representation is provided for by agreement, code, law, or otherwise, the Board, in its discretion, may postpone, or refuse to exercise, its jurisdiction. But such agreement, code, or law, or such postponement or refusal, shall not be construed to prevent or limit the right of the Board in such cases to take jurisdiction under this Act at any time in order to assure the effectuation of the policy of this Act and the development of a uniform body of administrative interpretation and practice with respect to unfair labor practices as defined herein.

Section 10 (d): Strike lines 3 to 7, and substitute the following:

* * * and cause to be served on such person an appropriate order. Such order may [10] require such person to cease and desist from such unfair labor practice, to restore a worker to his employment, to pay to him such compensation as he would have received if he had not been wrongfully discharged, and to make reports from time to * * *

Section 10 (d): Page 13, line 8, for "it" substitute "he"; line 13, for "dissolving" substitute "dismissing."

Section 11: Strike the section.

Section 14: Strike this section.

Section 16: Page 25, line 22, for "apply," substitute "remain in full force and effect."

Charlton Ogburn (For the American Federation of Labor)

Section 2 (5): Strike the present subsection and substitute the following:

The term "labor organization" means any organization of any kind, in which employees participate and which exists for the purpose of dealing with employers concerning labor disputes, wages, rates of pay, or hours of employment.

Section 3 (a): Page 5, line 6, after the word "Board," insert: "in connection with the Department of Labor."

Section 3 (b): Add at the end of the section the following: "The Board should report annually to the President."

Section 4 (a): Page 6, line 9, following the word "may," insert: "establish boards for special industries or."

Section 6 (b): Page 8, line 6, for "receive" substitute "require."

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Section 8: Insert as a title to this section the words "Duties of Employers."

Section 8 (2): Strike the present subsection and substitute:

Interfere with the formation or administration of any labor organization, employee representative plan, or other employee agency, or encourage in any way any form of employee organization or representation plan, or to contribute financial or other support thereto.

Section 8 (3): Page 9, line 4, following "tion", insert "or employee representative plan." Page 9, lines 12 to 15, strike the following:

if such labor organization is the representative of the majority of the employees in the appropriate collective bargaining unit covered by such agreement when made.

Section 8 (5): Insert as a new and additional subsection the following:

(5) Refuse to bargain collectively with representatives of employees.

Section 9 (a): On page 10, lines 1 to 4, strike out the entire proviso.

Section 9 (c): Strike out the present subsection and substitute the following:

If any dispute shall arise among employees as to who are the representatives of such employees, designated and authorized in accordance with the requirements of this Act, it shall be the duty of the National Labor Relations Board upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the employer. Upon receipt of such certification the employer shall treat with the representatives so certified as the representative or representatives of its employees for the purpose of this Act. In such an investigation the National Labor Relations Board shall be authorized and directed to take a secret ballot of the employees involved, ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the employer. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the companies to obtain and utilize such information as may be deemed necessary by (it) to carry out the purposes and provisions of this paragraph.

Section 9 (d): Page 10, line 19, strike out the words "in whole or in part."

Section 10 (b): Page 11, line 22, strike out the period at the end of the subsection, insert a comma, and add the following:

but the Board shall not have the power to overrule labor arbitration awards made by special boards under contract.

[11] Section 10 (c): Page 11, lines 23 and 24, strike out the words "or the Board shall have reason to believe."

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Section 10 (e): Page 13, line 16, insert after "notice" the following: "and after hearing."

Section 10 (g): Page 16, line 6, strike out the words "to the Board."

Section 10 (i): Page 16, strike lines 15 to 17, and substitute the following:

When entering a decree enforcing in whole or in part an order of

Section 11: Page 17, lines 6 and 7, strike the words "but solely at the request of the National Labor Relations Board."

New section 13: Insert as a new section, following present section 11:

SEC. 13. Not less than twenty-one days elapsing after the rendition of an order by the National Labor Relations Board, the party favored by such order shall file his certificate with the Board, stating either that the other party has complied with the provisions of the order, or that the order of the Board or substantial provisions of such order are ignored and no review thereof requested. Upon the filing of a certificate in any case stating that an order of the Board or substantial provisions thereof have been ignored, it shall be the duty of the Board forthwith to record its said order with the proper United States District Court, at the same time giving written notice to all parties. Thereafter, within a stated time, it shall be the duty of the Board, or the rights of the aggrieved party, to cause to be issued from the district court to the recalcitrant party, a rule requiring said party to show cause why it should not be adjudged in contempt for its failure to obey the order of the Board (this not to be in derogation of the right to appeal from orders of the Board).

Telephone Operators' Committee Organization

Section 8 (2): Page 8, line 25, strike the period at the end of the proviso, insert a comma, and add the following: "nor from the payment of reasonable traveling expense to and from the place of such conference."

John P. Frey

Section 9 (b): Line 5, insert after "decide", the following: "in each instance."

Walter Gordon Merritt

Section 2 (5): Strike out the period at the end of the subdivision and add the following:

and which complies with the following conditions, to wit:

(a) Registers with the National Labor Relations Board, giving its name, and the names of its officers, copies of its constitution and bylaws, and such other information as may be required by the Board.

(b) Files with the National Labor Relations Board its acceptance of a code of fair practice for labor organizations, as follows:

(1) That all elections and votes on strikes shall be by secret ballot.

(2) That a reliable accounting system will be maintained, and will be audited at least annually, with reports promptly and duly made to a meeting of the members, and a copy filed with the National Labor Relations Board.

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(3) That its membership books, or rolls, will not be closed to new members, and all applicants will be admitted to membership, except for good cause shown relating to the individual applicant.

(4) That all of its objects and purposes are lawful.

(5) That it will not instigate, maintain, or support any strike for an illegal purpose.

(6) That it will instigate, maintain, or support any strike in violation of any collective bargaining agreement, or in opposition to any arbitration award rendered pursuant to an agreement to submit to arbitration.

(7) That it will not instigate, maintain, or support any strike to further any issue which the employer offers to submit to arbitration pursuant to section 12 hereof.

(8) That it will not instigate, maintain, or support any strike, except as a last resort after making all reasonable efforts to settle the issues by direct negotiation and governmental mediation.

(9) That it will agree to submit all jurisdictional [sic] disputes to arbitration pursuant to section 12 hereof, and will not engage in any jurisdictional strike, in cases where other organizations, parties to such disputes, likewise agree to submit to arbitration.

[12] (10) That it will not instigate, maintain or support any strike designed or calculated to coerce Government or any agency thereof, either directly or by inflicting hardship upon the community.

(11) That it will not instigate, maintain, or support any strike except in furtherance of a trade dispute within the trade or industry in which the strikers are engaged.

(12) That it will not coerce, or attempt to coerce, any worker to join any particular labor organization.

(c) Observe the provisions of said code of fair practices for labor organizations.

Section 8 (1): Strike out the present subdivision 1 and substitute:

(1) For any person to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7."

Section 8 (2): Strike out the present subsection and substitute:

(2) For any employer to dominate or interfere with the formation or administration of any labor organization, or to contribute or to contribute [sic] financial or other support to it except in such manner and to such extent as may be requested by the employees participating in the activities of such organization, or except in such amount, or in such manner, as will not dominate or interfere with the formation or organization thereof.

Section 8 (3): Strike out the present subsection and substitute:

(3) For any employer, by discrimination, in regard to hire, or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization.

Section 9 (a): Strike out the present subdivision and substitute the following:

Representatives designated or selected for the purposes of collective bargaining shall constitute a bargaining (or negotiating) committee in a unit appropriate for such purposes. If there is more than one group desiring representation in such unit, each bargaining (or negotiating) committee shall have a total membership pro rata to the number of employees each committee member represents. Such committee shall represent all of the employees in such unit for the purposes

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of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual or group of employees shall have the right at any time to present viewpoints or grievances to their employer.

Section 9 (b): Strike out the present subsection and substitute the following:

(b) In order to effectuate the policies of this Act, the units appropriate for the purposes of collective bargaining shall be determined and set up by the employees concerned. In case of disagreement among employees in the determination of such units, appeal may be made to the Board, which shall have the power to hold elections to determine whether the appropriate unit shall be the employer unit, craft unit, plant unit, or other unit.

Section 12 (c): Strike out the proviso.

Section 15: Strike out the present section and substitute:

Nothing in this Act shall be construed so as to interfere with, or impede, or diminish in any way the right to strike, or to legalize strikes, which, for any reason, aside from the provisions of this Act, may be unlawful.

William H. Davis

Section 3 (a): For "National Labor Relations Board", substitute "National Labor Commission."

Section 7: Strike out the present section and substitute the following:

The right of the employees to full freedom of association, self-organization, and designation of representatives of their own choosing for collective bargaining with their employers is hereby recognized and affirmed. It shall be the duty of the Commission to foster that right and to encourage collective bargaining.

Section 8: Insert a new subdivision 1, reading as follows:

It shall be an unfair labor practice for anyone to interfere by fraud or violence with the free exercise by an employee of his right to participate in the formation of a labor organization or with the free exercise of his right to choose representatives for collective bargaining.

Section 8 (2): Strike out the present subsections (1) and (2) and substitute the following:

It shall be an unfair labor practice for an employer to interfere in any way with the free exercise by an employee of his right to participate in the [13] formation and in the activities of a labor organization or with the free exercise of his right to choose representatives for collective bargaining, or to contribute financial or equivalent support to any such labor organization: *Provided*, That subject to rules and regulations made and published by the Commission pursuant to section 6 (a), an employer shall not be forbidden to allow to an employee his regular rate of pay for time devoted during working hours to his duties as a representative of employees.

Section 8 (3): Strike out the present subsection (except the proviso), and substitute the following:

It shall be unfair labor practice for an employer to discharge or discriminate against or in favor of an employee for any activity in connection with forming,

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joining, or assisting any collective bargaining agency of employees or in connection with the choice of employee representatives for collective bargaining.

Section 8: Add a new subsection (5) as follows:

It shall be an unfair labor practice for either party to an agreement that has been registered pursuant to section 12 of this Act, to violate or to fail to observe any condition of such agreement.

Section 9 (c). Strike out the present section and substitute the following:

(c) Whenever a controversy affecting commerce arises among employees concerning the representation of employees for collective bargaining the Commission may, at the request of any party to the controversy or on its own initiative, investigate such controversy and certify to the parties and to the employer, in writing, the name or names of the representatives who have been designated or selected; but the employer shall not be recognized as a party to such a controversy. At any such investigation, the Commission shall provide for an appropriate hearing, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

In the conduct of any election for the purposes herein indicated, the Commission shall designate who may participate in the election and establish the rules to govern the election. The Commission shall have access to and have power to make copies of the books and records of the employer, to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Section 10 (a): Strike out the present section and substitute the following:

The Commission is empowered, as hereinafter provided, to issue a cease and desist order to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. The power to issue such cease and desist orders shall be vested exclusively in the Commission: *Provided*, That nothing in this section shall limit the jurisdiction of the several district courts of the United States as provided in section 11.

Section 12: Strike out the present section and substitute the following:

Whenever there shall be presented to the Commission an agreement between an employer and a duly represented collective bargaining agency of his employees (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice), together with a written request by both parties to the agreement that the Commission register the agreement, then the Commission shall have the power and the duty to register the agreement and to supply to each of the parties a certificate of registration thereof: *Provided*, That the Commission may in its discretion refuse registration of the agreement if, in the opinion of the Commission, the agreement is contrary to existing law or would tend to defeat the purpose of this Act, or does not contain such minimum provisions for notice of intention to change the agreement, and for adjusting complaints and disputes, as the Commission may require by appropriate rules and regulations not inconsistent with this Act.

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William M. Leiserson

Section 9 (c) page 10, lines 9 and 10: For "whenever a question affecting commerce arises concerning the representation of employees," substitute:

Whenever a question affecting commerce arises among the employees, concerning the representation of employees.

[15] COMMENTS

(References are to S. 1958, unless otherwise noted).

PREAMBLE

The change from "encourage the amicable settlement of labor disputes" to "diminish the causes of labor disputes" is made because the latter phrase is broader and contains a better tie-up to commerce and the constitutional basis of the act, as declared in section 1, and because the former phrase suggests adjustment or conciliation, in respect of which the Board has no power under the present bill.

DECLARATION OF POLICY

The second paragraph is comparatively identical with the section in the committee draft, except that the former omits reference to the "peaceful settlement of labor disputes" and stresses the intention "to encourage the practice of collective bargaining." Both are modeled upon section 2 of the Norris Anti-injunction Act and provisions of various other congressional enactments.

The importance of the first paragraph in S. 1958, newly added, cannot be overestimated. The constitutional basis for this legislation, as expressly set forth in S. 1958, is as follows: (1) In the absence of equality of bargaining power, the rate of wages fails to keep pace with the rate of industrial expansion, profits, etc., thus aggravating depressions and impairing economic stability, with consequent detriment to the free flow of interstate commerce. This is the familiar argument as to the effect of mass purchasing power on the flow of commerce. The wage and hour provisions of the National Industrial Recovery Act can probably be sustained only upon this ground. (2) Denials of the right to bargain collectively through freely chosen representatives lead to strikes and other economic strife, thus creating physical and other obstructions to the flow of interstate commerce. This ground is independent of the purchasing-power argument. Both rest upon the power of Congress to regulate or prevent activity which, if left unrestrained, generally affects or burdens or obstructs commerce.

The constitutionality of the legislation is thus seen to depend upon just such findings by the courts as to effect on interstate commerce

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of the subjects of the regulation. It is well recognized that findings as to such facts by Congress are entitled to great weight. In 1921 Congress enacted the Packers and Stockyards Act, which provides comprehensive regulation of the activities of packers, stockyard owners, market agencies, dealers, and so forth. The constitutionality of this act was sustained in *Stafford* v. *Wallace* (258 U. S. [16] 495 (1922)), the Court saying, after a discussion of cases under the anti-trust laws:

> Of course, what we are considering here is not a bill in equity or an indictment charging conspiracy to obstruct interstate commerce, but a law. The language of the law shows that what Congress had in mind primarily was to prevent such conspiracies by supervision of the agencies which would be likely to be employed in it. If Congress could provide for punishment or restraint of such conspiracies after their formation through the antitrust law as in the *Swift case*, certainly it may provide regulation to prevent their formation. The reasonable fear by Congress that such acts, *usually lawful and affecting only intrastate commerce when considered alone*, will probably and more or less constantly be used in conspiracies against interstate commerce or constitute a direct and undue burden on it, expressed in this remedial legislation, serves as the intent charged in the Swift indictment to bring acts of a similar character into the current of interstate commerce for Federal restraint. *Whatever amounts to more or less constant practice and threatens to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it. This court will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly nonexistent.* [Italics ours.]

In *United States* v. *Ferger et al* (250 U. S. 199, 39 Sup. Ct. 445, 63 L. Ed. 936), the validity of an act of Congress punishing forgery and utterance of bills of lading for fictitious shipments in interstate commerce was in question. It was contended that there was and could be no commerce in a fraudulent and fictitious bill of lading, and therefore that the power of Congress could not embrace such pretended bill. In upholding the act, this court, speaking through Chief Justice White, answered the objection by saying:

> "*But this mistakenly assumes that the power of Congress is to be necessarily tested by the intrinsic existence of commerce in the particular subject dealt with, instead of by the relation of that subject to commerce and its effect upon it.* We say mistakenly assumes, because we think it clear that if the proposition were sustained, it would destroy the power of Congress to regulate as obviously that power, if it is to exist, must include the authority to deal with obstructions to interstate commerce (*In re Debs*, 158 U. S. 564), and with a host of other acts which, because of their relation to and influence upon interstate commerce, come within the power of Congress to regulate, *although they are not interstate commerce in and of themselves.*" [Italics ours.]

A particularly pertinent illustration under the commerce clause of judicial deference to congressional findings is the reversal of position by the court on the constitutionality of the grain futures legislation soon after the World War. In *Hill* v. *Wallace* (259 U. S. 44), decided 2 weeks after *Stafford* v. *Wallace*, the court struck down as unconsti-

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tutional under the taxing and interstate commerce powers, the Future Trading Act of 1921. The court declared:

It follows that sales for future delivery on the board of trade are not in and of themselves interstate commerce. They cannot come within the regulatory power of Congress as such, unless they are regarded by Congress, from the evidence before it, as directly interfering with interstate commerce so as to be an obstruction or a burden thereon. (*United States* v. *Ferger* (250 U. S. 199, 39 Sup. Ct. 445, 63 L. Ed. 936.) It was upon this principle that in *Stafford et al.* v. *Wallace et al* (258 U. S. 495, 42 Sup. Ct. 397, 66 L. Ed.), decided May 1, 1922, we held it to be within the power of Congress to regulate business in the stockyards of the country, and include therein the regulation of commission men and of traders there, although they had to do only with sales completed and ended within the yards, because Congress had concluded that through exorbitant charges, dishonest practices, and collusion they were likely, unless regulated, to impose a direct burden on the interstate commerce passing through.

Congress made haste to repair this omission, and in a few months enacted the Grain Futures Act, which imposed regulation not at-[17]tempted to be disguised as taxation (as was the case in the Future Trading Act). The new act expressly declared:

SEC. 3. Transactions in grain involving the sale thereof for future delivery commonly conducted on boards of trade and known as "futures" are affected with a national public interest; and such transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling grain and the products and byproducts thereof in interstate commerce; that the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of grain and the products and byproducts thereof and to facilitate the movements thereof in interstate commerc that such transactions are utilized by shippers, dealers, millers, and others engaged in handling grain and the products and byproducts thereof in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price; that the transactions and prices of grain on such boards of trade are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control, which are detrimental to the producer or the consumer and the persons handling grain and products and byproducts thereof in interstate commerce, and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in grain and the products and byproducts thereof and render regulation imperative for the protection of such commerce and the national public interest therein.

The following year this act was sustained in *Board of Trade* v. *Olson* (262 U. S.) as a valid exercise of the power over interstate commerce, although the court admitted that "it was not the sales and delivery of the actual grain which are the chief subject" of the act's regulation, but rather the "contracts of sales of grain for future delivery, most of which do not result in actual delivery but are settled by offsetting them with other contracts of the same kind." The Court wrote (at pp. 33–36):

The Grain Futures Act which is now before us differs from the Future Trading Act in having the very features the absence of which we held in the somewhat

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carefully framed language of the foregoing prevented our sustaining the Future Trading Act. As we have seen in the statement of the case, the act only purports to regulate interstate commerce and sales of grain for future delivery on boards of trade because it finds that by manipulation they have become a constantly recurring burden and obstruction to that commerce. Instead, therefore, of being an authority against the validity of the Grain Futures Act, it is an authority in its favor. * * *

It is impossible to distinguish the case at bar, so far as it concerns the cash grain, the sales to arrive, and the grain actually delivered in fulfillment of future contracts, from the current of stock shipments declared to be interstate commerce in *Stafford* v. *Wallace* (258 U. S. 495, 42 Sup. Ct. 397, 66 L. Ed. 735). That case presented the question whether sales and purchases of cattle made in Chicago at the stockyards by commission men and dealers and traders under the rules of the stockyards corporation could be brought by Congress under the supervision of the Secretary of Agriculture to prevent abuses of the commission men and dealers in exorbitant charges and other ways, and in their relations with packers prone to monopolize trade and depress and increase prices thereby. It was held that this could be done, *even though the sales and purchases by commission men and by dealers were in and of themselves intrastate commerce, the parties to sales and purchases and the cattle all being at the time within the city of Chicago.* * * *

In the act we are considering, Congress has expressly declared that transaction and prices of grain in dealing in futures are susceptible to speculation, manipulation, and control which are detrimental to the producer and consumer and persons handling grain in interstate commerce and render regulation imperative for the protection of such commerce and the national public interest therein. * * *

It is clear from the citations, in the statement of the case, of evidence before committees of investigation as to manipulations of the futures market and [18] their effect, that *we would be unwarranted in rejecting the finding of Congress as unreasonable*, and that *in our inquiry as to the validity of this legislation we must accept the view that such manipulation does work to the detriment of producers, consumers, shippers, and legitimate dealers in interstate commerce in grain and that it is a real abuse.* [Italics ours.]

The recent decisions under the National Industrial Recovery Act, notably those in the *Weirton* and *"hot-oil" cases*, make almost imperative explicit Congressional findings rather than a recital of vague, general purposes such as are found in section 1 of the National Industrial Recovery Act. (Compare the precise, detailed findings in sec. 2 of the Securities Exchange Act.) Certainly it is no more difficult here to find the requisite effect on interstate commerce than is required to sustain all the wage and hour provisions of the codes under the National Industrial Recovery Act, the operation of the Railway Labor Act of 1926 insofar as it affects railway clerks who are not themselves directly engaged in the movement of interstate traffic, or the operation of the Railway Retirement Act of 1934, even as affecting trainmen and engineers. It is believed that the constitutional basis of the present act is more clearly supported in the decided cases than that of the National Industrial Recovery Act provisions, in view of the added ground of jurisdiction; i. e., effect on interstate commerce of strikes, lockouts, etc., as manifested in the *Coronado Coal* and *Bedford Stone-*

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cutters cases, among others cited by Senator Wagner in his opening statement, in which the courts have found strikes by workers located wholly within a State to affect commerce in the articles manufactured or mined, for the purposes of injunction under the antitrust laws. The problem under the present act, on this aspect of Federal jurisdiction, is substantially on all fours with that in *Stafford* v. *Wallace*, as the language quoted from that case above will clearly demonstrate. Whether we rely on this or the purchasing power theory, the findings in S. 1958 should be of great assistance in sustaining the constitutionality of the present act.

DEFINITIONS

Section 2 (1): The two drafts are identical except for the inclusion in S. 1958 of "trustees," and the pluralization of all terms, to take account of multiple parties defendant without the necessity of repetition throughout the act.

Section 2 (2): S. 1958 omits the limitation to persons employing 10 or more employees found in the committee draft. Section 7 (a) imposes no such arbitrary minimum requirement. Numerous cases have arisen in which the protection of the act is needed and where fewer employees were involved. In some industries, such as motion pictures and trucking, employee units of 3, 2, and even 1 are not at all uncommon. Moreover, an express limitation to any specific number of employees will doubtless afford opportunities for evasion by the organization of enterprises in smaller independent units of larger chains, in industries where this has not already been the normal trend of business organization. As now drafted, the act in any case requires the proper showing of effect on interstate commerce in the individual case, and this is believed to be a sufficient safeguard, with- [19] out discriminating against employees in those industries where employee units are small.

The parenthesis in the committee draft is omitted as unduly confusing and as making the entire reference to labor organizations in the subsection very ambiguous and difficult of construction. The extreme case against which the parentheses [sic] was intended to guard does not seem to justify endangering the entire purpose of the provision, that a labor organization or anyone acting in the capacity of officer or agent of such organization shall not be deemed to be an employer and subject to the act because of activities which it is the very purpose of labor organizations or their officers to engage in.

Section 2 (3): The added qualification of "substantially equivalent employment" in S. 1958 is readily justified. A striker or one discriminatorily discharged might, in desperation, accept some undesirable but nevertheless "regular employment."

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Extremely important changes have been made with reference to the inclusion of employees whose work has ceased under particular circumstances. First, the committee draft requires that the cessation be a consequence of, or in connection with, any current labor dispute connected with an unfair labor practice. This would require, in the case of a worker discriminatorily discharged, that a strike or immediate threat of strike exist before such worker may be considered an "employee" within the meaning of the bill. This is particularly clear from the emphasis on current labor dispute. There is thus a premium on strife rather than peace. S. 1958 corrects this by including as an "employee" one whose work has ceased because of any unfair labor practice. This has a constitutional basis apart from the dispute or strike aspect of industrial relations, on the theory that a discriminatory discharge interferes with self-organization and the process of collective bargaining, with the consequences recited in section 1.

Second, the committee draft would exclude from the definition of employee an individual "whose work has ceased * * * in connection with any current labor dispute * * *", but not in connection with an unfair labor practice. The result of this would be that employees who go out on a perfectly justifiable strike for higher wages or better working conditions would have no right under the act to participate in an election conducted during the strike period, or to freedom from interference, restraint, or coercion, and would probably not have the protection of the act if certain of their members, the strike leaders, for example, were discriminated against in reinstatment after all had agreed to return to work on the employer's terms, or if the employer absolutely refused to bargain collectively with the union in establishing the terms on which work might be resumed. The Textile Board (compare Textile Executive order, sec. 2), and the National Labor Relations Board have both ruled that discrimination against particular strikers under the above circumstances is a violation of the present section 7 (a) and the National Labor Relations Board has on the same basis required an employer to bargain collectively, saying (matter of Resnick Bros. and International Pocketbook Workers Union, Mar. 15, 1935):

> We do not believe it was the intention of Congress in section 7 (a), or that it is consistent with public policy, to hold that the obligation of an employer to attempt the adjustment of differences through collective bargaining ceases at the most crucial point in the collective bargaining process.

[20] Moreover, the definition would seriously limit existing case law on the subject. Under the National Industrial Recovery Act, the codes merely provide minimum standards, leaving adjustment upward to collective bargaining. A strike is a weapon recognized by the law as legitimate in the economic struggle incident to obtaining

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such increase. As the Court of Errors and Appeals of New Jersey recently stated, in *Bayonne Textile Corporation* v. *American Federation of Silk Workers:*

The right to organize and bargain collectively connotes the right to strike in event that such course is deemed advisable by the employees for their mutual aid or protection. The latter is an incident of, and imparts efficacy to, the former. It cannot be that Congress intended to reserve the right of collective action, in respect of wages, and to deprive the employees of the only weapon at their command to make its exercise effective—a lawful weapon devised to secure the enforcement of a fundamental right. A construction that would deny to the employees the privilege of striking, to enforce what they conceive to be a just demand for a wage increase, would emasculate and devitalize the clause conferring the right to organize and bargain collectively. The denial of this long-established fundamental right to strike would, in effect, compel acceptance of the scale of wages fixed by the employer. The act does not provide compulsory arbitration, in any form, of wage controversies.

The courts took the same view prior to the National Industrial Recovery Act. Thus Chief Justice Taft stated, in *American Steel Foundries* v. *Tri-City Council* (257 U. S. 184):

Labor unions * * * were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he though fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body in order, by this inconvenience, to induce him to make better terms with them. They were withholding their labor, of economic value, to make him pay what they thought it was worth. The right to combine for such a lawful purpose has, in many years, not been denied by any court. The strike became a lawful instrument in a lawful economic struggle, or competition, between employer and employees as to the share or division between them of the joint product of labor and capital.

Other judicial decisions, notably under the Clayton Act, sustained the position that a worker striking for better terms is an employee for certain purposes under the act. In *Michaelson* v. *United States* (291 Fed. 940), the Circuit Court of Appeals declared, in determining whether strikers against whom contempt proceedings were brought for alleged violation of an injunction were entitled to trial by jury under the terms of the Clayton Act:

In the case of a controversy over wages and conditions of work in a private and local industry, we agree with counsel for plaintiff in error that a "strike" does not of itself terminate the relation of employer and employee. A controversy arises, and the employees, then at work, say to their employer:

"We shall stop work until you are in what we may consider a more reasonable state of mind. We shall deprive you of our labor as a legitimate means of exerting economic pressure to induce you to yield. If we do go out, we shall remain at hand, ready to negotiate with you concerning fair wages and working rules, and ready to return to work the monent we agree.

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"If, by reason of a failure to agree, the employees stop their work, a strike is on. They are no longer working and receiving wages; but in the absence of any action, other than above indicated looking to a termination of the relationship, they are entitled to rank as 'employees', with the adjective 'striking' defining their immediate status."

[21] The court went on to find, however, that the particular strike was one against the Government and therefore an insurrection. On the latter point, it was reversed in the Supreme Court (266 U. S. 42).

Similarly, *Greenfield* v. *Central Labor Council* (104 Oreg. 236), decided on an identical State statute, rules:

Because a strike was declared and the union employees walked out, plaintiff claims that the relation of employer and employee ceased to exist; that there was no longer any "dispute concerning terms or conditions of employment", wherefore chapter 346, Laws 1919, would not apply. Counsel have not cited, and we have not found, any authority which sustains that contention, and where that question has been decided the authorities are against it. On this point, section 20 of the Clayton Act (38 Stat. L. 738 (U. S. Comp. St. par. 1243d)), is identical with section 2 of chapter 346, Laws 1919.

In *Tri-City Central Trades Council et al.* v. *American Steel Foundries* (238 Fed. 728, 151 C. C. A. 578), construing the Clayton Act, the Circuit Court of Appeals, seventh circuit, holds:

"A labor union, of which former employees engaged in a strike were members, is not a mere intermeddler, whose interference with other employees may be restrained, when only lawful means are used, since a strike does not fully terminate the relationship between the parties, but creates a relationship, neither that of general employer and employee, nor that of employers and employees seeking work from them as strangers."

The opinion there says:

"Neither strike nor lockout fully terminates during the strike the relationship between the parties."

In *Duplex Printing Press Co.* v. *Deering et al.* (252 Fed. 772, 164 C. C. A. 562), the syllabus lays down the rule that:

"Where union employees of open shop go out on strike for closed shop, employer's action for injunction against officers and members of union organizations to which strikers belong held within Clayton Act * * * relating to granting of injunctions in cases growing out of dispute concerning conditions of employment."

In *Iron Molders' Union* v. *Allis-Chalmers Co.* (166 Fed. 45, 91 C. C. A. 631, 20 L. R. A. (N. S.) 315), in his concurring opinion Judge Grosscup of the Circuit Court of Appeals, seventh circuit, says:

"A lockout is a cessation of the furnishing of work to employees in an effort to get for the employer more desirable terms. Neither strike nor lockout completely terminates, when this is its purpose, the relationship between the parties, * * *. Manifestly, then, pending a strike or a lockout, and as to those who have not finally and in good faith abandoned it, a relationship exists between employer and employee that is neither that of the general relation of employer and employee, nor again that of employer looking among strangers for employees, or employees seeking from strangers employment."

Indeed it is held that there is no "strike" at all in the absence of such intention on the part of employees to return to their jobs (*Uden* v. *Schaefer*, 110 Wash. 391).

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Other cases, apart from those cited or referred to above, where a mere strike for better working conditions was declared not to have terminated the employer-employee relationship are: *State* v. *Personett* (114 Kan. 680); *Kemp.* v. *Division* (241, 255 Ill. 213); *Fryns* v. *Fair Lawn Co.* (114 N. J. Eq. 462). Of course, this gives rise to the problem of when a strike is "terminated" or "lost" (Cf. *Dail Overland Co.* v. *Willys Overland, Inc.*, 263 Fed. 171, affd., 274 Fed. 56; *West Allis Foundry Co.* v. *State*, 186 Wis. 25; *Moore Drop Forging Co.* v. *McCarthy*, 243 Mass. 554); but S. 1958 provides that the labor dispute shall be "current," and the employer is free to hasten its end by hiring a new permanent crew of workers and running the plant on a normal basis. While expressions in some cases may indicate a contrary view, these must be distinguished as dealing with such questions as liability of strikers for trespass, the doctrine of respon- [22] deat superior, or the responsibility of the employer under a contract to deliver goods. It is fair to say that "in similar cases involving legislation guaranteeing to 'employees' certain rights in relation to their employer, the courts have uniformly ruled that employees on strike retain their status as employees and are entitled to assert the rights granted by the statute" (matter of Resnick Brother, supra). In *Fryns* v. *Fair Lawn Co.*, above, workers on strike were declared to be employees for the purpose of applying and enforcing section 7 (a), as incorporated in the President's reemployment agreement.

The broader definition of "employee' in S. 1958 does not lead to the conclusion that no strike may be lost or that all strikers must be restored to their jobs, or that an employer may not hire new workers, temporary or permanent, at will. All that is protected here is the right of those in a current labor dispute or strike to participate in elections, to be free from discrimination in reinstatement after they have agreed to return on the employer's terms, to collective bargaining, to freedom from interference, restraint, or coercion, etc. As already stated, the definition goes no further than the existing construction of 7 (a) by the Textile Board and the National Labor Relations Board, and the existing judicial concept of a striker. The limitation in the committee draft would be a distinct step backward and an unjustified restraint on the right to strike for better terms.

It should be noted also that the limitation would require employees to act at their peril in striking against what they consider to be an unfair labor practice under the act, since a finding by the Board in a close case (of which there are many) that no unfair practice was proved by a preponderance of the evidence would result in such strikers being excluded entirely from the benefits of the act in the respects above noted.

Section 2 (4): S. 1958 drops the language "designated by employees to act for them" as redundant, particularly since there is no need to

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differentiate between representatives of employees and of employers, unfair employee practices having been omitted.

Section 2 (5): The two drafts are substantially identical except that S. 1958 includes the term "plan" for obvious reasons. It has been argued frequently by employers as well as by protagonists of the bill last year that an employee representation plan or committee arrangement is not a labor organization or a union but simply a method of contact between employers and employees. But the act is entitled to prescribe its own definitions of labor organizations, for its own purposes, and it is clear that unless these plans, etc., are included in the definition, whether they merely "deal" or "adjust", or exist for the purpose of collective bargaining, most of the activity of employers in connection therewith which we are seeking to outlaw would fall outside the scope of the act. The act would thus be entirely nullified. If, as employers insist, such "plans", etc., are lawful representatives of employees, then employer activity relative to them should clearly be included.

For like reasons, S. 1958 adds to the purposes for which labor organizations exist, "grievances", and "labor disputes", in addition to the traditional wages, hours, and working conditions. In most cases employee representation plans or committees are nothing but agencies for presenting and discussing grievances or other minor [23] matters, and do not address themselves at all to the fundamental issues of collective bargaining agreements as to hours, wages, and basic working conditions. To exclude the term "grievances" particularly would exclude from the provisions of this act the vast field of employer interference with self-organization by way of such plans or committees.

Section 2 (6): Substantially identical.

Section 2 (7): While this is newly added in S. 1958, it is merely a short-hand device used so that the same succession of phrases need not be repeated throughout the act whenever the constitutional basis for action must be stated, as was done in the committee draft (in secs. 10 (a) and 8 (a), for example). A similar purpose underlies section 2 (b) of the Packers and Stockyards Act and section 2 (b) of the Grain Futures Act, both of which have been fully sustained as to congressional power under the commerce clause, in the *Stafford* and *Olsen* cases cited above. The section in the Packers Act, for example, reads as follows:

> For the purpose of this (but not in anywise limiting the foregoing definition) a transaction in respect to any article shall be considered to be in commerce if such article is part of that current of commerce usual in the livestock and meat-packing industries, whereby livestock, meats, meat food products, livestock products, dairy products, poultry, poultry products, or eggs, are sent from one state with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another state, or for slaughter of live-

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stock within the state and the shipment outside the state of the products resulting from such slaughter. Articles normally in such current of commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act.

This provision will be further discussed in connection with section 10 (a).

Section 2 (8): Identical.

Section 2 (9): The definition in S. 1958 is new. The term "labor dispute" is used throughout S. 1958 and the committee draft, and is an important jurisdictional requirement in many instances. A carefully phrased as well as broad difinition seems essential. The definition included here is taken entirely from the Norris Anti-injunction Act, section 13 (c).

Section 2 (10): The name of the Board is changed in S. 1958 from National Industrial Adjustment Board to National Labor Relations Board. The latter is convenient in that it is the name of the present Board; the former designation is misleading since the Board will not engage in adjustment or conciliation but in adjudicating and enforcing specific provisions of law laid down by Congress.

Section 2 (11): The change here is merely to conform to the present set-up since the establishment of the National Labor Relations Board under Public Resolution 44.

NATIONAL LABOR RELATIONS BOARD

Section 3 (a): S. 1958 establishes an impartial board of three members appointed by the President by and with the advice of the Senate, as an independent agency in the executive branch of the Government. Precedents may be found in the Reconstruction Finance Corpora-[24] tion, the National Mediation Board, the Securities Exchange Commission, Federal Housing Administration, Communications Commission, Federal Trade Commission, Interstate Commerce Commission, etc. Precedents for the sliding scale of original appointments are the Communications Act, the Securities Exchange Act, Section 4 (a); Federal Trade Commission Act, section 1.

There is no provision for partisan members, either voting or non-voting, since it has generally come to be recognized that such membership impairs the impartial action of the Board as a quasijudicial body and leads to compromise and adaptation on questions of law as to which Congress has laid down clearly defined policies. It should be noted that either the National Board or the regional agencies may under the powers conferred upon the Board in section 4 (a), "utilize voluntary and uncompensated services * * *," and thus establish advisory panels of employers and employees.

Section 3 (b): Substantially identical.

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Section 4 (a): The committee draft made no provision for the appointment without regard to the civil-service laws of an executive secretary, special experts, or regional directors, and limited the establishment of regional or local boards to those made up by voluntary and uncompensated services. Under S. 1958 all employees apart from those specifically mentioned will be subject to the civil-service laws. Much of the importance of the Board's work will depend upon permanent, chiefly compensated, regional or local agencies situated throughout the country to act as trial tribunals, for the hearing of complaints in first instance under the direction of a trained, compensated regional director. It is imperative that the Board have full control over such regional agencies in order that it may achieve that efficiency and flexibility in administration which it is the purpose of all such administrative agencies to achieve. Moreover, the reports of investigations in first instance by examiners, etc., from some other agency or department or bureau, would be hearsay, and the records taken by such examiners cannot be made the basis of a cease and desist order under the terms of this act.

Under S. 1958, it will be possible for the Board to utilize an existing industrial board as its agency for the purposes of the act, for example, by having one of the Board's own examiners sit in with such board and take a record upon which a cease and desist order could be issued, when special cases arise before such industrial boards which require the application of this act.

Section 4 (b): The intent of the two drafts is substantially similar. S. 1958 makes express that the personnel of the old Board shall be transferred to and become employees of the Board (see also Federal Trade Commission Act, sec. 3; Communications Act, sec. 603 (a)); and care has been taken to preserve, in the discretion of the Board, orders of the old Board under Public Resolution 44, and the prosecution of judicial proceedings in the courts pursuant to orders of the old Board under that resolution. (See also Communications Act, sec. 604; Securities Exchange Act, sec. 210.)

Section 4 (c): Substantially identical.

Section 5: The two drafts are identical, except that it is made express in S. 1958 that the Board may meet and exercise "any or all of its powers" at any place other than the District of Columbia. (See also Communications Act, sec. 154 (e)).

[25] The power granted in the second sentence is taken from section 3 of the Federal Trade Commission Act, and is similar to that given like administrative tribunals in other acts. The provision in the third sentence is merely a statutory statement of a decision under the Federal Trade Commission Act (*J. B. Kobi* v. *F. T. C.*, 23 F. (2d) 41).

Section 6 (a): The two drafts are identical, except that S. 1958 omits the limitation that the rules by "reasonable." In no case do the rules have the force of law in the sense that criminal penalties or

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fines accrue for their violation, and it seems sufficient that the rules prescribed must be "necessary to carry out the provisions" of the act. The limitation in the committee draft can only result in confusion in the interpretation of the term "reasonable," without really making any change of substance. The provision as drafted in S. 1958 is substantially identical with that in Packers and Stockyards Act, section 407; N. I. R. A., section 10 (a); Cotton Control Act of 1934; section 15 (a), etc.

The rules in any case become effective only upon publication, thus circumventing the recent criticism of the N. R. A. in connection with the Supreme Court's decision in the "hot oil" case.

Section 6 (b): This provision in S. 1958 is new. The same power is granted the present Board under section 3 (a) (1) of the Executive order of June 29, 1934, for the purpose of reporting to the President whether such other boards shall be designated as special boards and given the powers that the President is authorized to confer by Public Resolution 44. While it is not contemplated that the public resolution will be continued, such powers to study and receive reports from such boards are essential if the Board is to have the information necessary for the intelligent exercise of its authority under section 10 (b); i. e., to defer its exercise of jurisdiction over an unfair labor practice where there is another means of prevention provided for by agreement, code, law, or otherwise which has not been utilized, and to institute proceedings under the act thereafter, even in a case where it has so deferred. Without such information, furthermore, it will be impossible for the Board to determine whether it should utilize such industrial board for the purpose of this act. It should be noted that this power is limited to other boards, and is no authority for broad fishing expeditions into the affairs of private citizens (Cf. Federal Trade Commission Act, sec. 6).

S. 1958 omits section 13 of the committee draft, requring an annual report to Congress. This provision is quite usual, and there can be no objection to its reinsertion in the present act.

RIGHTS OF EMPLOYEES

Section 7: This section, while newly added in S. 1958, is nothing more than a verbatim recital of the various rights granted employees under section 7 (a). The text of that section is as follows:

> (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or pro- [26] tection; (2) that no employee and no one seeking employment shall be required as a condition of employment to * * * refrain from joining, organizing, or assisting a labor organization of his own choosing.

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Comparable provisions are found in various other Federal statutes.

Railway Labor Act of 1934, section 2:

The purposes of the act are * * * (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization. * * * Employees shall have the right to organize and bargain collectively through representatives of their own choosing. * * * No carrier, its officers, or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees. * * *

Emergency Transportation Act, section 7 (e):

Carriers, whether under control of a judge, trustee, receiver, or private management, shall be required to comply with provisions of the Railway Labor Act and with provisions of section 77, paragraphs (o), (p), and (q) of the amendments to the Bankruptcy Act. Subdivision (p) reads: "No judge or trustee acting under this act shall deny or in any way question the right of employees on the (property under his jurisdiction to join the labor organization of their choice, and it shall be unlawful for any judge, trustee, or receiver to interfere in any way with the organizations of employees." (See also sec. 77 (b), added in 1934, applicable to corporate reorganizations under the Bankruptcy Act, subdivision (1) and (m).)

Norris Anti Injunction Act: In the interpretation of this act, and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

"Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; * * *"

S. 1958 omits the unfair employee practice in the committee draft (sec. 3 (5)) relative to interference with employers in the designation of representatives for collective bargaining. No factual need has been demonstrated for any such provision, and it is largely meaningless. It has the positive effect, moreover, of weakening the fundamental principle upon which the legislation is based, i. e., to equalize bargaining power by affording employees full freedom of self-organization. There is thus presented an opening wedge for further and more effectual restrictions by Congress on labor union activity, which again, it is not the purpose of this legislation to impose.

Section 8 (1): This is a blanket unfair labor practice, to protect the rights cited in section 7, and again the phrase "interfere with, restrain

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or coerce," is taken from section 7 (a) of the National Industrial Recovery Act. Such a general unfair practice is necessary, since the courts may emasculate or construe very narrowly some one of the following specific unfair practices. Furthermore, employers [27] will doubtless find methods of interference, etc., which are not specifically recited in the other unfair practices, but are just as effective in impeding self-organization and collective bargaining. Thus, subdivisions (2), (3), and (4) and [sic] are not exclusive, and, furthermore do not limit the general scope of subdivision (1).

Section 8 (2): The two provisions are quite similar in language, purpose, and intent. The provision in S. 1958 makes express that it is an unfair practice to dominate or interfere with the formation of a labor organization or to contribute support in some manner, equally destructive of self-organization, but other than "financial." While possibly an employer should not be penalized for merely suggesting to his employees that they organize a union or a committee, i. e., for "initiating" a labor organization, it cannot be argued that an employer should be free to help form the labor organization by engaging actively in its sponsorship, and in the drafting of its bylaws, etc. As the testimony before the committee last year and this year amply demonstrates, it is at the stage of "formation" that employer activity is most effective and harmful. Such activity would not be included under "administration", which refers to the activity of the labor organization as a going proposition. A comparable provision is section 2 (4) of the Railway Labor Act, as amended in 1934, providing as follows:

* * * it shall be unlawful for any carrier * * * to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor * * * or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

To the same effect are the provisions of the Bankruptcy Act, as amended in 1933 and 1934, and section 7 (e) of the Emergency Railroad Transportation Act of 1933. Under these sections it is unlawful for a carrier, whether under control of a judge, trustee, receiver, or private management, and for such judge, trustee, or receiver in a corporate reorganization under the Bankruptcy Act—

* * * to use the funds of the [property] under his jurisdiction in maintaining so-called "company unions", or to influence or coerce employees to induce them to join or remain members of such company unions.

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The provisos in the two drafts are similar in purpose. S. 1958 omits the reference to "local representatives of employees," which, on examination, is largely meaningless. If such representatives are not employees, then they would not be compensated in any case. If they are employees, there is no need for a confusing additional term. The proviso in the committee draft is similar to that in the Railway Labor Act, where it applies not only to financial support but to all of section 2 (4), including the majority rule. In S. 1958 it is elsewhere expressly declared (under sec. 9 (a)) that the majority rule is not to affect the right of any employee or group of employees to present grievances through representatives of their own choosing.

[28] Section 8 (3): The two drafts are substantially identical. The purpose here is to cover all forms of discrimination in hire or tenure of employment or conditions of employment, including the "yellow-dog contract," whose enforcement in the Federal courts is already outlawed by the Norris Antiinjunction Act. Precedents for the provision are subdivision (2) of section 7 (a) of the National Industrial Recovery Act, stating that "no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing"; section 2 (5) of the Railway Labor Act, as amended in 1934; amendments to the Bankruptcy Act of 1933 (subdivision (q)) and 1934 (subdivision (m)); and section 7 (e) of the Emergency Transportation Act of 1933.

The provisos in the two drafts are similar in purpose. They are intended merely to preserve the status quo as to the legality of closed-shop agreements under the common law in the different States, and to make clear that neither section 7 (a) nor any other statute of the United States precludes such agreements, provided that the labor organization represents a majority and is not established, maintained, etc., by action constituting an unfair labor practice.

The proviso does not make closed-shop agreements legal; it merely says that nothing herein should illegalize them. The operation of State common law on the subject is left unaffected. The parentheses in S. 1958 substitutes "assisted" for "controlled," since the former term extends the scope and clarifies the meaning of the proviso, whereas the latter is merely repetitious of "maintain" and of the general theme of "domination."

Further, S. 1958 applies the general policy of the proviso to workers already on the job, for otherwise the proviso would be much narrower than existing case law sanctioning closed-shop agreements in some jurisdictions. In the following cases the court held the legality of closed-shop agreements though they affected existing employees: *Kemp* v. *Division* (241, 255 Ill. 213); *Jacobs* v. *Cohen* (183 N. Y. 207); *Parkinson* v. *Building Trades Council* (154 Calif. 581); *Harper* v.

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Local Union (48 S. W. (2d) 1033 (Tex. Civ. App.)); *Gasaway* v. *Borderland Coal Corp.* (278 Fed. 56); *Local Branch No. 248* v. *Salt* (8 Ohio App. 437). This list includes most of the jurisdictions which have passed upon and sustained the legality of the closed shop. In the *Kemp* case, the court wrote:

> If it is proper for workmen to organize themselves into such combinations as labor unions, it must necessarily follow that it is proper for them to adopt any proper means to preserve that organization. If the securing of the closed shop is deemed by the members of a labor union of the utmost importance and necessary for the preservation of their organization, through which alone they have been enabled to secure better working conditions, and if to secure that is the primary object of the threat to strike, *even though in the successful prosecution of the object of the combination injury may result instanily to nonunion men through the loss of their positions, that object does not become unlawful.* It is apparent that in this case the sole purpose was to ensure employment by the Railways Co. of union men only. The appellees had the right to retain their membership in the union or not, as they saw fit. On the other hand, if the members of the union honestly believed that it was to their best interest to be engaged in the same employment with union men only and that it was a detriment and a menace to their organization to associate in the same employment with non-members, it was their right to inform the common employer that they would [29] withdraw from its service and strike unless members of the union only were employed, even though an acquiescence in their demands would instantly result in the loss of employment on the part of the nonunion men. It was only incumbent upon them to act in a peaceful and lawful manner in carrying out their plans. * * * [Italics ours.]

So also in *Jacobs* v. *Cohen*, above:

> * * * This contract was voluntarily entered into by the Cohens and, if it provided for the performance of the firm's work by those only who were accredited members, in good standing, of an organization of a class of workmen whom they employed, were they not free to do so? If they regarded it as beneficial for them to do so (and such is a recital of the contract) does it lie in their mouths, now, to urge its illegality? *That it might result in the discharge of some of those employed, for failure to come into affiliation with their fellow workmen's organization, or that it might prevent others from being engaged upon the work*, is neither something of which the employers may complain, nor something with which public policy is concerned. [Italics ours.]

Unless this change is made as provided in S. 1958, most strikes for a closed shop or even for a preferential shop would by this act in effect be declared to be for an illegal purpose, and hence would be enjoinable in many States. The law on the question is in great confusion in the State courts, and any uniform rule as a Federal statute would work hardship and injustice in many areas. This is accentuated by the fact that the law in many States is in a state of change. In New Jersey, for example, a strike for a closed shop was recently held legal (*Bayonne Textile Mills* v. *American Federation of Silk Workers*, 172 Atl. 551) reversing sub silentio several earlier cases. *Lehigh Structural Steel Co.* v. *Atlantic Smelting and Refining Works* (92 N. 5 [sic] Eq. 131); *Baldwin Lumber Co.* v. *International Brotherhood* (91 N. J. Eq. 240).

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As the legislative history of 7 (a) demonstrates, nothing in that section was intended to deprive labor of its existing right in many States to contract or strike for a closed or preferential shop (House Committee Hearings, pp. 116–122; Senate Committee Hearings, pp. 389–390). And this has been the view of enlightened courts (*Bayonne Textile Mills* v. *American Federation of Silk Workers*, above; *Farulla* v. *Freundlich*, N. Y. Sup. Ct. Dec. 1, 1934). No reason appears for a contrary view here.

The last sentence of the proviso in the committee draft has been omitted. It is surplusage at best, and at worst might be construed by a hostile court in such a way as to illegalize closed shop agreements, and thus defeat the entire purpose of the proviso.

Section 8 (4): While this provision was not in the committee draft, it is merely a reiteration of the Executive order of May 15, 1934, issued pursuant to the National Industrial Recovery Act, providing as follows:

> No employer subject to a code of fair competition approved under said title shall dismiss or demote any employee for making a complaint or giving evidence with respect to an alleged violation of the provisions of any code of fair competition approved under said title.

The need for this provision is attested by various decisions of the National Labor Relations Board (matter of New York Rapid Transit Corporation, decided Nov. 21, 1934; matter of Zenith Radio Corporation, decided Nov. 26, 1934; matter of Ralph A. Freundlich, Inc., decided Feb. 13, 1935).

[30] REPRESENTATIVES AND ELECTIONS

Section 9 (a): S. 1958 provides for a mandatory majority rule; the committee draft left this all-important matter in the discretion of the Board. Experience with the automobile board clearly shows that proportional representation is confusing and provocative of strife, and, moreover, in operation defeats all true collective bargaining. The proviso in S. 1958 is better in that it states that individuals or minority groups have an express right at any time to present grievances through representatives of their own choosing.

Immediate precedents for the mandatory majority rule, apart from its establishment under the War Labor Board and the Railway Labor Act of 1920, are the following:

Railway Labor Act of 1934, section 2 (4):

> Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have a right to determine who shall be the representative of the craft or class for the purpose of this act.

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Executive order of June 28, 1934, establishing the Steel Labor Relations Board, section 3:

After * * * such election the Board shall certify the result to all concerned, and the person, persons, or organization certified as the choice of the majority of those voting shall be accepted as the representative or representatives of said employees for the purpose of collective bargaining, without thereby denying to any individual employee or group of employees the right to present grievances, to confer with their employers or otherwise to associate themselves and act for mutual aid or protection.

Executive order of September 26, 1934, establishing the National Textile Labor Relations Board, section 5:

The Board shall certify the results of all elections * * * and the person, persons, or organization certified as the choice of the majority of those voting shall be accepted, for the purpose of collective bargaining, as the representative or representatives of the employees eligible to participate in the election, without thereby denying to any individual employee or group of employees the right to present grievances, to confer with their employers, or otherwise to associate themselves and act for mutual aid or protection.

Executive order of February 1, 1934, conferring additional powers upon the National Labor Board, section 1:

* * * Thereafter the Board shall publish promptly the names of those representatives who are selected by the vote of at least a majority of the employees voting, and have been thereby designated to represent all the employees eligible to participate in such an election for the purpose of collective bargaining or other mutual aid or protection in their relations with their employer.

Section 9 (b): The two drafts are substantially identical, except that S. 1958 provides a standard against which the Board's action may be weighed, for purposes of review when an order relative to an unfair labor practice is issued based upon the results of an election. The same necessity for unit determinations is embraced in the definition of majority rule in the Railway Labor Act of 1934 as set out above, although in that industry the nature of the department or craft alinement is so clearly defined as to require no express elaboration.

Section 9 (c): S. 1958 makes express that an election hearing may be held either in conjunction with a proceeding to adjudicate [31] whether an unfair labor practice has been committed, or otherwise. Similar provisions authorizing the conduct of elections may be found in the Executive orders cited above dealing with the National Labor Board, Textile Labor Relations Board, and Steel Labor Relations Board, as well as in Public Resolution 44, section 2, and the Railway Labor Act of 1934, section 2 (9). The latter provision is as follows:

SEC. 2. (9) If any dispute shall arise among the carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within 30 days after the receipt of the invoca-

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tion of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within 10 days designate the employees who may participate in the election.

S. 1958 omits the mediatory power conferred upon the Board in section 10 (b) of the committee draft, to offer its services to the parties to aid in determining representatives of employees (although the matter is not one within its express jurisdiction). This seems an added burden which probably should not be imposed. Public pressure might well force the Board to take on a great deal of additional work.

Section 9 (d): This provision makes express the intent of section 10 of the committee draft, that an election is merely a method of determining a particular fact and is not subject to court review until after the results have been made the basis in whole or in part of an order relative to an unfair labor practice (pursuant to sec. 10 of S. 1958 or sec. 8 of the committee draft, respectively). When such order is made the certification and the record of the vote in the election must be included in the transcript required to be filed in court, and will be subject to review as to the facts and the law in the same manner as other findings of the Board.

PREVENTION OF UNFAIR LABOR PRACTICES

Section 10 (a): S. 1958 makes express that the power to prevent unfair labor practices, as defined in and under the procedure of that act, is vested exclusively in the Board, and is not affected in any way by any other means of adjustment or prevention that has been or may be established by agreement, code, law, etc. This is essential to clarify the paramount position of the Board under the act and to constitute it a real Supreme Court of Labor.

Under section 8 (a) of the committee draft, the Board took jurisdiction only in the case of an unfair labor practice that "has led or threatens to lead to a labor dispute that might affect commerce or obstruct the free flow of commerce." This would seem to require [32] that in every individual case a strike either be in progress or be immediately threatened. Such strike or threat of strike would be a jurisdictional requirement, and so the act would put a premium

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on industrial warfare rather than operate as an instrument of peace. The provision in S. 1958 (see definition of "affecting commerce", above sec. 2 (7)) is broader and more carefullyw orded. As stated above under section 1, it is believed not to go beyond the constitutional power of Congress to regulate commerce wherever there is an unfair labor practice which is "tending to lead to a labor dispute that might burden or affect commerce." This puts emphasis on the generally well-known fact, as found by Congress in section 1, that such practices generally lead to obstructions, rather than require a specific showing of immediate danger of obstruction in every individual case. This position is clearly fortified by *Stafford* v. *Wallace*, above. Moreover, S. 1958 rests on a constitutional basis apart from the dispute or strike problem, as stated above under section 1. An unfair labor practice, though not leading in a particular case to a strike or other controversy or dispute, may "affect" or "burden" or "obstruct the free flow of" interstate commerce by its effect on self-organization and collective bargaining, with consequent detriment to purchasing power and the movement and flow of goods and trade.

Section 10 (b): This provision is intended to carry out more explicitly the purpose to establish the Board as the paramount body in labor relations. Otherwise there would be a multiplicity of boards and agencies interpreting the law in various ways. Typically such other agencies are unsuited to dealing with legal interpretation, since they are generally bipartisan and are established primarily for, and deal with, problems of adjustment of controversies over wages and hours. This atmosphere of conciliation and adjustment is not conducive to dispassionate interpretation of law. Widely varying interpretations create discord and confusion. It seems essential that the experience with section 7 (a) be not duplicated under this act.

The provision will operate somewhat as follows: Where the facts establishing an unfair labor practice do not constitute also a violation of section 7 (a) or of some other statute, this provision has no application at all, since there is no other means of "prevention." Where the facts constitute a violation of both statutes, the Board may defer exercising jurisdiction under this statute and permit the other agency to proceed under other methods of enforcement as for a 7 (a) violation. The other agency in no case deals with unfair labor practices as defined in S. 1958 or uses the procedures or exercises the powers of subpena, etc., provided in S. 1958, unless of course the Board should constitute such other agency its agent for the purposes of unfair labor practices under and pursuant to S. 1958, in accordance with its powers under section 4 (a).

Section 10 (c): The two drafts are substantially similar, except that the committee draft required complaints to be cleared through the Secretary of Labor, who, through the Conciliation Service, would

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previously have exhausted all efforts at settlement of the matter. Under S. 1958, the Board is of course independent of any department, has no powers of conciliation, and is authorized and directed to enforce, not compromise, specific rights of employees as laid down by Congress.

[33] The procedure set up is typical of that established for many similar judicial tribunals, such as the Federal Trade Commission Act, section 5; the Packers and Stockyards Act, section 203; the Securities Exchange Act, section 21 (a); the Grain Futures Act, section 6 (b); Clayton Antitrust Act, section 11, and others. S. 1958 is drafted principally after the Federal Trade Commission Act, but draws upon the best features of the other statutes. Great care has been taken to spell out in detail the members, agents, or agencies who, or which may exercise the particular functions involved.

The provision in S. 1958 relative to amendments of complaints is somewhat broader than that in the committee draft, but both are in general intended to apply here the liberal rules of code pleading relative to conforming pleadings to the proof.

The provision in S. 1958 for 3 or more days notice of complaint is identical with that in section 6 (b) of the Grain Futures Act.

S. 1958 makes express that "the rules of evidence prevailing in courts of law or equity shall not be controlling." It is the very purpose of an administrative tribunal to cut through the maze of legal forms and rules of evidence in order to get at the truth. It is generally recognized that administrative bodies similar to the Board to be set up here are not and in their very nature cannot be restricted in their proceedings to the rules of evidence prevailing in the courts. Thus in *John Bene & Sons, Inc.*, v. *Federal Trade Commission* (299 Fed. 468), the United States Court of Appeals for the Second Circuit, inquiring whether the Commission was bound by the formal rules of evidence, stated:

> We incline to think that it is not by the statute, and having regard to the exigencies of administrative law, that it should not be so restricted. We are of the opinion that evidence or testimony, even though legally incompetent, if of the kind that usually affects fair-minded men in the conduct of their daily and more important affairs, should be received and considered; but it should be fairly done.

That the same rule obtains in a host of other administrative tribunals is shown by the work of Judge Harold M. Stephens, Assistant Attorney General, entitled "The Rules of Evidence in Administrative Tribunals" (Harvard University Press, 1933).

The Board's conduct of the case as to due process of law in connection with notice of hearing, introduction of evidence, amendments to complaints, etc., will be subject to judicial review in every case in which applications for enforcement or petitions for review are made. There will thus be constant check on the Board's handling of individual

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cases in the individual circumstances in which they arise, and there is absolutely no need for further restrictive provisions in the procedural operations of the Board. As a matter of fact the procedure is spelled out in S. 1958 far more carefully than in many comparable statutes. Compare, for example, the Interstate Commerce Commission [sic] (49 U. S. C., sec. 17): "The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice"; Communications Commission [sic] (47 U. S. C., sec. 154 (j)): semble; [sic] and Securities Exchange Act, for example, section 19 (a):

> The Commission is authorized * * * after appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding 12 months or to withdraw the registration of a national security exchange if the Commission finds that such exchange has violated any provision of this title. * * *

[34] Section 10 (d): The two drafts are substantially identical. S. 1958 spells out expressly that if the Board should find no proof that an unfair labor practice has been committed it should make findings of fact and issue an appropriate order dissolving the complaint. Such negative order is expressly made subject to review by a party aggrieved, under section 10 (g). Further, S. 1958 substitutes "and to take such affirmative action, including restitution, as will effectuate the policies of this act," for the comparable provision in the committee draft, "or to take such affirmative action or to perform any other acts that will achieve substantial justice under the circumstances." The phrase "substantial justice" has no real significance in terms of the problems of this act, whereas the phrase "effectuate the policies of this act" refers directly back to the statement of policies in section 1. The broad term "restitution" is used in S. 1958 to take in the host of varied forms of reparation which the National Labor Relations Board has been making in its present decisions, to suit the needs of every individual case. An effort to substitute express language such as reinstatement, back pay, etc., necessarily results in narrowing the definition of restitution, which may include many other forms of action. For precedent, we may cite the corrective decrees of equity courts under the Sherman and Clayton Acts and under the Railway Labor Act (in the *Texas* case). Statutory precedents are: Interstate Commerce Act, 49 U. S. C., section 5 (15), 16 (12); Communications Act, section 401 (b); Packers and Stockyards Act, section 315. These provisions typically authorize a court to "enforce obedience" to a more or less complex administrative order "by a writ of injunction or other proper process, mandatory or otherwise, to restrain such person * * * from further disobedience of such order or to enforce upon him or them obedience to the same."

Section 10 (e): The two drafts are identical except that S. 1958 provides expressly for "reasonable" notice. Similar sections are com-

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mon; for example, section 5 of the Federal Trade Commission Act, section 203 (c) of the Packers and Stockyards Act.

Section 10 (f): The two drafts are substantially identical. Both provide for review in the circuit court of appeals. Provisions for similar enforcement of orders of administrative bodies made upon like procedures may be found in the Federal Trade Commission Act, section 5; the Clayton Act, section 11. Other statutes authorize criminal penalties as well as like court review by parties aggrieved, the court in like manner making orders affirming, modifying, or setting aside the orders of the Board or Commission. (Packers and Stockyards Act, sec. 204; Communications Act, sec. 402 (e); Grain Futures Act, sec. 6; Securities Exchange Act, sec. 25 (a).)

S. 1958 authorizes application to the Court of Appeals of the District of Columbia, as well as the other circuit courts mentioned, and the party aggrieved by an order may in like manner apply to the same court, as well as the others. To the same effect is the Securities Exchange Act, section 25 (a), and the Communications Act, section 402 (where this is the only court of review). Section 2 (11) of the committee draft would preclude utilization of this court, either as to application by the board or by a party aggrieved, unless the unfair practice itself occurred in the District, and for that reason has been omitted. Another minor venue change is from "carries on business" [35] to "transacts business." Under the cases the latter phrase has been definitely construed to take in activities of corporations although not amounting to "doing business" within the highly technical definition (*Eastman Kodak Co.* v. *The Southern Photo-Materials Co.*, 273 U. S. 359.)

S. 1958 provides expressly for temporary relief or restraining orders pending final disposition. This is essential to expedite relief and to make the Board's orders really effective to prevent the continuance of unfair practices pending the final order of the court. Such temporary orders are clearly justified here since they will be granted by the court in its discretion upon the determination of the Board based upon an adequate record, the finding of fact of the Board being binding upon the court if supported by evidence. Such provision for relief pendente lite is not at all novel and precedents may be found in the following statutes, whether or not an order has already been made upon a prior record before an administrative board:

Packers and Stockyards Act, section 204 (c):

> At any time after such transcript is filed * * * the court, on application of the Secretary, may issue a temporary injunction restraining, to the extent it deems proper, the packer and his officers, directors, agents, and employees, from violating any of the provisions of the order pending the final determination of the appeal.

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The Sherman Antitrust Act, section 4:

When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

The Clayton Antitrust Act, section 15:

When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and make determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

(See also sec. 16.)

The Securities Exchange Act, section 21 (e):

The Commission * * * may in its discretion bring an action in the proper district court of the United States, the Supreme Court of the District of Columbia, or the United States courts of any Territory * * * to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond.

The provision in both drafts that the objections not urged before the Board shall not be considered by the court except under unusual circumstances is included for the reason that administrative tribunals are frequently harried and their proceedings unduly prolonged by objections raised for the first time in the reviewing court. Plain justice requires that objections should first be made before this Board. The Securities Exchange Act, in section 25 (a) goes further and provides without any qualification that "no objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission."

Many comparable statutes may be cited in support of the provision in both drafts that "the findings of the Board as to the facts, if supported by evidence, shall be conclusive." See, for example, Federal Trade Commission Act (sec. 5); Clayton Act (sec. 11); [36] Tariff Act of 1930 (sec. 337 (c)). Other statutes, coming to the same result, provide that the court should enforce obedience if it determines that "the order was regularly made and duly served, and that the carrier is in disobedience of the same." (Interstate Commerce Act, 49 U. S. C., sec. 16 (12); Packers and Stockyards Act, sec. 315, 316.) (These provisions are to be distinguished from these authorizing orders of such bodies as the Interstate Commerce Commission for the payment of money, where findings as to the facts are "prima facie" evidence only (49 U. S. C. sec. 16 (2)).) Otherwise there would be constant reiteration of the same issues of fact and the entire purpose of establishing an administrative body with experience to deal with the facts and the operation of a particular statute, would be entirely

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nullified. As the Supreme Court recently declared in *Federal Trade Commission* v. *Keppel and Bros.* (291 U. S.), speaking of the Federal Trade Commission:

> It (the Commission) was created with the avowed purpose of lodging the administrative functions committed to it in "a body specially competent to deal with them by reason of information, experience, and careful study of the business and economic conditions of the industry affected", and it was organized in such a manner, with respect to the length and expiration of the terms of office of its members, as would "give to them an opportunity to acquire the expertness in dealing with these special questions concerning industry that comes from experience." (Report of Senate committee, No. 597, June 13, 1914, 63d Cong. 2d sess., pp. 9, 11. See *Federal Trade Commission* v. *Beechnut Packing Co.*, supra, at 453; compare *Illinois Central R. R.* v. *Interstate Commerce Commission*, 206 U. S. 441, 454.) If the point were more doubtful than we think it, we should hesitate to reject the conclusion of the Commission, based as it is upon clear, specific, and comprehensive findings supported by evidence.

So also in *Tagg Brothers & Moorhead* v. *U. S.* (280 U. S. 420):

> A proceeding under section 316 of the Packers and Stockyards Act is a judicial review, not a trial de novo. The validity of an order of the Secretary, like that of an order of the Interstate Commerce Commission, must be determined upon the record of the proceedings before him—save as there may be an exception of issues presenting claims of constitutional right, a matter which need not be considered or decided now. (*Louisville & Nashville R. R. Co.* v. *United States*, 245 U. S. 463, 466, 38 S. Ct. 141, 62 L. Ed. 400; compare *Liscio* v. *Campbell* (C. C. A.) 34 F. (2d) 646, 647; and see *Prendergast* v. *New York Telephone Co.*, 262 U. S. 43, 50, 43 S. Ct. 466, 67 L. Ed. 853; and *Ohio Valley Water Co.* v. *Ben Avon Borough*, 253 U. S. 287, 289, 40 S. Ct. 527, 64 L. Ed. 908.) *On all other issues his findings must be accepted by the court as conclusive*, if the evidence before him was legally sufficient to sustain them and there was no irregularity in the proceeding. To allow his findings to be attached or supported in court by new evidence would substitute the court for the administrative tribunal as the rate-making body.

This form of judicial review is clearly constitutional, as against various objections such as, that the Board is constituted "judge and prosecutor", or is vested with "judicial power." (*Arkansas Wholesale Grocers Association* v. *Federal Trade Commission*, 18 F. (2d) 866, certiorari denied 42 Sup. Ct. 30; *Tagg Bros. & Moorhead* v. *U. S.*, 280 U. S. 420.) The legal implications of so-called "jurisdictional facts" will, under this statute as well as all others, be examined more closely. See *Tagg Brothers & Moorhead* v. *United States*, above.

Section 10 (g): The two drafts are substantially similar in providing a remedy of petition to review to any person aggrieved by an order granting or denying in whole or in part the relief sought. The petitioning party has the same broad liberty of venue as the Board in applying for enforcement, and the procedure is substan- [36] tially the same. Similar practice is provided for in all the statutes cited above in discussing section 10 (a). S. 1958 makes express that upon the filing of a petition to review the court has the same jurisdiction, even to granting to the Board appropriate temporary relief or restraining

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order. This is essential, for otherwise an employer might by rushing into courts first avoid the imposition of temporary restraint. It is enough that the remedy is provided so that the aggrieved party may in his own right make his own choice of convenient venue and vindicate his innocence. There is no other real distinction between the court's function on an application by the Board or the party aggrieved; in either case, as under the statutes cited above, the court makes an order affirming, modifying, or setting aside the Board's order. There is similar provision for temporary relief at the request of the administrative board, on petition for review by the party aggrieved, in Packers and Stockyards Act, section 204 (c).

Both drafts go further than most existing statutes in requiring that upon the filing of the petition to review the aggrieved party, and not the Board, shall file the record before the court. This makes no essential difference since the record will in any case have to be certified by the Board, and the regular rules of the circuit courts of appeals require that the petitioning party in any action shall pay for the cost of printing the record.

Section 10 (h): The two drafts are identical except that, for reasons already stated, the provision is extended to include the case where a petition to review is filed as well as where the Board itself applies for enforcement. Similar sections are common (Perishable Commodities Act, sec. 10; Interstate Commerce Act, sec. 15 (2); Communications Act, sec. 408); and it should be noted that there is an identical provision, likewise applicable to a procedure by way of petition to review, in the Securities Exchange Act, section 25 (b).

Such provision seems to be necessary in order to keep running the time in which the employer would be in violation of the Board's order, for example, for purposes of back pay.

Section 10 (i): The drafts are identical except that S. 1958 goes further to include temporary relief or restraining order. This is justified for the reasons stated above, because of the peculiar need for speed in the temporary and permanent enforcement of the Board's orders. Unless this is included the provision for temporary relief would be entirely nullified.

Section 10 (j): Identical. Similar provisions are numerous. Cf. the Federal Trade Commission Act (sec. 5), and the Clayton Antitrust Act (sec. 11), which go even further and provide that "such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited."

Section 11: This provision is newly added in S. 1958, and is closely modeled on comparable provisions in the Sherman Act (sec. 4), and the Clayton Act (sec. 15), among others. It provides an alternative method of procedure in the district courts under the direction of the Attorney General through the various district attorneys, in instances

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where the Board may be particularly overburdened, where the circumstances require immediate use of court process, where the [38] circuit courts of appeals are in vacation, or where for other reasons such procedure is preferable.

Section 12 (a): Under S. 1958 the Board may, in addition to appointing an agent to act as arbitrator, appoint any person to act as such arbitrator. This meets a rather frequent situation where the Board would be unwilling to act itself or through an agent, and the parties would gladly accept any appointee of the Board.

Under the committee draft, agreements to arbitrate are stated to be "enforceable as to the submitting parties" if the submission is accepted by the Board. This has been eliminated from S. 1958, since the Board should be free to decline to proceed with arbitrations which it does not wish to handle. However, S. 1958 expressly provides that if the Board desires to compel arbitration, it may proceed ex parte and shall have power to issue an award applicable to the submitting parties, enforceable in the manner provided.

Section 12 (b): This is newly added in S. 1958. While the Board has power to make rules in general, that power might be held inapplicable to arbitrations, inasmuch as an arbitration is a voluntary act. Moreover, most arbitration agreements merely provide that the parties shall submit disputes to the Board. It therefore seems desirable that such agreements should result in arbitrations conducted in accordance with the rules and regulations of the Board, as is expressly provided for herein. Furthermore, should arbitration submissions become so numerous as to be a burden upon the Board's docket or time, it would be unwise to require that the Board attend personally. For this reason S. 1958 declares that an agreement to submit to arbitration by the Board shall be deemed consent to arbitration before agents, who in the discretion of the Board may render a decision in its name, or may take a record upon which the Board may itself make a decision.

Section 12 (c): S. 1958 provides a more convenient venue in the case where the parties have failed to make an agreement as to the district court in which the award may be filed. Moreover, it states expressly, in immediate proximity to the provision authorizing the court to enter judgment, that employees shall not be compelled to render labor or service without their consent. While both the committee draft and S. 1958 reserve the right to strike and the right of an individual to terminate his employment, in respective sections at the end of both bills, it might be argued that such general section did not apply to the court order enforcing an arbitration award, inasmuch as the parties had voluntarily agreed to be bound by the award of the arbitrators.

Section 12 (d): S. 1958 omits subdivision 1 of the committee draft, inasmuch as the draft itself contains no specific provisions indicating

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just how arbitrations are to be conducted. It substitutes for this the provision that the arbitration must be in accordance with the rules adopted for the conduct of the arbitration; these rules must in turn under section 6 (a) be necessary to carry out the provision of section 12.

S. 1958 inserts a proviso limiting the definition of the defense of fraud of which a party may avail himself under this subsection. This is necessary, since courts have all too frequently condemned the practice of appointing partisans as arbitrators, applying the analogy of commercial arbitration. This is, of course, erroneous, [39] inasmuch as it is universally recognized that arbitrators in industrial relations are admittedly appointed because of their partisanship, the chairman of the arbitration board alone generally being a neutral member.

Section 12 (e): Identical.

Section 12 (f): This states more clearly the conditions under which an award may be modified for formal irregularities or clerical errors of computation, etc. It is taken verbatim from the United States Arbitration Act.

Section 12 (g): Under the committee draft, if part of an award were invalid and set aside, the valid portion could not be sustained unless all interested parties "shall agree that the valid part is severable." This seems unduly restrictive, inasmuch as it is unlikely that both sides will ever agree as to this. S. 1958 allows the court itself to determine whether or not the parts are severable. This rule is well accepted common-law arbitration doctrine.

Section 12 (h): The committee draft was silent as to procedure when an award was vacated by the court. S. 1958 provides that in such case the matter be remanded to the Board, as is provided in the Federal Arbitration Act. This seems wise since in many cases the basis for the vacation of the award might be corrected by the arbitrator with very little difficulty. If a new arbitration appears unwise, the Board is given discretion to discontinue the proceedings. Where the matter is resubmitted, the Board has power to modify the arbitration agreement. The Board might find a different procedure in the second arbitration prefereable, or, if the arbitrators had practiced fraud, the Board would undoubtedly wish to appoint new arbitrators.

S. 1958 omits subdivision (g) and (h) of the committee draft (sec. 9) as surplusage, or as conveying the impression that the courts are given blanket jurisdiction relative to such arbitration agreements, in the way of specific enforcement, etc. Subsection (e), likewise omitted, authorizes appeal to the circuit court of appeals. This was at first thought unnecessary, but it would now seem desirable to reincorporate this provision. Subsection (f) seems an undesirable provision and has been omitted.

Section 13: S. 1958 authorizes the utilization of the powers of investigation and subpena under this section in arbitrations as well

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as elections and hearings as to unfair labor practices; provided, of course, that the arbitration is one "affecting commerce." Despite the alleged voluntary aspects of arbitration submissions, arbitrators sometimes have to proceed ex parte and in any case have full need for subpena power. If is, of course, not uncommon for arbitrators under State laws to be granted such power, as is also done under the Railroad Labor Act (sec. 7 (h)), and no good reason appears for denying it here.

Section 13 (1): S. 1958 takes care to recite with great particularity who may issue subpenas, before whom the investigation in question may be conducted, etc. As in the committee draft, the power to issue subpenas is limited to Board members. This is common (for example Federal Trade Commission Act, sec. 9; Interstate Commerce Act, 49 U. S. C., sec. 17). The Securities Exchange Act goes even further and authorizes the issuance of subpenas by an officer desig-
[40] nated by the Commission (sec. 21 (b)). See also Communications Act, section 409.

S. 1958 provides, also, that agents of the Board may have access to, for the purpose of examination and the right to copy, evidence relating to matters under investigation. There is an identical provision in the Federal Trade Commission Act, section 9, which reads:

> That for the purpose of this act the Commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against * * *

In the Interstate Commerce Act (49 U. S. C., sec. 20 (5)), and in the Communications Act (sec. 220 (c)). .There are similar provisions in section 2 (9) of the Railway Labor Act of 1934 ("the Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph"), and section 4 of the Executive order of June 28 establishing the National Steel Labor Relations Board ("the Board shall have access to such pay rolls and other documents as will enable the Board to prepare and certify lists of employees eligible to vote in elections").

The last sentence in S. 1958 is new. It is essential for the operation of the entire investigatory power, since the Board may, under section 5, by one or more of its members or agents prosecute any inquiry necessary to its functions in any part of the United States. The provision here is very common, and is on the same order as the following:

Federal Trade Commission Act, section 9:

> Such an attendance of witnesses and the production of such documentary evidence may be required from any place in the United States, at any designated place of hearing.

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Securities Exchange Act, section 21 (b):

For the purpose of any such investigation, or any other proceeding under this title, any member of the Commission or any officer designated by it is empowered to administer oaths and affirmations, subpena [sic] witnesses, compel their attendance, take evidence, and require tne production of any books, papers, correspondence, memoranda, or other records which the Commission deems relevant or material to tne inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

Other provisions to the same effect are Agricultural Adjustment Act, section 10 (h); Packers and Stockyards Act, section 402; Grain Futures Act, section 6 (b); Communications Act, section 409.

Section 13 (2): This method of enforcement of subpenas of an administrative board has been deemed constitutional ever since *I. C. C.* v. *Brimson* (154 U. S. 448), under the Interstate Commerce Act. Similar provisions may be found in Federal Trade Commission Act, section 9; Securities Exchange Act, section 21 (c); and in all the other statutes above cited. Indeed, many statutes have gone further and imposed criminal penalties for failure to comply with such orders of administrative boards, for example, Federal Trade Commission Act, section 10; Securities Exchange Act, section 21 (c); Agricultural Adjustment Act, section 10 (h); Packers and Stockyards Act, section 402; Interstate Commerce Act (49 U. S. C., sec. 46), [41] and have provided for alternative methods of enforcing such orders by mandamus. Securities Exchange Act, section 21 (f); Federal Trade Commission Act, section 9; Agricultural Adjustment Act, section 10 (h).

The venue provisions have been rearranged somewhat so that it is possible to make an application to the courts of the District of Columbia in addition to those already cited. This is not a common provision and may if not wisely administered lead to adverse criticism. It might be best, therefore, to insert the reference to the United States Courts of the District of Columbia immediately following the word "possession."

Section 13 (3): This is the common provision requiring the production on evidence properly demanded or the attendance or testimony of witnesses. The privilege against self-incrimination is, however, met by a provision against prosecution for or on account of matters concerning which testimony or evidence has been produced on order of the Board. Under the provision as stated, the parties subpenaed are granted immunity in every respect in which the Constitution affords the protection of the privilege against self-incrimination, at the same time without impeding the orderly proceedings of the Board (*Brown* v. *Walker*, 161 U. S. 591; *Baltimore, etc., Railway Co.* v. *I. C. C.* 221 U. S. 612). Like provisions are Federal Trade Commission Act, section 9; Interstate Commerce Commission Act, sections 46, 47, 48; Communications Act, section 409 (i), etc.

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Throughout S. 1958, the phrase "documentary evidence" in the committee draft has been changed to read simply "evidence." This was in any case the intention of the committee draft, as witness section 11 (3) ("* * * or produce evidence, documentary or otherwise * * *"). The former phrase has been defined by the courts and in the dictionaries to mean of or pertaining to documents (see *F. T. C.* v. *American Tobacco Co.*, 264 U. S. 298), which, in turn, are defined as memorials of particular transactions rather than running accounts such as books or records (*Cudahy Packing Co.* v. *U. S.*, 15 F. (2d) 133). The adjective "documentary" is therefore very restrictive and would exclude the type of records, such as pay rolls, which the Board would have most need of.

The specific enumeration in S. 1958, "books, records, correspondence, documents, or other evidence," is preferable to the comparable language in the committee draft—"books, papers, contracts, agreements, and other documents." Under the decisions, papers, contracts, and agreements would probably be included under the generic term "documents", whereas correspondence (*U. S.* v. *L. & N. Railway Co.*, 236 U. S. 318) and books and records (*Cudahy Packing Co.* v. *U. S.*, *supra*) would not be so included. Note the comparable provision in the Securities Exchange Act, section 21 (d): "Books, papers, contracts, agreements, and other records and documents."

Section 13 (4): The two drafts are substantially identical. Similar versions are very common, as for example, Federal Trade Commission Act, section 9; Clayton Act, section 11.

Section 13 (5): This section is new. Its omission constituted a very serious defect in S. 2926 as originally introduced and in the committee draft. Throughout all these drafts application may be [42] made, either by the Board or a party aggrieved, to various courts. But unrestricted liberty of venue does not carry with it jurisdiction over the defendant or other persons required to be served, as the Railway Labor Board discovered to its dismay in *Robertson* v. *Railway Labor Board* (268 U. S. 619). This is true even where the administrative board is authorized in the broadest terms to invoke the aid of "any court of the United States." The provision here is not at all novel. It may be found in Securities Exchange Act, section 21 (c), "all process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found," and in section 27 "* * * and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found"; *Clayton Act*, section 12, "That any suit, action, or proceedings under the antitrust law against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all persons in

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such cases may be served in the district of which it is an inhabitant or wherever it may be found," and section 13, "that in any suit, action, or proceeding brought by or on behalf of the United States, subpenas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or criminal, arising under the antitrust laws may run into any other district * * *"; Perishable Commodities Act, section 7 (b), "The orders, writs, and other processes of the district court may in these cases run, be served, and be returnable anywhere in the United States." See also like provisions as to other defendants in Interstate Commerce Commission Act, section 16 (4); Communications Act, section 411; Sherman Act, section 5.

Section 13 (6): This is a typical provision in similar statutes. For example, section 8 of the Federal Trade Commission Act provides—

> that the several departments and bureaus of the Government, when directed by the President, shall furnish the Commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this act, and shall detail from time [sic] such officials and employees to the Commission as he may direct.

To the same effect are Agricultural Adjustment Act, section 10 (h); Packers and Stockyards Act, section 402, among others. There is always the limitation of Presidential approval and direction, and it seems unnecessary to add, as does the committee draft, a proviso that the information must not have related to trade secrets or have been received under an assurance of nondisclosure. There is no great objection, however, to including the latter part of this proviso again. It is recommended, however, that the reference to "trade secrets" be omitted, since immediately on passage of the act all documents and records will be claimed to fall in this category. The problem of trade-secret disclosure holds throughout in the exercise of the investigatory power, and the reckless disclosures of trade secrets by utilization of subpena power would be unconstitutional. But all action of administrative bodies is subject not only to this but all other constitutional checks, and it is impossible and wholly useless to attempt to meet every constitutional objection which may conceivably arise upon a particular state of facts. The problem is easily [43] taken care of by a rule and regulation or administrative practice that matters relating to trade secrets be not made public. Thus, under the Federal Trade Commission Act, the Circuit Court of Appeals declared in *Hughes* v. *Federal Trade Commission* (63 F. (2d) 362):

> The rule requiring public hearings, whether in courts or bureaus * * * is to be approved. Doubtless, on such a hearing as is provided, the Commission has discretion, on a showing that such a hearing would disclose trade secrets or other data in itself destructive of the business under investigation, to do whatever is proper and necessary to avoid these consequences. But where, as is here alleged the possibility of loss is founded wholly on the public knowledge that an

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investigation has been ordered, no good reason exists or can still be shown why the public hearing should not continue.

S. 1958 omits the provision in the committee draft, section 5 (d) regarding the Board's authority to call upon the Secretary of Labor for assistance and information. There is a similar provision in the Executive order, June 29, section 4 (a) (2), and while it is not contemplated that any difficulties in this regard will immediately arise, it might be well to include the same provision here.

Section 14: The two drafts are substantially idential, except that S. 1958 applies broadly to the performance of duties "pursuant to this Act", whereas the committee draft omits entirely the performance of duties relative to the investigation and conduct of hearings on unfair labor practices.

There is a comparable provision in Public Resolution 44, section 4, which reads:

> Any person who shall * * * impede or interfere with any member or agent of any board established under this resolution in the performance of his duties, shall be punishable by a fine of not more than $1,000 or by imprisonment for not more than one year, or both.

Section 15: S. 1958 is modeled on section 6 of Public Resolution 44, which reads: "Nothing in this resolution shall prevent or impede or diminish in any way the right of employees to strike or engage in other concerted activities." This is an affirmative declaration of the right to strike. The committee draft merely provides that nothing therein shall "make illegal" the failure or refusal of any employee individually, or any number of employees collectively, to render labor or service.

Section 16: The two drafts are similar in intent. S. 1958 includes other statutes which might be in conflict, such as Public Resolution 44 and the amendments to the Bankruptcy Act.

Section 17: Identical.

Section 18: For reasons stated above in connection with section 2 (10), the name of the act is changed to "National Labor Relations Act."

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NATIONAL LABOR RELATIONS BOARD

HEARINGS

BEFORE THE

COMMITTEE ON EDUCATION AND LABOR

UNITED STATES SENATE

SEVENTY-FOURTH CONGRESS

FIRST SESSION

ON

S. 1958

A BILL TO PROMOTE EQUALITY OF BARGAINING POWER BETWEEN EMPLOYERS AND EMPLOYEES, TO DIMINISH THE CAUSES OF LABOR DISPUTES, TO CREATE A NATIONAL LABOR RELATIONS BOARD, AND FOR OTHER PURPOSES

PART 1

MARCH 11, 12, 13, AND 14, 1935

Printed for the use of the Committee on Education and Labor

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CONTENTS

Statement of:
Biddle, Francis 73, 85
Green, William 101
Perkins, Hon. Frances 57
Wagner, Senator Robert F 32

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NATIONAL LABOR RELATIONS BOARD

MONDAY, MARCH 11, 1935

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D. C.

The committee met, pursuant to call, at 10 a. m., in the caucus room, Senate Office Building, Washington, D. C., Senator David I. Walsh presiding.

Present: Senators Walsh (chairman), Murray, Donahey, and Borah.

The CHAIRMAN. The committee will come to order, please.

Senator Wagner, I suppose you have no objection to our inserting in the record some of the previous history of this proposed legislation?

Senator WAGNER. Of course not.

The CHAIRMAN. Therefore, we will insert in the record the bill now before the committee, known as "S. 1958", introduced by Senator Wagner on February 15 (calendar day, February 21), 1935, entitled "A bill to promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes."

(The bill is here printed in full as follows:)

[S. 1958, 74th Cong., 1st sess.]

A BILL To promote equality of bargaining power between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DECLARATION OF POLICY

SECTION 1. Equality of bargaining power between employers and employees is not attained when the organization of employers in the corporate and other forms of ownership association is not balanced by the free exercise by employees of the right to bargain collectively through representatives of their own choosing. Experience has proved that in the absence of such equality the resultant failure to maintain equilibrium between the rate of wages and the rate of industrial expansion impairs economic stability and aggravates recurrent depressions, with consequent detrimental to the general welfare and to the free flow of commerce. Denials of the right to bargain collectively lead also to strikes and other manifestations of economic strife, which create further obstacles to the free flow of commerce.

It is hereby declared to be the policy of the United States to remove obstructions to the free flow of commerce and to provide for the general welfare by encouraging the practice of collective bargaining, and by protecting the exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or other mutual aid or protection.

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DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization, or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, or hours of employment.

(6) The term "commerce" means trade or commerce, or any transportation or communication relating thereto, among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or affecting commerce, or obstructing the free flow of commerce, or having led or tending to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183).

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created as an independent agency in the executive branch of the Government a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

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SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint such employees, and, without regard for the provisions of the civil-service laws or the Classification Act of 1923, as amended, appoint and fix the compensation of an executive secretary, assistant executive secretaries, and such attorneys, special experts, examiners, and regional directors, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services as may from time to time be needed.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist; and all pending investigations and proceedings of the old Board, and all proceedings in the courts pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), to which the old Board is a party, shall be continued by the Board in its discretion. All orders made by the old Board pursuant to said Public Resolution Numbered 44 shall continue in effect unless modified, superseded, or revoked by the Board after due notice and hearing. All employees of the old Board shall be transferred to and become employees of the Board at their present grades and salaries, without acquiring by such transfer a permanent or civil-service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

(b) The Board shall have authority and is directed to study the activities of such boards and agencies as have been or may be hereafter established by agreement, code, or law to deal with labor disputes, and to receive from such boards reports of their activities.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from mak-

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ing an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the majority of the employees in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or group of employees shall have the right at any time to present grievances to their employer through representatives of their own choosing.

(b) The Board shall decide whether, in order to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (d) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (f) or 10 (g), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise, except as provided in section 11.

(b) The Board may, in its discretion, defer its exercise of jurisdiction over any such unfair labor practice in any case where there is another means of prevention provided for by agreement, code, law, or otherwise, which has not been utilized. But in any case where the Board has so deferred, the Board may at any time thereafter institute proceedings under this Act in order to assure the effectuation of the policy of this Act and the development of a uniform body of administrative interpretation and practice with respect to unfair labor practices as defined herein.

(c) Whenever there is a charge or the Board shall have reason to believe that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than three days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer and to appear in person or otherwise and give testimony at the place and time fixed in the complaint, and to invoke the compulsory process of the Board in summoning witnesses in its behalf.

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In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to appear in the said proceeding to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(d) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including restitution, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dissolving the said complaint.

(e) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(f) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any circuit court of appeals of the United States within any circuit wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, or the Court of Appeals of the District of Columbia, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and shall make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgement and decree shall be final except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C. title 28, secs. 346 and 347).

(g) Any person aggrieved by an order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order

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complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (f), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and shall in like manner make and enter a decree enforcing, modifying, or setting aside, in whole or in part, the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(h) The commencement of proceedings under subsection (f) or (g) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(i) When granting appropriate temporary relief or restraining order, or making and entering a decree enforcing, modifying, or setting aside, in whole or in part, an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes" (U. S. C., title 29, secs. 101–115).

(j) Petitions filed under this Act shall be heard expeditiously, and if possible with ten days after they have been docketed.

SEC. 11. The several District Courts of the United States are hereby invested with jurisdiction to prevent and restrain any unfair labor practice affecting commerce; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, but solely at the request of the National Labor Relations Board, to institute proceedings in equity to prevent and restrain any such unfair labor practice, in the judicial district wherein such unfair labor practice occurred or wherein the person complained of resides or transacts business. Such proceedings may be by way of petition setting forth the case and praying that such violation be enjoined and that such affirmative action, including restitution, be required as will effectuate the policies of this Act. When such person shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearings and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

ARBITRATION

SEC. 12. (a) The Board shall have power to act and to appoint any person, agent, or agency to act as arbitrator in labor disputes, when parties agree to submit the whole or any part of a labor dispute to the arbitration of the Board or its appointees. A provision in a written contract or a written agreement to submit to the arbitration of the Board or its appointees, when accepted by the Board after the dispute has arisen, shall be valid and irrevocable as to the parties to the agreement, save upon such grounds as exist at law or in equity for the revocation of any contract. If any party fails, neglects, or refuses to perform under such contract or submission, the Board, its agents or appointees, may nevertheless, in the discretion of the Board, proceed to hear the case ex parte, and the Board, its agents or appointees, shall have the power to issue an award applicable to the submitting parties.

(b) The Board shall make and publish pursuant to section 6 (a), rules for the conduct of arbitrations, and an agreement to submit to the arbitration of the Board, or its appointees or its agents, shall be deemed consent to the proceeding being conducted in accordance with such rules then obtaining unless otherwise specified in the arbitration contract or submission. An agreement to submit to the Board shall authorize the Board to appoint agents to take evidence, and in the discretion of the Board, to render a decision in the name of the Board on the findings thus presented, unless otherwise specified in the agreement. The Board may, however, in its discretion, render a decision on testimony taken before its agents.

(c) In any case in which an award has been made, the Board shall file the award in the clerk's office of the United States District Court that has been agreed upon by the parties, or, in default of such agreement, that of the district wherein the labor dispute arose or the Supreme Court of the District of Columbia. Notice of the filing shall be personally served or sent by registered mail to each submitting party. Unless a petition to impeach the award on the ground hereinafter set forth shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment in

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accordance with the terms of the award: *Provided*, That no employee individually, and no group of employees collectively, shall be compelled to render labor or services without their consent.

(d) A petition for the impeachment of any award may be filed not more than ten days after the communication of notice of the filing of the award to the submitting parties. Notice of filing of such petition shall be served personally or sent by registered mail to each submitting party. The petition shall be sustained by the court only on one or more of the following grounds:

1. That the proceedings were not substantially in conformity with the provisions of the arbitration agreement or rules adopted for the conduct of the arbitration.

2. That an arbitrator or member of the Board participating in the award was guilty of fraud or corruption; or that a party to the award practiced fraud or corruption which affected the result: *Provided*, That partisanship known, or which by the exercise of due care should have been known, by a party prior to the arbitration proceeding, shall not constitute fraud of which he may avail himself within the meaning of this section.

(e) The court shall not set aside an award on the ground that it is invalid for uncertainty. In such case the court shall suspend action pending its resubmission of said award to the Board for interpretation.

(f) Where there was an evident material miscalculation of figures, or an evident material mistake in the description of any person, thing, or property referred to in the award, or where the arbitrators have awarded on a matter not submitted to them, unless it is a matter affecting the merits of the decision on the matters submitted or where the award is imperfect in the matter of form not affecting the matter of the controversy, the court shall modify and correct the award so as to effect the intent thereof and promote justice between the parties, and thereupon shall enter judgment in accordance with subsection (c).

(g) The court shall construe every award with a view to favoring its validity. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground for invalidity, but that a part of the award is valid, the court shall nevertheless enter judgment upon such part or parts of the award as are valid unless such part or parts are inseparable from the remainder of the award, in which case the entire award shall be vacated.

(h) If the petition for impeachment of the award is not sustained, the court shall enter judgment in accordance with the terms of the award, and in accordance with subsection (c). Where a petition for the impeachment of an award is granted, the award shall be vacated, and the court shall remand the arbitration to the Board, which may, in its discretion, accept the case for resubmission to arbitration in accordance with the terms of the original agreement or with such modifications as the Board deems fit, or it may refuse to take any further action regarding it.

INVESTIGATORY POWERS

SEC. 13. For the purposes of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9, section 10, and section 12 (in any arbitration affecting commerce)—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, within the jurisdiction of which the inquiry is carried

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on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, and the Supreme Court of the District of Columbia, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty of forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 14. Any person who shall willfully assault, resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. 15. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 16. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., title 15, sec. 707 (a)), as amended from time to time, or of section 77 (b), paragraphs (1) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (1) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall apply.

SEC. 17. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 18. This Act may be cited as the "National Labor Relations Act."

The CHAIRMAN. We will next insert in the record the original bill dealing with this subject introduced in the Senate on February 28 (calendar day, March 1), 1934, and known as "S. 2926", and entitled "A bill to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes be-

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tween employers and employees, to create a National Labor Board, and for other purposes."

(Said bill is printed in full as follows:)

[S. 2926, 73d Cong., 2d sess.]

A BILL To equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

SECTION 1. This Act may be cited as the "Labor Disputes Act."

SEC. 2. The tendency of modern economic life toward integration and centralized control has long since destroyed the balance of bargaining power between the individual employer and the individual employee, and has rendered the individual, unorganized worker helpless to exercise actual liberty of contract, to secure a just reward for his services, and to preserve a decent standard of living, with consequent detriment to the general welfare and the free flow of commerce. Inadequate recognition of the right of employees to bargain collectively through representatives of their own choosing has been one of the causes of strikes, lockouts, and similar manifestations of economic strife, obstructing commerce and imperiling the general welfare. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of commerce, to encourage the establishment of uniform labor standards, and to provide for the general welfare, by removing the obstacles which prevent the organization of labor for the purpose of cooperative action in maintaining its standards of living, by encouraging the equalization of the bargaining power of employers and employees, and by providing agencies for the peaceful settlement of disputes.

SEC. 3. When used in this Act—

(1) The term "person" includes individual, partnership, association, corporation, and the legal representative, trustee in bankruptcy, receiver, or trustee thereof, or the legal representative of a deceased person.

(2) The term "employer" means a person who has one or more employees, except that the term "employer" shall not include the United States, or any State, municipal corporation, or other governmental instrumentality, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization, or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" means any individual employed by an employer under any contract of hire, oral or written, express or implied (including any contract entered into by any helper or assistant of any such individual, whether paid by him or his employer, if such assistant or helper is employed with the knowledge, actual or constructive, of the employer), or any individual formerly so employed whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice: *Provided*, That the term "employee" shall not include an individual who has replaced a striking employee. Wherever the term "employee" is used, it shall not be limited to mean the employee of a particular employer, but shall embrace any employee, unless the Act explicitly states otherwise.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization, labor union, association, corporation, or society of any kind in which employees participate to any degree whatsoever, which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages or hours of employment.

(6) The term "commerce" means trade or commerce, or any transportation or communication relating thereto, among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

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(7) The term "unfair labor practice" means any unfair labor practice listed in section 5.

(8) The term "National Labor Board" means the National Labor Board created by section 201 of this Act.

SEC. 4. Employees shall have the right to organize and join labor organizations, and to engage in concerted activities, either in labor organizations or otherwise, for the purposes of organizing and bargaining collectively through representatives of their own choosing or for other purposes of mutual aid or protection.

SEC. 5. It shall be an unfair labor practice for an employer, or anyone acting in his interest, directly or indirectly—

(1) To attempt, by interference, influence, restraint, favor, coercion, or lockout or by any other means to impair the right of employees guaranteed in section 4.

(2) To refuse to recognize and/or deal with representatives of his employees, or to fail to exert every reasonable effort to make and maintain agreements with such representatives concerning wages, hours, and other conditions of employment.

(3) To initiate, participate in, supervise, or influence the formation, constitution, bylaws, other governing rules, operations policies or elections of any labor organization.

(4) To contribute financial or other material support to any labor organization by compensating anyone for services performed in behalf of any labor organization, or by any other means whatsoever.

(5) To fail to notify employees in accordance with the provisions of section 304 (b).

(6) To engage in any discriminatory practice as to wage or hour differentials, advancement, demotion, hire, tenure of employment, reinstatement, or any other condition of employment, which encourages membership or nonmembership in any labor organization: *Provided*, That where a contract or agreement of any kind is or shall be in force between an employer and a group of employees, the provisions of such contract or agreement regarding conditions of employment shall not, because of anything contained in this paragraph, compel an employer to observe similar conditions of employment in his relations with all his employees: *Provided further*, That nothing in this Act shall preclude an employer and a labor organization from agreeing that a person seeking employment shall be required, as a condition of employment, to join such labor organization, if no attempt is made to influence such labor organization by any unfair labor practice, if such labor organization is composed of at least a majority of such employer's employees, and if the said agreement does not cover a period in excess of one year.

SEC. 6. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain any unfair labor practice that burdens or affects commerce or obstructs the free flow of commerce, or has led or tends to lead to a labor dispute that might affect or burden commerce or obstruct the free flow of commerce, and it shall be the duty of the several district attorneys of the United States, but solely at the request of the National Labor Board, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain any such unfair labor practices.

TITLE II

SECTION 201. There is hereby created a Board, to be known as the "National Labor Board" (hereinafter referred to as the "Board"), which shall be composed of seven members, to be appointed by the President, by and with the advice and consent of the Senate. Two of such members shall, at the time of nomination, be designated as representatives of employers, two as representatives of employees, and three as representatives of the general public. The members representing the general public shall be appointed for terms of five years each, and the other members shall be appointed for terms of one year each, and all members shall be eligible for reappointment. Any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one of the members representing the general public as chairman of the Board. No member representing the general public shall engage in any other business, vocation, or employment. A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board. The Board shall have an official seal, which shall be indicially noticed.

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SEC. 202. (a) Each member representing the general public shall receive a salary of $10,000 a year. The other members shall each receive $25 per diem and necessary traveling and subsistence expenses when attending meetings of the Board. The Board shall appoint and fix the compensation of an executive secretary, and it shall have authority to appoint and fix the compensation of such attorneys, special experts, examiners, mediators, clerks, and other employees, and to establish such regional or local boards, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may make such appointments without regard to the civil-service laws or the Classification Act of 1923, as amended. The Board is directed to retain the officers and employees of the National Labor Board created by the President on August 5, 1933, to the fullest extent consistent with the efficient functioning of the Board.

(b) All the expenses of the Board, including all necessary traveling expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 203. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise all its powers at any other place. The Board may, by one or more of its members or by such employees as it may designate, prosecute any inquiry necessary to its duties in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 204. The Board may, either by itself or through its agents, offer its services to the parties to any labor dispute as conciliator or mediator in such dispute, and may act as conciliator or mediator for the parties who accept such offer.

SEC. 205. (a) The Board is empowered to prevent any person from engaging in any unfair labor practice that burdens or affects commerce or obstructs the free flow of commerce, or has led or tends to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

(b) Whenever any member of the Board, or the executive secretary, or any person designated for such purpose by the Board, shall have reason to believe, from information acquired from any source whatsoever, that any person has engaged in or is engaging in any such unfair labor practice, he shall in his discretion issue and cause to be served upon such person a complaint stating the general nature of the charges in that respect, and containing a notice of hearing before either an examiner or the Board at a place therein fixed, not less than twenty-four hours after the service of said complaint, but the examiner or the Board shall have discretion to continue or adjourn such hearing from time to time. Any such complaint may be amended by any member of the Board or by any person designated for that purpose by the Board at any time prior to the issuance of an order based thereon; and the original complaint shall not be regarded as limiting the scope of the inquiry. The person so complained of shall have the right to file an answer, to appear and give testimony at the place and time fixed in the complaint, and to avail himself of the compulsory process of the Board in summoning witnesses in his behalf. In the discretion of the examiner or the Board, any other person shall be allowed to appear in the said proceeding by counsel or in person to present testimony. In any such proceeding, the examiner or the Board shall not be bound by the rules of evidence prevailing in courts of law or equity.

(c) The testimony taken by an examiner or the Board shall be reduced to writing and filed in the office of the executive secretary. Thereafter, in its discretion, the Board may itself take further testimony and/or hear argument. If upon all the testimony taken, the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an appropriate order directed to such person. The order may require such person to cease and desist from such unfair labor practice, or to take affirmative action, or to pay damages, or to reinstate employees, or to perform any other acts that will achieve substantial justice under the circumstances. Such order may further require such person to make a report from time to time showing the extent to which he has complied with the order. Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the

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Board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(d) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any District Court of the United States within any district wherein the labor practices in question was engaged in or wherein such person resides or carries on business, or the Supreme Court of the District of Columbia, for the enforcement of the order of the Board, and shall certify and file in the court a transcript of the record upon which such order was entered, together with a copy of the findings and the order of the Board. Upon such filing of the petition and transcript, the court shall place such petition upon its motion or equity calendar and shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside in whole or in part the order of the Board. No objection to the order of the Board shall be considered by the court unless such objection shall have been urged before the Board. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, the court may order such additional evidence to be taken before the Board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree, affirming, modifying or setting aside, in whole or in part, any order of the Board, shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals or the Court of Appeals for the District of Columbia, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347). The commencement of proceedings under this subsection shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(e) Any person aggrieved by an order of the Board may obtain a review of such order in any district court of the United States in the district wherein the unfair labor practice in question was engaged in or wherein such person resides or carries on business, or in the Supreme Court of the District of Columbia, by filing in such court, within ten days after the entry of such order, a written petition praying that the order of the Board be modified or be set aside in whole or in part. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the record, certified by the Board, upon which the order complained of was entered, together with a copy of the findings and order of the Board. No objection to the order of the Board shall be considered by the court unless such objections shall have been urged before the Board. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, the court may order such additional evidence to be taken before the Board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree, affirming, modifying, or setting aside, in whole or in part, any order of the Board, shall be final, except that the same shall be subject to review by the appropriate Circuit Court of Appeals or the Court of Appeals of the District of Columbia, and by the Supreme Court of

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the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347). The commencement of proceedings under this subsection shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(f) No court shall have any jurisdiction to enjoin the Board or an examiner from taking action or holding hearings under a complaint.

(g) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

(h) Complaints, orders, and other process of the Board and its agents may be served by anyone duly authorized by the Board, either (1) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer, or a director of the corporation to be served; or (2) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (3) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business; or (4) by sending a telegraphic copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt or telegraph receipt for said complaint, order, or other process registered and mailed or telegraphed as aforesaid shall be proof of the service of the same.

SEC. 206. (a) The Board shall have power to act as arbitrator in labor disputes. When any of the parties to a labor dispute agree to submit the whole or any part thereof to the arbitration of the Board, and the Board accepts such submission, the agreement shall be valid, irrevocable, and enforceable as to the submitting parties save upon such grounds as exist at law or in equity for the revocation of any contract. In any case accepted by it for arbitration the Board shall have power to issue an award applicable to the submitting parties.

(b) Unless a party to the arbitration has otherwise stipulated at the time of the submission of the case to the Board, any party to the arbitration, or the Board itself, may within one month after the award is made, apply to the Supreme Court of the District of Columbia for an order confirming the award, and thereupon the court shall grant such an order unless the award is vacated, modified, or corrected as hereinafter prescribed. Notice of the application shall be served upon the other parties to the arbitration by the marshal of any district within which they may be found, in like manner as any other process of such court, and thereupon such court shall have jurisdiction of such parties as though they had appeared generally in the proceeding.

(c) The court may make an order vacating the award upon the application of any party to the arbitration if the Board exceeded its powers or executed them so imperfectly that a mutual and definite award upon the subject matter was not made. The court may make an order modifying or correcting the award upon the application of any party to the arbitration if (1) the award covers a matter not submitted to the Board (unless the award upon such matter does not affect the merits of the decision upon the matter submitted) or (2) the award is imperfect in matter of form not affecting the merits of the controversy. The order may modify or correct the award so as to effect the intention thereof and promote justice between the parties. A party to the arbitration, claiming to be aggrieved by the award, may apply to the court, within one week after the award is made, for an order vacating, modifying, or correcting the award. Notice of such application shall be served upon all other parties to the arbitration proceeding or their attorneys, by the marshals of the respective districts within which such parties may be found. For the purposes of the application, any judge who might make an order to stay the proceedings in any action brought in the same court may make an order, to be served with the notice of the application, staying the enforcement of the award.

(d) The party applying for an order confirming, modifying, or correcting an award shall, at the time the application is filed, also file the following papers with the clerk of the court: (1) An agreement to arbitrate; (2) the award of the Board; and (3) each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon any such application. The order shall be docketed as if it were rendered in a suit in equity and shall have the same

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force and effect, in all respects, as, and be subject to all the provisions of law relating to, a decree in a suit in the court in which it is entered; and it may be enforced as if it had been rendered in a suit in the court in which it is entered.

SEC. 207. (a) In any dispute as to who are the representatives of employees, the Board, if the dispute might burden or affect commerce or obstruct the free flow of commerce, may investigate such dispute and certify to the parties, in writing, the name or names of the individuals or labor organizations that have been designated and authorized to represent employees. In any such investigation, the Board shall be authorized to take a secret ballot of employees, or to utilize any other appropriate method to ascertain their representatives. The Board shall decide whether eligibility to participate in elections shall be determined on the basis of employer unit, craft unit, plant unit, or other appropriate grouping.

(b) In any dispute not of the character described in subsection (a), as to who are the representatives of employees, the Board may offer its services to aid in determining who are employees' representatives.

SEC. 208. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by sections 205 and 207 (a)—

(1) Any member of the Board, or any agent designated by it for such purposes, is empowered to administer oaths and affirmations, take depositions, subpena witnesses, take evidence, and require the production of any books, papers, or other documents which the Board deems relevant or material to the inquiry. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any district court of the United States, the United States courts of any Territory or possession, and the Supreme Court of the District of Columbia, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides, upon application by the Board, shall issue to such person an order requiring such person to appear before the Board, or an examiner designated by it, there to produce documentary evidence if so ordered, or there to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and other documents before the Board, or in obedience to the subpena of the Board or any member thereof or any agent designated by it, or in any cause, proceeding, or investigation instituted by the Board, on the ground that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Witnesses summoned before he Board or any of its examiners shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

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(5) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 209. The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

SEC 210. Any person who shall willfully assault, resist, prevent, impede, or interfere with any member of the Board or any of its agents in the performance of his duties pursuant to section 205 or section 207 (a), shall be punished by a fine of not more than $5,000, or by imprisonment for not more than 1 year, or both.

TITLE III

SECTION 301. There is hereby created in the Department of Labor the United States Conciliation Service, under the direction of a Director of Conciliation. The Secretary of Labor shall appoint and fix the compensatiton of such Director, and shall have authority to appoint and fix the compensation of such commissioners of conciliation, clerks, and other officers and employees as he may from time to time find necessary for the proper performance of the duties of the Service, and as may from time to time be appropriated for by Congress. The Secretary of Labor may make such appointments without regard to the provisions of the civil-service laws or the Classification Act of 1923, as amended.

SEC. 302. It shall be the duty of the United States Conciliation Service, whenever the Director deems it desirable, to offer its services to the parties to any labor dispute, and to attempt to adjust such dispute by conciliation or mediation, or by arranging for voluntary arbitration. Nothing in this title shall limit the power given to the Secretary of Labor under section 8 of the Act of March 4, 1913 (U. S. C., title 5, sec. 619).

SEC. 303. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 304. (a) Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act and/or of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U. S. C., title 29, secs. 101–115), conflicts with the application of the provisions of this Act, the provisions of this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of section 7 (a) of the National Industrial Recovery Act and/or of such Act of March 23, 1932, shall apply.

(b) Any term of a contract or agreement of any kind which conflicts with the provisions of this Act is hereby abrogated, and every employer who is a party to such contract or agreement shall immediately so notify his employees by appropriate action.

SEC. 305. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

The CHAIRMAN. It is my opinion, Senator Wagner, and I am dealing only with the history of this legislation, that after you introduced this bill, and while the hearings were in progress, you substituted another bill which I do not think we have a print of; is that correct?

Senator WAGNER. That is correct.

The CHAIRMAN. In any event, the Committee on Education and Labor, after extensive hearings, rewrote the bill, retaining the essential principles and making some changes that were not of essentially material consequence: is that true?

Senator WAGNER. Some, of course, I regarded as substantive; and you will recall that when the bill was presented to the Senate I introduced some amendments which I intended to propose to the bill as

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reported by the committee. But as the bill never came up for final consideration in the Senate, I did not have an opportunity to offer those amendments.

The CHAIRMAN. The next step then, is to insert in the record the bill reported by me to the Senate from the Committee on Education and Labor, which was in the nature of a substitute bill for S. 2926; and this bill went on the calendar—No. 1260 of the Seventy-third Congress, second session—and the title somewhat changed from the original title, which was as follows:

A bill to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes.

This title was amended to read as follows:

A bill to equalize the bargaining power of employers and employees, to promote the amicable settlement of labor disputes, to create a National Industrial Adjustment Board, and for other purposes.

We will insert in the record the substituted bill of the committee. (Said bill is here printed in full, as follows:)

[S. 2926, 73d Cong., 2d sess.]

A BILL To equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DECLARATION OF POLICY

SECTION 1. It is hereby declared to be the policy of the United States to remove unnecessary obstructions to the free flow of commerce, to encourage the establishment of uniform labor standards, and to provide for the general welfare, by establishing agencies for the peaceful settlement of labor disputes, and by protecting the exercise by the worker of complete freedom of association, self-organization, and designation of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes an individual, partnership, association, corporation, labor organization, legal representative, trustee in bankruptcy, or receiver.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State, municipal corporation, or other governmental instrumentality, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization, or any person employing less than ten employees.

(3) The term "employees" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute connected with any unfair labor practice, and who has not obtained any other regular employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his father, mother, or spouse.

(4) The term "representatives" includes any individual or labor organization designated by employees to act for them or any individual or employer organization designated by an employer to act for him.

(5) The term "labor organization" means any organization or any agency or employee representation committee, in which employees participate and

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which exists for the purpose, in whole or in part, of dealing with employers concerning hours of labor, wages, or working conditions.

(6) The term "employer organization" means any organization or agency or employer's representation committee which exists for the purpose, in whole or in part, of dealing with employees concerning hours of labor, wages, or working conditions.

(7) The term "commerce" means trade or commerce, or any transportation or communication relating thereto, among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 3.

(9) The term "National Industrial Adjustment Board" means the National Industrial Adjustment Board created by section 4 of this Act.

(10) The term "old Board" means the National Labor Board established by the President in August 1933.

(11) As used in this Act the term the "Circuit Court of Appeals" means the Court of Appeals of the District of Columbia.

UNFAIR LABOR PRACTICES

SEC. 3. It shall be an unfair labor practice—

(1) For an employer to attempt, by interference or coercion, to impair the exercise by employees of the right to form or join labor organizations, to designate representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(2) For employees to attempt, by interference or coercion, to impair the exercise by employers of the right to join or form employer organizations and to designate representatives of their own choosing for the purpose of collective bargaining.

(3) For an employer to interfere with or dominate the administration of any labor organization or contribute financial support to it: *Provided*, That, subject to rules and regulations prescribed by the Secretary of Labor, an employer shall not be prohibited from permitting an employee, individual, or local representatives of employees, from conferring among themselves or with management during working hours without loss of time while engaged in the business of a labor organization.

(4) For an employer, by discrimination in regard to hire or tenure of employment or any term or condition of employment, or by contract or agreement, to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act, or in any code or agreement approved thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or controlled by any unfair labor practice) to the effect that a person seeking employment shall be required, as a condition of employment, to join such labor organization, if the agreement is sought by the majority of employees in the unit covered by it when made. Nothing in this proviso shall be construed by the Board to indicate that any employer is bound to enter into an agreement conditioning employment upon membership in any labor organization.

NATIONAL INDUSTRIAL ADJUSTMENT BOARD

SEC. 4. (a) There is hereby created in the Department of Labor a board, to be known as the "National Industrial Adjustment Board" (hereinafter referred to as the "Board"), which shall be composed of five members, appointed as hereinafter provided.

(b) The President, by and with the advice and consent of the Senate, shall appoint three members to represent the general public, and shall designate one of such members as chairman of the Board. One of the members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. Each member

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representing the general public shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment.

(c) The President, by and with the advice and consent of the Senate, shall appoint for terms of one year each six individuals as a panel to represent employers and six individuals as a panel to represent employees. In making such appointments the President may consult organized representatives of employers and employees. The chairman of the Board shall from time to time select individuals from these panels to serve as members of the Board, and shall fix and rotate their periods of service in such manner that (1) there shall always be one representative of employers and one representative of employees upon the Board, and (2) all the individuals on the panels shall, insofar as practicable, serve as members of the Board for approximately the same length of time. Members of the Board who are selected from the panels shall each receive $20 per diem and necessary traveling and subsistence expenses when engaged in the performance of their duties.

(d) Three members of the Board, including one member representing the general public, shall constitute a quorum. A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board. The Board shall have an official seal which shall be judicially noticed.

SEC. 5. (a). The members representing the general public shall appoint such employees, and, without regard for the provisions of the civil-service laws, appoint such attorneys and examiners as may be from time to time appropriated for by Congress. The Board may utilize such voluntary and uncompensated services, and establish such voluntary and uncompensated regional, or local boards, as it may from time to time find necessary.

(b) Upon the organization of the Board and the designation of its chairman, the old Board shall cease to exist; and all pending investigations and proceedings of the old Board relating to the unfair practices defined in this Act shall be within the jurisdiction of the Board. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board, shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it duly designates for that purpose.

(d) The Board may request and the Secretary of Labor may direct from time to time the officers and employees of the Department of Labor to render services and furnish information and otherwise to aid the Board in the performance of its duties, insofar as such assistance can be made available under the appropriations and other legal obligations of the Department of Labor.

SEC. 6. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise all its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 7. The Board shall have authority from time to time to make, amend, and rescind such reasonable rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 8. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice defined in section 3 that has led or threatens to lead to a labor dispute that might affect commerce or obstruct the free flow of commerce.

(b) Whenever the Secretary of Labor shall notify the Board that there is reasonable cause to believe that any person has engaged in or is engaging in any such unfair labor practice, the Board shall issue and cause to be served upon such person a complaint stating the charges in that respect, and con-

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taining a notice of hearing before the Board or before a designated agent or agency, at a place therein fixed, at a time to be designated by the Board. Any such complaint may be amended by the Board in its discretion at any time prior to the conclusion of the taking of the evidence. The person so complained of shall have the right to file an answer to the original or amended complaint and appear in person or by counsel and give testimony at the place and time fixed in the complaint, and to invoke the compulsory process of the Board in summoning witnesses in its behalf.

(c) The testimony taken by such agent or agency of the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board may itself take further testimony and/or hear argument. If upon all the testimony taken, the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, or to take affirmative action or to perform any other acts that will achieve substantial justice under the circumstances. Such order may further require such person to make a report from time to time showing the extent to which it has complied with the order.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any circuit court of appeals of the United States within any circuit wherein the labor practice in question occurred or wherein such person resides or carries on business, for the enforcement of such order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, the court may order such additional evidence to be taken before the Board and to be adduced upon the hearing. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347). The commencement of proceedings under this subsection shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(f) Any person aggrieved by an order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any Circuit Court of Appeals of the United States in the circuit wherein the unfair labor practice in question was engaged in or wherein such person resides or carries on business, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, and including the testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall have the same jurisdiction to affirm, set aside, or modify the order of the Board, and shall proceed in the same manner, as in the case of an application by the Board for an enforcement of its order, and the findings

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of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) When making and entering a decree affirming, modifying, or setting aside in whole or in part an order of the Board as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled, "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U. S. C., title 29, secs. 101–115).

(h) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

(i) Complaints, orders, and other process and papers of the Board and its agents may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post-office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same.

ARBITRATION

SEC. 9. (a) The Board shall have power to act, and to appoint any agent or agency to act, as arbitrator in labor disputes, when parties agree to submit the whole or any part of a labor dispute to the arbitration of the Board or its appointees. When the Board accepts such submission, the agreement shall be valid, irrevocable, and enforceable as to the submitting parties save upon such grounds as exist at law or in equity for the revocation of any contract. In any such arbitration the Board shall have power to issue an award applicable to the submitting parties.

(b) In any dispute in which an award has been made the Board shall file the award in the clerk's office of the United States district court that has been agreed upon by the parties or, in default of such agreement, that of the Supreme Court of the District of Columbia. Notice of the filing shall be personally served or sent by registered mail to each submitting party. Unless a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter final judgment confirming the award.

(c) A petition for the impeachment of any award may be filed only in the court where the award has been filed and not more than ten days after the communication of notice of the filing of the award to the submitting parties. Notice of the filing of such a petition shall be served personally or sent by registered mail to each submitting party. This petition shall be sustained by the court only on one or more of the following grounds:

1. That the proceedings were not substantially in conformity with this Act:

2. That the award does not conform nor confine itself to the stipulations of the agreement to arbitrate; or

3. That an arbitrator or member of the Board participating in the award was guilty of fraud or corruption; or that a party to the award practiced fraud or corruption which affected the result.

(d) The court shall not set aside an award on the ground that it is invalid for uncertainty; in such case the court shall suspend action pending a resubmission of such award to the Board for interpretation. It shall not set aside an award for irregularity or clerical error, going only to form and not to substance; in such case the court shall correct the form of the award in its judgment. If the award has ceased to be operative because it has been carried out or superseded, the court shall enter judgment accordingly. The court shall construe every award with a view to favoring its validity. But if the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but that a part of the award is valid, the court shall set aside the entire award; unless all interested parties shall agree that the valid part is severable. If the petition is not sustained, the court shall enter judgment confirming the award.

(e) Within ten days from the entry of judgment upon the petition, confirming or otherwise disposing of the award, any party may appeal to the circuit court of appeals. Only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law to be decided. The determination of the circuit court of appeals upon these questions shall be final, and judgment pursuant thereto shall thereupon be entered by the district court.

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(f) If at any time before final judgment all interested parties agree upon a settlement in lieu of the award, judgment may be entered upon such settlement.

(g) The judgment shall be entered and docketed as if it were rendered in a suit in equity and shall have the same force and effect as, and be subject to all the provisions of law relating to, a decree in a suit in the court in which it is entered.

(h) The several United States courts are hereby vested with jurisdiction to entertain proceedings and to enforce all judgments entered pursuant to this section, without respect to the amount in controversy.

REPRESENTATION OF EMPLOYEES

SEC. 10 (a) In any dispute as to who are the representatives of employees, the Board, if the dispute might burden or affect commerce or obstruct the free flow of commerce, may investigate such dispute and certify to the parties, in writing, the name or names of the individuals or labor organizations that have been designated and authorized to represent employees. In any such investigation, the Board shall hold an appropriate hearing, and the Board shall be authorized to take a secret ballot of employees, or to utilize any other suitable method to ascertain by whom or by what labor organization they desire to be represented. The Board shall decide whether eligibility to participate in a choice of representatives shall be determined on the basis of employer unit, craft unit, plant unit, or other appropriate unit. Each unit may be given representation in proportion to its membership. The Board may determine that representatives agreed upon by the majority of employees in an appropriate unit shall represent the entire unit for the purpose of negotiating agreements concerning terms and conditions of employment. *Provided*, That nothing in this Act shall be construed to prohibit an employer from discussing grievances with an employee or groups of employers at any time.

(b) In any dispute not of the character described in subsection (a), as to who are the representatives of employees, the Board may offer its services to aid in determining who are such representatives.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 8 and section 10 (a)—

(1) Any member of the Board representing the general public shall have power to require by subpena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under a complaint. Any member of the Board, or any agent designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States, the United States Courts of any Territory or possession, and the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides, upon application by the Board, shall issue to such person an order requiring such person to appear before the Board, or an agent designated by it, there to produce documentary evidence if so ordered, or there to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and other documents germane to the matter under investigation before the Board, or in obedience to the subpena of the Board, on the ground that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise germane to the matter under investigation except that such individual so tesifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Witnesses summoned before the Board or any of its agents shall be paid the same fees and mileage that are paid witnesses in the courts of the

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United States, and witnesses whose depositions are taken and the persons taking the same, other than employees of the Board, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board unless such records, papers, or information, relate to trade secrets or have been received by the Government under an assurance of nondisclosure.

SEC. 12. Any person who shall willfully assault, resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to section 9, or section 10 (a), shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

REPORTS

SEC. 13. The Board shall at the close of each fiscal year make a report in writing to Congress stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

LIMITATIONS

SEC. 14. Nothing in this Act shall be construed to require any employee to render labor or service without his consent, or to authorize the issuance of any order or injunction requiring such service, or to make illegal the failure or refusal of any employee individually, or any number of employees collectively, to render labor or service.

SEC. 15. Wherever the application, by means of code, agreement, or otherwise, of the provisions of section 7 (a) of the National Industrial Recovery Act conflicts with the application of the provisions of this Act, the provisions of this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of section 7 (a) of the National Industrial Recovery Act shall apply.

SEC. 16. If any provision of this Act or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 17. This Act may be cited as the "National Industrial Adjustment Act."

Amend the title so as to read: "A bill to equalize the bargaining power of employers and employees, to promote the amicable settlement of labor disputes, to create a National Industrial Adjustment Board, and for other purposes."

The CHAIRMAN. Following the substituted bill from the committee, we will now insert the committee report which was ordered to be printed on May 10 (calendar day, May 26), 1934. The report is known as Calendar No. 1260, Report No. 1184, Seventy-third Congress Second session, and this report to accompany S. 2926.

(Said report is here printed in full as follows:)

[S. Rept. 1184, 73d Cong., 2d sess.]

The Committee on Education and Labor, to whom was referred the bill (S.2926) to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Industrial Adjustment Board, and for other purposes, after holding hearings and giving consideration to the bill, report the same with amendments in the nature of a substitute and recommend the passage of the bill, as amended.

WHAT THE BILL DOES NOT DO

There has been such propaganda over the country in relation to this bill and in much of the material sent out there are so many mistatements, that many people have an erroneous idea as to what is sought to be accomplished by the

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bill. It seems, therefore, advisable to state at the outset what the bill does not do or try to do.

Nothing in the bill allows the National Industrial Adjustment Board or any other branch or agency of the Government to fix wages, to regulate rates of pay, to limit hours of work, or to affect or govern sanitary or similar working conditions in any establishment or place of employment. In such matters the Board (like any nongovernmental group of persons) is available for voluntary arbitration if and only if all the parties invoke its aid.

As now drafted, the bill does not relate to employment as a domestic servant or as an agricultural laborer. It does not affect establishments in which less than 10 persons are employed, and it does not relate to individuals employed by their parents or spouses.

There is nothing in the bill which requires any employee to join any form of labor organization.

If employees choose to organize, nothing in the bill will prevent them from organizing a shop committee or a union for a particular plant or company, free and independent of any national or international organization as well as of any employer.

In cases in which employees choose to belong to an organization, there is nothing in the bill to compel an employer to make a closed-shop agreement with that organization or to consent to a deduction of pay to meet the dues of that organization (i. e. the check-off). These matters are left to the parties to settle by the orderly process of collective bargaining, and free from suggestion, much less direction, from the Government.

There is nothing in the bill which makes it impossible for grievances or disputes to be settled locally or through the aid of appropriate machinery in the several States; and every effort has been made to avoid the embarrassment and inconvenience to both employers and employees of being called to settle in Washington a dispute which might be adjusted locally.

The Board is not going to be empowered to settle all labor grievances.

The quasi-judicial power of the Board is restricted to four unfair labor practices and to cases in which the choice of representatives is doubtful. And even then the Board's compulsory action is limited to cases that have led or threaten to lead to labor disputes that might affect commerce or obstruct the free flow of commerce. The bill makes it impossible for the Board to exercise any compulsory power in a purely local and intrastate dispute. Employers and employees engaging in a local or intrastate business are not within the jurisdiction of this bill.

The Board is not given any unusual powers to hear evidence, summon witnesses, or require testimony. Every power granted to the Board with respect to the taking of testimony, summoning of witnesses, and like matters, is duplicated in at least a majority, if not all, of the Federal administrative tribunals such as the Federal Trade Commission, the Interstate Commerce Commission, the United States Employees' Compensation Commission, and the proposed communications commission.

OBJECTS OF THE BILL

The bill aims primarily to clarify rather than to extend the existing law governing relations between employers and employees and to provide for a means of enforcement. Language of earlier statutes, particularly section 7 (a) of the National Industrial Recovery Act, has been considered ambiguous, and that ambiguity has misled both employers and employees as to their rights under the law. Section 7 (a) of the National Recovery Act is as follows:

"Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President."

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The interests of democratic government require that the policy of the United States should be clearly and briefly stated in authoritative form.

A second important objective of the bill is to establish some orderly method by which cases involving supposed violations of the law may be heard. At the present time there exist many different Federal (not to mention State) agencies that deal with labor questions—the Department of Labor has a conciliation service; the National Recovery Administration has a compliance board; a National Labor Board, set up by Executive order, exists in Washington, and 20 regional boards have been established throughout the country subordinate to that National Labor Board, and recently the N. R. A. has been establishing in various industries industrial boards. It is important that these agencies should not be multiplied, lest parties fail to know either the proper tribunal to which to resort or the proper construction of law to follow. Three essentials of justice are that it shall be administered promptly, clearly, and with finality. By establishing a quasi-judicial board, this bill definitely establishes the agency that shall give the final administrative interpretation of the law.

Of course, court review remains available, as it always does under our system of government. But the officers of the executive branch of the Government, as well as private persons, will recognize and be bound by decisions of the Board until and unless they are reversed in the courts. Moreover, the existence of such an agency will relieve overburdened executives of what is in essence a quasi-judicial function.

Another important aspect of the bill as amended is the emphasis it places on the strictly judicial aspect of the work on the Board. It is not primarily a prosecuting agency to ferret out offenders. So far as possible, all disputes will continue to be adjusted by conciliatory methods, such as those used in the Division of Conciliation of the Department of Labor. When a case cannot be adjusted because of the continuance of an unfair labor practice or because of disputes over representation, it can be referred to the Industrial Adjustment Board, which can then judicially consider it. This makes two things plain: (1) The Board is to enforce the law as written by Congress, and (2) the Board acts only when enforcement is necessary and adjustment has failed.

ANALYSIS OF THE BILL

Section 1 is a self-explanatory declaration of policy.

Section 2 defines the terms used in the act. The most important of these definitions are those of "employer" and "employee." These words are so defined as to exclude from the operation of the act domestic servants, agricultural laborers, individuals employed by their parents or spouses, persons subject to the Railway Labor Act, and persons employing less than 10 employees. One of the important reasons for this exclusion is to make it clear that the Industrial Adjustment Board is to have jurisdiction over only those disputes which are of a certain magnitude and which affect commerce.

The definitions also make it clear that a person who has been discharged as a result of an employer's violation of this statute, if he has not obtained any other regular employment, may be considered by the Board as an employee. This does not mean that he will necessarily be so considered, but the Board may decide that he is entitled to be reinstated or to vote in a choice of representatives. Without this provision it is possible that an employer might contend that a worker he had unlawfully discharged had no remedy.

The reason for stating that "employer" excludes "any labor organization, other than when acting as an employer", is this: In one sense every labor organization is an employer; it hires clerks, secretaries, and the like. In its relations with its own employees, a labor organization ought to be treated as an employer, and the bill so provides. But in relation to other employees it ought not to be treated as an employer and ought to have the right to use lawful means to induce employees to join the organization.

"Representatives" is defined in a manner to make it clear that it includes any organization or any individual. Without such a statement it could be contended that the workers could only choose one of their fellow workers as a representative.

The term "labor organization" is explained so that no one can be under a misapprehension in regard to the effect of the bill upon company schemes of unemployment insurance, participation in bonuses, stock ownership, etc. So long as an organization does not deal with employees concerning hours of labor, wages,

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or working conditions, the employer may freely participate in and contribute to its success.

Section 3 lists what the bill calls unfair labor practices. This method of approach has been borrowed from the Federal Trade Commission Act, which speaks of unfair trade practices, and is designed to establish this bill upon a sound constitutional basis and in accordance with decisions of the Supreme Court. There are four separate unfair labor practices listed, and only those practices which are listed are, for the purposes of this bill, to be regarded as unfair. That is made explicit by the preceding section defining "unfair labor practices."

The first unfair labor practice restates the familiar law already enacted by Congress in section 2 of the Norris-La Guardia Act (47 Stat. 70; U. S. C., title 29, sec. 102), in section 77 (p) and (q) of the 1933 amendments to the Bankruptcy Act (47 Stat. 1481; U. S. C., title 11, sec. 205 (p) and (q)), in section 7 (e) of the act creating the office of Federal Coordinator of Transportation (48 Stat. 214; U. S. C., title 49, sec. 257 (e)), in section 2 of the Railway Labor Act of 1926 (44 Stat. 577, U. S. C., title 45, sec. 152) and in section 7 (a) of the National Industrial Recovery Act (48 Stat. 198; U. S. C., title 15, sec. 706 (a)). The language restrains employers from attempting by interference or coercion to impair the exercise by employees of rights which are admitted everywhere to be the basis of industrial no less than political democracy. A worker in the field of industry, like a citizen in the field of government, ought to be free to form or join organizations, to designate representatives, and to engage in concerted activities. And in *Texas & New Orleans Railroad Co.* v. *Brotherhood of Railway Clerks* (281 U. S. 548 (1930)) the Supreme Court of the United States (in a decision from which there was no dissent) upheld a Federal statute recognizing these rights. Indeed the statute upheld by the Supreme Court was in terms broader than this bill, for it forbade an employer not merely to interfere with or coerce his employees, but even to "influence" them.

The second unfair labor practice is directed at employees. So far as other laws (such as the Sherman and Clayton Acts) allow, employers should be free to join organizations, to designate representatives, and bargain collectively. No employee or group of employees ought to be permitted to interfere with the cooperative effort of employers to present a united front, and (in the words of the declaration of policy) "to encourage the establishment of uniform labor standards."

The third unfair labor practice is one that the committee has considered with great care. There was presented to the committee much testimony from Government officers, workers, and representatives of labor to the effect that a few employers had dominated labor organizations of their own employees by dictating the terms of their constitutions and bylaws, by refusing to let these labor organizations amend their constitutions without the consent of the employer, by dictating to the organization officials the procedure or agenda for meetings, by indulging in unusual favors prior to or contemporaneously with an election of representatives by the workers, and by making financial contributions to one of several rival labor organizations with the intent of inducing the workers to join the subsidized organization. These practices and others of the same character are clearly abusive and should not be allowed to continue in the few instances where they have existed.

Yet these abuses do not seem to the committee so general that the Government should forbid employers to indulge in the normal relations and innocent communications which are part of all friendly relations between employer and employee. The policy of the Government is founded upon the theory of democratic collective bargaining, not upon the theory of class war, a conception foreign to industrial conditions in this country. And democratic collective bargaining means the exchange of ideas no less than the exchange of services, goods, or money. The object of the third unfair labor practice is to remove from the industrial scene unfair pressure, not fair discussion.

Nor is the committee persuaded that in all cases an employer should be forbidden to pay the representatives of employees their regular wages if they confer together or with employees or employers during working hours. Under certain definite restrictions this practice should be allowed to continue. In making this decision the committee recognizes that it is not going so far as the Bankruptcy Act and the act establishing the Federal Coordinator of Transportation, both of which make it unlawful "to use the funds of (a) railroad * * * in maintaining so-called 'company unions'" (47 Stat. 1481; U. S. C., title 11; 205 (q); 48 Stat. 214; U. S. C., title 49, sec. 257 (e)), or the proposed

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bill to amend the Railway Labor Act, S. 3266, introduced by Senator Dill on April 2, 1934, which provides in section 2 (4) (p. 6, lines 4–7) that it shall be unlawful to "use the funds of the carrier in maintaining or assisting or contributing to any labor organization, or in performing any work therefor."

These prohibitions may be better adapted to a specialized field in which for many years there has been a history of successful labor organization than to industries generally, particularly since in some industries there appears to be no desire on the part of workers to organize, and a prohibition in sweeping terms would introduce an element of confusion in what we have called "normal relations and innocent communications."

The fourth unfair labor practice is a corollary of the first unfair labor practice. An employer, of course, need not hire an incompetent man and is free to discharge an employee who lacks skill or ability. But if the right to join or not to join a labor organization is to have any real meaning for an employee, the employer ought not to be free to discharge an employee merely because he joins an organization or to refuse to hire him merely because of his membership in an organization. Nor should an employer be free to pay a man a higher or lower wage solely because of his membership or nonmembership in a labor organization. The language of the bill creates safeguards against these possible dangers.

The proviso that follows the fourth unfair labor practice (but which governs the whole act as well as other statutes) is not intended to require any employer to enter into an agreement conditioning employment upon membership in any labor organization. Indeed neither here nor elsewhere in the act is there a duty imposed upon an employer to make any particular contract. An employer will presumably make a reasonable effort to reach an agreement with his workers or their representatives when and if they seek to negotiate with him; but the terms of that agreement are for the parties to settle by collective bargaining. This proviso is not a mandate, but is a permissive exception made necessary by other provisions of the law. If this proviso were not in the bill, a willing employer and willing employees could not of their own accord agree that thereafter a person seeking employment should be required, as a condition of employment, to join the employees' organization.

The reason is that an employer is elsewhere in the bill (sec. 3 (4), p. 5, lines 7–10) forbidden to indulge in, "discrimination in regard to hire * * * to encourage * * * membership in any labor organization" or "to attempt, by interference or coercion, to impair the exercise by employees of the right to form or join labor organizations" (sec. 3 (1), p. 4, lines 14–19). The committee is of opinion that if employers and employees of their own accord, in a voluntary spirit of cooperation, want to require persons thereafter seeking employment to belong to an organization, they ought generally to be allowed to do so. This always has been the law, and in many industries and plants it has worked remarkably well. But the committee, recognizing the danger of abuse, has inserted to restrictions. First, such an agreement can be made only as to "a person seeking employment." If a worker already has a position, the employer cannot agree with a majority of his employees that the worker will be discharged unless he joins an organization. A second restriction is that an employer cannot make a contract conditioning employment upon membership in a labor organization, unless that organization is one that was established without the employer's interference or coercion, has been maintained without his dominance or financial support, and is not controlled by him. Unless this restriction were written into the bill, it would be possible for an employer to defeat one of its primary objectives.

Section 4 creates in the Department of Labor, a National Industrial Adjustment Board, whose decisions are not subject to review by the Secretary of Labor. Three members representing the general public, appointed by the President with the advice and consent of the Senate for terms of 5 years at a salary of $10,000 each, form the nucleus of the Board and are always eligible to sit on cases. In addition there are two panels representing employers and employees. These persons are likewise appointed by the President with the advice and consent of the Senate, but they serve only for 1-year terms, and receive $20 per diem only when engaged in the performance of their duties. It is intended that the persons representing employers and employees shall serve in rotation, at the designation of the chairman of the Board, but in such a way that there shall always be 1 representative of employers and 1 representative of employees upon the Board.

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Section 5 allows attorneys and examiners to be appointed by the Board without regard to the civil-service laws, but other employees are subject to those laws. This section also allows the Board to establish voluntary regional or local boards, but it is not intended to have the Board create numerous paid tribunals throughout the country subordinate to it. Indeed section 5 (d), by giving the Secretary of Labor power to put at the disposal of the Board the personnel, services, and information of the Department of Labor, emphasizes the importance of utilizing existing agencies of Government, and of curtailing expenses. The Secretary of Labor should retain the control of services, such as conciliation and statistical bureaus, for which the Department of Labor was specifically established, and duplication should be avoided.

Section 6 is designed to allow the Board or one of its members, agents, or agencies to come to the scene of a dispute rather than always to require the parties to come to Washington.

Section 7 follows the customary practice of giving an administrative body power to make, amend, and rescind reasonable rules and regulations.

Section 8 is an important procedural section. When a person is supposed to have engaged in one of the four unfair labor practices defined in section 3, and the practice has led or threatens to lead to labor dispute that might affect commerce or obstruct the free flow of commerce, the Board is given power to prevent the practice and take appropriate steps to correct the injustice. Usually the Board will act only when a case is drawn to its attention by the Secretary of Labor (who through the Conciliation Service of the Department of Labor will presumably first utilize every appropriate means for a voluntary adjustment of the matter); but in exceptional cases, the Board by a vote of a majority, may on its own motion decide to hear the case. Hearings can be conducted by the Board or by an agent or agency designated by it, but decisions must be by the Board. As in the case of other administrative tribunals, the Board upon the basis of evidence may issue an order, and this order may be brought either by the Board or by an aggrieved person before the Circuit Courts of Appeal (or if the practice occurred in the District of Columbia, or the person resides or carries on business in the District of Columbia, before the Court of Appeals of the District of Columbia). That court can then affirm, set aside or modify the order; and from that decision appropriate steps for review by the Supreme Court can be taken.

Section 9 provides for voluntary arbitration by the Board "when parties agree to submit the whole or any part of a labor dispute to the arbitration of the Board." This is in no sense a compulsory power, but merely gives to the Board the right to act in a way already tested under the Railway Labor Act.

Section 10 relates to the power of the Board in a dispute as to who are the representatives of the employees. The board is authorized to take a secret ballot or to use other suitable methods. Since the dispute may relate only to a single craft or a single plant the Board is given the power to determine the appropriate unit for the election. In some cases it may decide that the appropriate unit is the whole plant; in other cases a particular craft. In cases in which a poll is taken of several different units, it is provided that each unit may be given representation in proportion to its membership. Of course, if an election is held in only a single unit, no matter how large, then there is no occasion for "representation in proportion to its membership" since its membership bears no mathematical relation to any other group.

Within any single unit the Board may, but need not, determine that representatives agreed upon by the majority of employees shall represent the entire unit for the purpose of negotiating agreements. The existing National Labor Board under specific authority from the President (Executive Order 6580, Feb. 1, 1934), has adopted this rule (see Decisions of the National Labor Board, August 1933-March 1934, published at Washington May 1934), but the new Board is free to adopt or reject it in particular cases, with one qualification. Although the representatives of the majority may make the agreement for that unit, the majority have a right through representatives or otherwise to present grievances to their employer.

Section 11 gives to the Board in connection with those issues in which it has compulsory power (that is, the prevention of unfair labor practices and the choice of representatives, whenever such practices or such choices affect interstate commerce) the usual powers to take testimony germane to the matter under investigation.

Section 12 provides a criminal penalty for assaulting or interfering with a member or agent of the Board in the performance of his duties. Neither this

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nor any section of the act provides a criminal penalty (other than the usual penalty for contempt) for engaging in an unfair labor practice, even after a court has ordered its cessation.

Section 13 requires an unusually detailed report to the Congress of the work of the Board so that the Congress may be adequately informed in determining the value and success of the work performed.

Section 14 is a restatement of section 9 (8) of the Railway Labor Act (44 Stat. 585, U. S. C., title 45, sec. 159 (8)) and an application of it to industrial labor and to this act.

Section 15 guards against any possible conflict with the National Industrial Recovery Act.

Section 16 is the usual provision for separability to avoid doubt in case part of the act is held invalid.

HISTORICAL PRECEDENTS OF THE BILL

The substantive features of the bill are not new, but merely codify and clarify the policy already declared by Congress in different fields of industry, trade, and transportation. This is shown by reference to the following excerpts from statutes now on the books:

(1) Section 2 of the Railway Labor Act of 1926 (44 Stat. 577; U. S. C., title 45, sec. 152) provides that:

"First. It shall be the duty of all carriers, their officers, agents, and employees, to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

"Second. All disputes between a carrier and its employees shall be considered and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carriers and by the employees thereof interested in the dispute.

"Third. Representatives, for the purposes of this act, shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other.

"Fourth. In case of a dispute between a carrier and its employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier and of such employees, within 10 days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided*, (1) That the place so specified shall be situated upon the railroad line of the carrier involved unless otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed 20 days from the receipt of such notice: *And provided further*, That nothing in this paragraph shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties. * * *"

(2) Section 2 of the Norris-La Guardia Act—"An act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes" (47 Stat. 70, U. S. C., title 29, sec. 102)—states that:

"* * * under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. * * *"

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(3) Section 77, paragraphs (p) and (q), of the act approved March 3, 1933, entitled "An act to amend an 'act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and acts amendatory thereof and supplementary thereto" (47 Stat. 1481; U. S. C., title 11, sec. 205 (p) and (q)), provides that:

"No judge or trustee acting under this act shall deny or in any way question the right of employees on the property under his jurisdiction to join the labor organization of their choice, and it shall be unlawful for any judge, trustee, or receiver to interfere in any way with the organization of employees, or to use the funds of the railroad under his jurisdiction, in maintaining so-called 'company unions' or to influence or coerce employees in an effort to induce them to join or remain members of such company unions.

"No judge, trustee, or receiver acting under this act shall require any person seeking employment on the property under his jurisdiction to sign any contract or agreement promising to join or to refuse to join a labor organization; and if such contract has been enforced on the property prior to the property coming under the jurisdiction of said judge, trustee, or receiver, then the said judge, trustee, or receiver, as soon as the matter is called to his attention, shall notify the employees by an appropriate order that said contract has been discarded and is no longer binding on them in any way."

(4) Section 7 (e) of the act establishing a Federal Coordinator of Transportation ("An act to relieve the existing national emergency in relation to interstate railroad transportation and to amend secs. 5, 15a, and 19a of the Interstate Commerce Act, as amended" (48 Stat. 214, U. S. C., title 49, sec. 257 (e)) provides that—

"Carriers, whether under control of a judge, trustee, receiver, or private management, shall be required to comply with the provisions of the Railway Labor Act and with the provisions of section 77, paragraphs (o), (p), and (q), of the act approved March 3, 1933, entitled 'An act to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, and acts amendatory thereof and supplementary thereto.'"

(5) Section 7 (a) of the National Industrial Recovery Act (48 Stat. 198, U. S C., title 15, sec. 707 (a)) provides that—

"Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organibation or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President."

Not only the substantive features of this bill are familiar but the procedural features are well known and tested. Without considering the close analogy of the Federal Trade Commission in the field of trade practices, or the Railway Labor Act (with its boards of mediation and adjustment), it is enough to refer to the National War Labor Board established by proclamation of President Wilson on April 8, 1918, under the joint chairmanship of Hon. William H. Taft and Hon. Frank P. Walsh (see U. S. Department of Labor, Bureau of Labor Statistics Bulletin No. 287, p. 34) and to the existing National Labor Board created by President Roosevelt on August 5, 1933, and supplemented by Executive Order No. 6511 of December 16, 1933, Executive Order No. 6580 of February 1, 1934, and Executive Order No. 6612–A of February 23, 1934.

It is from this wealth of precedent that the features of the present bill have been drawn.

CONSTITUTIONAL BASIS OF THE BILL

In conclusion, it seems desirable to make it clear why the committee feels that the general subject matter of the bill is appropriate for consideration by the Congress and for Federal legislation.

There was presented to the committee a wealth of evidence (which it is not necessary to recite or even to summarize) indicating that there has been an ever-increasing stoppage of the free flow of commerce between the several States and between this and other countries as a result of disturbances in some of our

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larger industrial enterprises. Dramatic examples were drawn to the attention of the committee; and indeed, during the very weeks when the committee was holding public hearings, a serious stoppage of work in the automobile plants throughout the Nation was narrowly averted by the prompt and generous intervention of the President, who was for the time forced to lay aside many of the other duties of his office.

A large number of the witnesses who testified (particularly those from Government agencies most familiar with labor questions), were of opinion that a majority of these strikes or threatened strikes were caused by interference with the right of individuals to organize for the purpose of collective bargaining and to select representatives. The impression of these witnesses is in accord with the official statistics on the causes of strikes published from time to time by the Division of Conciliation of the United States Department of Labor in the Department's Monthly Labor Review; and also is in accord with data supplied by the National Labor Board. Moreover, these witnesses have stated that if the Government clearly declared the rights of the parties in these purely procedural questions, the parties themselves would often be able to reach an amicable adjustment of the substantive issues, such as wages, hours, and similar working conditions. The committee feels that under these circumstances it is the duty of the Government clearly to declare the law; to give every opportunity (by conciliation and otherwise), to the parties to follow this declaration voluntarily; but, as a last resort, to provide an orderly, effective method for eliminating those undemocratic practices that have threatened and actually stopped the free flow of commerce.

Some witnesses, while conceding the necessity of governmental elimination of certain abuses, have urged that the proper governmental authorities are the several States rather than the National Government. However, the committee found that many of the disputes not only had indirect effect on industries in several States but also themselves extended into more than one State. The disputes in the automobile, bituminous coal, and steel industries, whatever may have been the merits of the disputes (as to which the committee has no opinion), clearly involved identical issues simultaneously in several States and could not easily have been settled without Federal intervention.

The committee is of opinion that the evidence presented to it furnishes a constitutional basis for congressional legislation of the general character proposed in this bill. Without attempting to discuss the matter exhaustively, the committee refers in passing to two different groups of cases decided by the Supreme Court. That Court has held that Congress has power to pass laws forbidding activities of labor organizations that involve restraints of and interference with interstate commerce (*Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443; *Bedford Cut Stone Co.* v. *Journeyman Stone Cutters*, 274 U. S. 37.) Such cases indicate that labor practices may have so direct a relation to commerce as to come within the ambit of Federal jurisdiction. Another line of decisions of the Supreme Court holds that Congress may declare unlawful and may prohibit "unfair methods of competition in commerce." (*Federal Trade Commission* v. *Klesner*, 274 U. S. 145; *Federal Trade Commission* v. *Raladam Co.*, 283 U. S. 643). From this it seems to follow that Congress may declare and prohibit unfair labor practices in commerce, since these practices are not merely analogies to unfair methods of competition, but are themselves instances of such unfair competition (since in our modern interdependent economic society the break-down of labor standards in one plant affects the competitive position and eventually the labor standards in other plants even in remote areas).

The CHAIRMAN. While that report and the bill were pending in the Senate, and as the result of conferences with President Roosevelt, a substitute proposal was presented to the Senate and was enacted into law, and which is now the law, dealing with this subject. Is that correct, Senator Wagner?

Senator WAGNER. That is correct; Public Resolution No. 44. It was not, however, introduced by me, but by Senator Robinson, and all the powers under that resolution expire on June 16, I think, of this year.

The CHAIRMAN. There may be inserted in the record at this point a copy of the law enacted by the Congress in the last session, known as

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"Public Resolution 44", which was drafted and adopted as a temporary compromise.

This law expires when?

Senator WAGNER. June 16 of this year.

The CHAIRMAN. June 16, 1935?

Senator WAGNER. Yes.

(The said Public Resolution No. 44 is here printed in full:)

[PUBLIC RESOLUTION—No. 44—73D CONGRESS]

[H. J. Res. 375]

JOINT RESOLUTION

To effectuate further the policy of the National Industrial Recovery Act

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to further effectuate the policy of title I of the National Industrial Recovery Act, and in the exercise of the powers therein and herein conferred, the President is authorized to establish a board or boards authorized and directed to investigate issues, facts, practices, or activities of employers or employees in any controversies arising under section 7a of said act or which are burdening or obstructing, or threatening to burden or obstruct, the free flow of interstate commerce, the salaries, compensation, and expenses of the board or boards and necessary employees being paid as provided in section 2 of the National Industrial Recovery Act.

SEC. 2. Any board so established is hereby empowered, when it shall appear in the public interest, to order and conduct an election by a secret ballot of any of the employees or any employer, to determine by what person or persons or organization they desire to be represented in order to insure the right of employees to organize and to select their representatives for the purpose of collective bargaining as defined in section 7a of said act and now incorporated herein.

For the purposes of such election such a board shall have the authority to order the production of such pertinent documents or the appearance of such witnesses to give testimony under oath, as it may deem necessary to carry out the provisions of this resolution. Any order issued by such a board under the authority of this section may, upon application of such board or upon petition of the person or persons to whom such order is directed, be enforced or reviewed, as the case may be, in the same manner, so far as applicable, as is provided in the case of an order of the Federal Trade Commission under the Federal Trade Commission Act.

SEC. 3. Any such board, with the approval of the President, may prescribe such rules and regulations as it deems necessary to carry out the provisions of this resolution with reference to the investigations authorized in section 1, and to assure freedom from coercion in respect to all elections.

SEC. 4. Any person who shall knowingly violate any rule or regulation authorized under section 3 of this resolution or impede or interfere with any member or agent of any board established under this resolution in the performance of his duties, shall be punishable by a fine of not more than $1,000 or by imprisonment for not more than 1 year, or both.

SEC. 5. This resolution shall cease to be in effect, and any board or boards established hereunder shall cease to exist, on June 16, 1935, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 of the National Industrial Recovery Act has ended.

SEC. 6. Nothing in this resolution shall prevent or impede or diminish in any way the right of employees to strike or engage in other concerted activities.

Approved, JUNE 19, 1934.

The CHAIRMAN. There may be inserted in the record at this point the full text of section 7 (a) of the National Industrial Recovery Act (1933) which is the foundation of all these proposals.

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(Section 7 (a) of the National Industrial Recovery Act reads as follows:)

SEC. 7 (a). Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

The CHAIRMAN. That, Senator, completes the history, I think.

Senator WAGNER. Yes.

The CHAIRMAN. Now, Senator Wagner, you may present your views to the committee.

STATEMENT OF HON. ROBERT F. WAGNER, UNITED STATES SENATOR, NEW YORK

Senator WAGNER. Mr. Chairman and members of the committee, the National Labor Relations bill does not present a single novel principle for the consideration of Congress. It is designed to further the equal balance of opportunity among all groups that we have always attempted to preserve despite the technological forces driving us toward excessive concentration of power and wealth.

LEGAL BACKGROUND OF THE BILL

The first of these attempts that has contemporary significance was the Sherman Antitrust Law, enacted in 1890 to protect the laborer, the small business man, and the consumer from the dangers of unregulated monopolies of capital. The failure of that noble undertaking demonstrates the impossibility of trying to swim against the currents of economic development. The early dissolution of the Standard Oil Co. was more spectacular than realistic. The rule of reason enunciated in that famous case soon came to mean that the courts found little reason in the antitrust laws. During the flowering of American enterprise between the World War and 1930, 40.7 percent of the net income earned by all of the nonfinancial corporations in the country went to the 200 largest. The annual number of recorded mergers mounted from 89 in 1919 to 221 in 1928, while the number of concerns involved in these mergers more than tripled yearly. The right of business to combine was virtually unchallenged.

One may rake the debates preceding the passage of the Sherman Act with a fine-toothed comb and not find any indications that the law might be used to harass and impede the laborers and consumers it was designed to protect. But that has been the paradoxical fate of labor, and also of the vast majority of consumers whose share of the national income depends upon the reward they receive as employees.

The famous *Danbury Hatters case*, 208 U. S. 274 (1908), was the harbinger of future events when it declared unequivocally that the

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antitrust laws applied to labor as well as to capital. A long procession of cases following this decision moved Congress in 1914 to write the Clayton Act, declaring that labor organizations should be allowed to pursue their lawful and legitimate objectives, and that no injunction should issue in a dispute between employers and employees except when necessary to prevent irreparable injury.

Undaunted by this clear pronouncement, the Supreme Court in *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443 (1921), upheld an injunction against a secondary boycott by employees. Mr. Justice Pitney wrote:

> In determining the right to an injunction under that (the Clayton Act) and the Sherman Act, it is of minor consequence whether either kind of boycott is lawful or unlawful under common law or under the statutes of particular States. Those acts, passed in the exercise of the power of Congress to regulate commerce among the States, are of paramount authority, and their prohibitions must be given full effect irrespective of whether the things prohibited are lawful or unlawful under common law or under local statutes.

Thus the learned justice reasoned that Congress, in excluding from the prohibition of the antitrust laws all lawful acts of labor organizations, had intended to exclude only those acts that were lawful under the antitrust laws.

Mr. Justice Pitney had another hurdle to overcome, for section 20 of the Clayton Act prohibited injunctions in disputes between employers and employees. But he decided that the statute referred only to an employer and his employees, and therefore did not cover a secondary boycott. Mr. Justice Brandeis, with a keener perception of economic realities, was joined in dissent by Mr. Justice Holmes and Mr. Justice Clarke.

Soon after this, the court went even further. In *American Steel Foundries* v. *Tri-City Central Trade Council* (257 U. S. 184 (1921)), it declared that the Clayton Act "introduced no new principle into equity jurisprudence of those courts. It is merely declaratory of what was the best practice always."

While the courts were extending Federal power over labor disputes in this manner, they were deciding other cases affecting the substantive rights of employees. In the *Tri-City case* (supra), an employee organization was denied the right to place more than one peaceful picket near the entrance to a building, and the court added that "the name 'picket' indicated a militant purpose, inconsistent with peaceful persuasion." In *Truax* v. *Corrigan* (257 U. S. 312 (1912)), an Arizona statute substantially similar to section 20 of the Clayton Act was declared unconstitutional.

The high-water mark of the adverse flood came in *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters' Association* (275 U. S. 37 (1927)). In this case a small group of craftsmen had refused to work upon stone which had been shipped into the State from quarries in other States where nonunion labor was employed. The way for declaring the legality of the peaceful secondary boycott had been blazed by high courts in New York and California. (*Bossert* v. *Dhuy*, 221 N. Y. 342, 1917); and *Pierce* v. *Stablemen's Union*, 156 Cal. 70 (1909)). But the Supreme Court found a violation of the antitrust laws and sustained an injunction. The voice of Mr. Justice Brandeis was heard in protest:

> The Sherman law was held, in *United States* v. *The United States Steel Corporation*, to permit capitalists to combine in a single corporation 50 percent

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of the steel industry of the United States, dominating the trade through its vast resources. The Sherman law was held in *United States* v. *The United Shoe Machinery Co.*, to permit competitors to combine in another corporation practically the whole shoe machinery industry of the country, necessarily giving a position of dominance over shoe manufacturing in America It would, indeed, be strange if Congress had by the same action willed to deny to members of a small craft of workmen the right to cooperate in simply refraining from work, when that course was the only means of self-protection against a combination of militant and powerful employers.

While the effect of court decision was to turn against the worker and the consumer a statute which was designed for their benefit, other cases were sweeping aside the direct attempts of Congress and of the States to benefit these groups. In *Adair* v. *United States* (208 U. S. 161 (1907)), over the dissents of Mr. Justice Holmes and Mr. Justice McKenna, and in *Coppage* v. *Kansas* (236 U. S. 1 (1914)), with Mr. Justice Holmes, Mr. Justice Day, and the then Associate Justice Hughes dissenting, statutes making it a crime to discharge men for union membership were declared unconstitutional.

ECONOMIC BACKGROUND OF THE BILL

I have engaged in this summary discussion of legislation and decided cases because they present in brief and bold outline the full sweep of events. But they are largely the shadow of profound social and economic developments, and it is by turning to statistics that we get at the substance. What do the figures reveal regarding our progress in making opportunity available to all?

When the World War ended, according to the unrivaled studies of Prof. W. I. King, 15 million American families were living in poverty and 86 percent of our wage earners were receiving incomes below the level of health and decency. At the same time one-thirtieth of the people were earning one-tenth of the total national income.

During the so-called "golden era" that extended until 1929 there were stupendous increases in the total wealth of the Nation. But a study published last year by the Brookings Institution entitled "America's Capacity to Consume" indicates that the paradox of poverty and plenty was never more glaring. In 1929, 6 million families, or more than 21 percent of the total population, had incomes of less than $1,000 per year. About 12 million families, or more than 42 percent of the total, earned less than $1,500 yearly. Nearly 20 million families, constituting 71 percent of our people, received less than $2,500 each year. At the same time, in the highest income bracket, one-tenth of 1 percent of American families were earning as much as the 42 percent at the bottom. Thus Recent Social Trends, published in 1933 by President Hoover's committee, states:

> In spite of the deliberate attempts to promote the wider diffusion of wealth there is little evidence that any change in the distribution of wealth has taken place in the country during the past several decades.

I am not pleading for any special group. It is well recognized today that the failure to spread adequate purchasing power among the vast masses of the consuming public disrupts the continuity of business operations and causes everyone to suffer. The piling up of excess capital reserves and plant capacities is a dead weight upon the whole economic structure. This is abundantly proved by the painstaking statistical studies of F. C. Mills. In Economic Tendencies in

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the United States (1932) he shows that between 1922 and 1929 the development of productive capacities was four times as rapid as the rise in real wages. An unbalanced economy, fraught with certain disaster to every interest, was implicit in these undeniable developments.

And in 1929 the disaster came. But neither the social injustice of making those at the bottom of the economic ladder suffer first and suffer most, nor the preachments of economists that we could never recover by further curtailments in purchasing power, had the slightest effect. Last month the Research and Planning Division of the National Recovery Administration released its remarkable report. This report shows that while the depression forced the index of manufacturing pay rolls in the second quarter of 1933 down to 41.3 percent of the 1926 level, and brought our national income down to 57.3 percent of that level, the index of total dividend and interest payments stood as high as 142.6 percent of the 1926 level in early 1933. So long as these conditions persisted, there seemed no way to lift ourselves out of the bottomless pit of depression.

Finally, about 2 years ago, we set forth upon a new program, openly and completely reversing our earlier policies. Industrial cooperation was given sanction in order to limit the evils of destructive competition. Employees were guaranteed protection in their cooperative efforts, in order that they might help the Government to insure a sufficient flow of purchasing power through adequate wages.

At the present time, there is controversy as to whether industrial cooperation is a wise policy. There are some who plead for the strict enforcement of the antitrust laws. There are others who argue with equal force that concerted action is made necessary because of technological conditions, and that the real problem is to make such unity serve social ends. But there is no one who denies that industrial cooperation has increased enormously, and that the trade association movement has blanketed the entire country.

Still less open to question is the proposition that workers also should be allowed to cooperate fully. If impartial students agreed, and Congress recognized, that full freedom of association and self-organization among workers was desirable even when the antitrust laws were a policy, if not an actuality, how much more necessary this freedom is today, when the antitrust laws have been in part suspended. The governmental policy of fixing minimum wages and maximum hours is not a definitive solution. It is merely the foundation upon which can be built the mutual endeavors of a revived industry and a rehabilitated labor. This process of economic self-rule must fail unless every group is equally well represented. In order that the strong may not take advantage of the weak, every group must be equally strong. Not only is this common sense; but it is also in line with the philosophy of checks and balances that colors our political thinking. It is in accord with modern democratic concepts which reject the merger of all group interests into a totalitarian state. It is necessary to avert the advent of fascistic devices. The recovery program did not give employees any rights of organization to which they were not entitled before the program began. But the inauguration of the program has made the protection of these rights imperative.

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THE BREAK-DOWN OF SECTION 7 (A) AND ITS CONSEQUENCES

It is a matter of common knowledge that the principles of section 7 (a) of the Recovery Act have been flaunted at the very crucial spots where their observance is most essential. This does not inflict injuries upon one group alone. It is unjust to employees who have seen what was handed to them as a new charter being treated as a meaningless gesture. It is unfair to the vast majority of employers who are anxious and willing to obey the law, and who are faced with the destructive competition of those who seek to gain advantage by disobeying it. It is disastrous to every economic interest because it is a main cause for the reappearance of those very tendencies which brought collapse in 1929, and which will certainly bring it again if they are not checked.

Again we find a tremendous disparity between wages and return upon investment. The Research and Planning Division Report shows that by the last quarter of 1934, manufacturing pay rolls had risen only to 59 percent of the 1926 level, and our natural income had mounted only to 67.6 percent of that level, while dividend and interest payments were no less than 148.9 percent of the 1926 figure. As a corollary to this development, the past year has witnessed no appreciable increase in the real wage of the individual worker employed full time, no substantial reductions in hours of work, and no decrease in the ranks of the jobless. With hardly less than 10,000,000 people now unemployed, the consequences of not bringing corrective forces into play are truly alarming.

The CHAIRMAN. I am surprised, Senator, at those figures.

Senator WAGNER. Well, they are the figures.

The CHAIRMAN. Yes; I assume they are. We have been constantly impressed with the fact that this industry and that industry is not making any money but is carrying on in the red.

Senator WAGNER. The study is available, and it is based on actual reports of the industries.

The CHAIRMAN. In conversation I can hardly find one industry in my State that will admit anybody is making any money.

Pardon me for the interruption, but I was impressed with those figures you just gave.

Senator WAGNER. I try, as far as possible, whenever I assert anything either before a committee or the Senate, to be supported by the record rather than conjecture.

INDUSTRIAL DISCONTENT

Another major characteristic of the past two years has been the rising tide of industrial discontent. Of the 812,137 workers who were involved in strikes during 1933, over 77 percent walked out during the second half of the year. In 1934, the number rose to 1,277,344. Within a span of 24 months, over 32,000,000 man-days were lost because of labor controversies.

No one can examine the facts without concluding that the overwhelming preponderance of this tragic waste of man power was engendered by the failure to observe the basic principles of section 7 (a) of the Recovery Act.

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The CHAIRMAN. What percentage of these strikes were the outgrowth of differences between the employer and employee over section 7 (a)?

Senator WAGNER. I do not know exactly, but I should say between 70 and 80 percent; certainly not less than 70 percent. You will have more accurate figures presented to you by members of the National Labor Relations Board.

The CHAIRMAN. Of course, there is nothing in the legislation proposed that seeks to prevent strikes resulting from inability or failure of the employers and employees to agree upon terms through collective bargaining?

Senator WAGNER. No; there is not.

The CHAIRMAN. Wage and working conditions strikes, of course, will continue, but other strikes you say have been the results of misunderstanding or misinterpretation of section 7 (a), and are due to the failure alleged by employees of their employers to meet them and negotiate for collective bargaining with their duly appointed representatives.

Senator WAGNER. Yes. In many cases, also, the employer denies that particular individuals represent the majority of the workers. And there is no machinery for enforcement. While the Board has the right to hold elections, there is no way of enforcing their conclusions.

The CHAIRMAN. I meant to include that in my question. These troubles all arise over misunderstanding and misinterpretation of section 7 (a), leading up to the point of negotiating for collective bargaining.

Senator WAGNER. Yes; and there are other reasons for discontent. You will find instances where the employer has interfered by organizing a union so that he can control both sides of the table. That is why this legislation will tend to bring about peace.

During the second half of last year and the first month of 1935, controversies embracing 1,333,041 workers came before the regional labor boards. Certainly this was a large enough volume for sampling purposes. Of the 3,655 new cases received by the Board during the period, violations of section 7 (a) were involved in 3,230 of them, or about 74 percent.

Our alternatives are clear. If we allow section 7 (a) to languish, we shall be confronted by intermittent periods of peace at the price of economic liberty, dangerous industrial warfare, and dire depressions. On the other hand, if we clarify that law and bolster it by adequate enforcement agencies, we shall do much to round out the program for a balanced economic system founded upon fair dealing and common business sense. The latter course is charted by the national labor relations bill before the committee.

The CHAIRMAN. You are now going to take up an analysis of the bill?

Senator WAGNER. Yes.

The CHAIRMAN. Will you now, or later, tell us the difference in the operation of the Labor Board under section 7 (a) and under the law that was the result of Public Resolution 44. Later on you may do that, but I wanted to mention it while I had it in mind.

I want to find out how far that law which expires this year tended to remove the difficulties, misinterpretations, and limitations that the Labor Board found under section 7 (a) without that law.

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Senator WAGNER. I think you will find that the temporary resolution made practically no contribution at all toward supplying the power that was lacking. I think it might be better if, when the present chairman of the Board appears, you have him give his actual experiences under the resolution, since I have not been officially connected with the Board since its passage. I think he will persuade you that unless such power is given, there is no use continuing the National Labor Relations Board.

PROVISIONS OF THE BILL

The main provisions of the present bill define four unfair labor practices, and provide suitable means of preventing them. Let us examine how well-grounded these prohibitions are in established congressional policy, to what specific evils they are addressed, and what their implications are. I wish to state at the outset that this bill is an entirely new draft, and that it must not be interpreted in the light of whether or not it contains provisions that were in the bills upon the same subject before Congress last year.

The first unfair labor practice in substance forbids an employer to interfere with, restrain, or coerce employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

This language follows practically verbatim the familiar principles already embedded in our law by section 2 of the Railway Labor Act of 1926, section 2 of the Norris-LaGuardia Act, section 77 (p) and (q) of the 1933 amendments to the Bankruptcy Act, section 7 (a) of the National Industrial Recovery Act, and section 7 (e) of the act creating the office of the Federal Coordinator of Transportation.

Long experience has proved, however, that courts and administrative agencies have difficulties in enforcing these general declarations of rights in the absence of greater statutory particularity. Therefore, without in any way placing limitations upon the broadest reasonable interpretation of its omnibus guaranty of freedom, the bill refers in greater detail to a few of the practices which have proved the most fertile sources for evading or obstructing the purpose of the law.

Thus the third unfair labor practice makes it illegal for an employer, by discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization.

This provision is merely a logical and imperative extension of that section of the Norris-LaGuardia Act which makes the yellow-dog contract unenforceable in the Federal courts. If freedom of organization is to be preserved, employees must have more than the mere knowledge that the courts will not be used to confirm injustice. They need protection most in those very cases where the employer is strong enough to impress his will without the aid of the law. And it is perfectly obvious that unfair pressure may be exercised by discrimination in terms of employment as well as by actual discharge.

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The fourth unfair labor practice, forbidding discharge or discrimination because an employee has filed charges or given testimony under this measure, is self-explanatory.

The CHAIRMAN. Is there any material difference in the unfair practices as defined in the bill of this year in comparison with the bill reported by the committee?

Senator WAGNER. Substantially there is little. Of course, however, this is a new bill which has benefited by an additional year of thought and by the additional problems and experiences of the present National Labor Relations Board in its fine work.

Senator BORAH. Are you going to discuss the differences between this bill, if any, and the bill we had last year?

Senator WAGNER. I am not doing that at present; but later I, along with some of the experts who helped me, shall be glad to confer with the committee in regard to the reasons for the slight changes that have been made.

The CHAIRMAN. Is there any difference in the enforcement features?

Senator WAGNER. Yes; there is some slight difference in enforcement, and the present bill creates an absolutely independent board.

Senator BORAH. That is a considerable difference.

Senator WAGNER. Not very great, because although last year's bill placed the board in the Labor Department it was intended that the board should be absolutely independent in the exercise of all its powers.

The CHAIRMAN. You are setting it up apart from the Labor Department?

Senator WAGNER. Yes; because it is a quasi-judicial body and ought to be independent of the Labor Department.

The CHAIRMAN. Do you know the views of the Labor Department on that?

Senator WAGNER. I do not.

The CHAIRMAN. I understand they do not want that changed.

Senator WAGNER. I suppose the Madam Secretary will present her views to the committee.

Senator BORAH. How do you create a judicial body in this way?

Senator WAGNER. I do not say that it is entirely judicial. Complaints as to unfair labor practices are heard by the board. Then an order may be made, which is enforceable and reviewable by the courts.

The CHAIRMAN. I was impressed last week in listening to the testimony of Mr. Richberg before the Committee on Finance when he advocated a separate board in the N. R. A. to deal with issuing orders and fixing punishment. He thought the regular administration office should make the investigations and collect evidence of alleged violations, but that some independent board should act in a semijudicial manner to issue orders and invoke penalties.

Senator BORAH. There is, of course, no argument against creating a new board of some kind.

THE COMPANY-DOMINATED UNION

Senator WAGNER. The second unfair labor practice makes it unlawful for an employer to dominate or interfere with the formation or administration of any labor organization or contribute financial

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or other support to it. It is provided, however, that the National Labor Relations Board may, in its discretion, permit employees to confer with the management during working hours without loss of time or pay.

The intent here is to bring about in industry generally the same conditions which Congress decreed for the railways and businesses under trusteeship by the 1933 amendments to the Bankruptcy Act, the act creating the office of the Federal Coordinator of Transportation, and the 1934 amendments to the Railway Labor Act. If, unlike these other laws, the present bill uses the term "company-dominated union" instead of "company union", it is simply to make it clear that there is no intent to outlaw the so-called "company union" when that term is used to include an independent and unhampered organization of employees confined by their own volition to the limits of one plant.

The development of the company-dominated union has been one of the great obstacles to genuine freedom of self-organization. It is extremely significant that these spurious unions have sprouted most prolifically in the form of various employee representation plans devised after the enactment of the law designed to insure that very freedom. Over 69 percent of the plans now in existence have been inaugurated since the passage of the Recovery Act. It is worthy of note also that these plans are most prevalent in the largest plants. This means that in the very instances where the bargaining power of the employer is strongest, the worker is least free to attempt to improve his position by unrestricted affiliation with others of his kind.

In fact, the most common characteristic of the company-dominated union is that the employer to which it is subject does not permit his workers to band together with others who are not serving the same company. Thus workers may be prevented from dealing intelligently and effectively with problems of wages or hours that are regional or even national in scope. Certainly the employer who is enlisted in a powerful trade association, and who seeks to deny equivalent privileges to his employees, is acting unfairly and not in the public interest.

Another defect of the company-dominated union is that, sometimes by express provision, but more frequently by imponderable economic pressure, the employees' selection of representatives is limited to those who work for the same company. While a worker may be master of his tools, he seldom possesses the general knowledge of business conditions necessary to deal upon a parity with employers concerning terms of work. Nor can a man whose very livelihood depends upon maintaining the favor of his employer, be outspoken and independent in representing the interest of employees. No just employer should want to impose such restrictions when he utilizes trained experts in personnel management, and when he certainly would not countenance that these experts should be answerable to anyone save himself.

The company dominated union is frequently supported in part or in whole by the employer. I cannot comprehend how people can rise to the defense of a practice so contrary to American principles as one which permits the advocates of one party to be paid by the other. Collective bargaining becomes a sham when the employer sits

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on both sides of the table or pulls the strings behind the spokesman of those with whom he is dealing.

I have discussed the most common practices in connection with the company-dominated union. But interference may exist in the absence of any or all of these practices. It may consist of employer participation in the internal management or in the formation of the constitution or bylaws of a labor organization. Acts which would not constitute interference where separated parties are concerned may become interference when one party has the unique dependence attached to its source of livelihood. The question is entirely one of fact, and turns upon whether or not the employee organization is entirely the agency of the workers. Employers may of course confer with the union; but they should not participate in its deliberations as an organic entity. The organization itself should be independent of the employer-employee relationship.

Since this bill is so permeated with principles of freedom, I have been astounded to encounter the wide-spread propaganda that it imposes new forms of restraints. It does not encourage a national-union monopoly. It does not manifest preference for craft or industrial unionism. As I have said, it does not even outlaw the company union, if by that term is meant solely the free and independent organization of workers who desire to confine their cooperative actions to a single company. Nor does it prevent employers from contributing to group welfare, recreation, pensions, or other benefits, when such contributions are not used as a covert means of discrimination against workers who belong to organizations of their own choosing. But to argue that freedom of organization for the worker must embrace the right to select a form of organization that is not free is a contradiction in terms. There can be no freedom in an atmosphere of bondage.

Furthermore, the terms of the bill do not compel or even encourage a man to join any union. Nothing could be more false than the charge that a gigantic closed shop would be forced upon industry. The much-discussed closed-ship proviso merely states that nothing in any Federal law shall be held to illegalize the consummation of closed-shop agreements when they are sought by the majority of the employees in the unit to be covered by them when made. This insertion is necessary to prevent repetition of these mistaken interpretations which have held that Congress intended to outlaw the closed shop when it enacted section 7 (a) of the Recovery Act.

I hold no brief for or against the closed shop. But there are many who believe that it is a device which at times may be necessary to advance and preserve the living standards of employees. It is legal in New York, in Massachusetts, and in many other States. Upon this subject, no sufficient reason has been advanced why Congress should change the status quo.

The CHAIRMAN. Is that provision changed from the bill of last year?

Senator WAGNER. It is in most respects similar to last year's.

The CHAIRMAN. As I remember, it provides that by agreement employers and employees may decide to maintain the closed shop and only by agreement.

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Senator WAGNER. It must have the support of at least a majority of the workers.

Senator BORAH. Just how much restraint do you put on the company union, as you call it?

Senator WAGNER. The bill prevents employer interference in the formation or administration of a union, and prevents support of the union by employers.

Senator BORAH. You are not attempting to legislate against company unions?

Senator WAGNER. I have brought that out fully a few minutes ago. So long as the so-called "company union" is called such merely because it is confined to the limits of one plant, but is the free and independent and volitional choice of the workers, that is all right.

Senator BORAH. Do you regard interfering with that choice, the contribution of funds to the union?

Senator WAGNER. That would be.

Senator BORAH. Now, what others are there?

Senator WAGNER. For instance, participating in its internal management, or influencing its constitution, both frequent devices. I have never come across a company union where the constitution was not drafted by the attorney for the employer.

Senator BORAH. Let us suppose it was drafted by the attorney for the employer, but was entirely satisfactory to the union?

Senator WAGNER. The question is whether there could be real freedom of choice in such a case. I am trying to make the worker economically free as well as politicaly free. When the employer hands his workers a constitution, can there be real freedom or choice?

Senator BORAH. Who determines whether it is his choice?

Senator WAGNER. The workers choose their own representatives.

Senator BORAH. How?

Senator WAGNER. Well, by an election uninfluenced in any way. I have had experience in that line.

Senator BORAH. I have had experience with company unions, too, and I want to be sure you are not interfering with the right of the workers to have a company union if they so desire.

Senator WAGNER. I have covered the question fully in my testimony.

The CHAIRMAN. You have been using the term "dominated company union", do you concede or admit that company unions exist that are not company dominated?

Senator WAGNER. Yes; there are some, but these should really be called independent unions, for they are unions unaffiliated with other unions, but, nevertheless, the free agents of workers.

Senator BORAH. You would not permit a company to contribute any financial support at all to a company union?

Senator WAGNER. The bill so provides. However, it also provides that in the discretion of the Board, employees may confer with management during working hours without loss of time or pay.

Senator BORAH. I have in mind a union that has an annual picnic on a large scale, and the company contributes to that picnic, employs a band and such, to make it a success, and would that come in this?

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Senator WAGNER. Not if it had nothing to do with favoring or supporting a union. That is done frequently for all employees without respect to questions of unionism.

The CHAIRMAN. How about furnishing a hall or meeting place without expense by the employers for the company union?

Senator WAGNER. I think that depends a good deal on circumstances. However, I would want to think about that a little bit. Of course, these matters would come before the Board only if they were complaints or evidence of interference.

COLLECTIVE BARGAINING AND MAJORITY RULE

While the bill explicitly states the right of employees to organize, their unification will prove of little value if it is to be used solely for Saturday night dances and Sunday afternoon picnics. Therefore, while the bill does not state specifically the duty of an employer to recognize and bargain collectively with the representatives of his employees, because of the difficulty of setting forth this matter precisely in statutory language, such a duty is clearly implicit in the bill. To attempt to deal with his men otherwise than through representatives they have named for such purposes would be the clearest interference with the right to bargain collectively. As the National Labor Relations Board said so well in the Houde Engineering Corporation case, decided August 30, 1934.

> The right of employees to bargain collectively implies a duty on the part of the employer to bargain with their representatives. Without this duty to bargain the right to bargain would be sterile; and Congress did not intend for the right to be sterile * * * the incontestably sound principle is that the employer is obligated by the statute to negotiate in good faith with his employees' representatives; to match their proposals, if unacceptable with counter proposals; and to make every reasonable effort to reach an agreement.

All collective bargaining is simply a means to an end. That end is not the mere exchange of pleasantries between employer and employees, but rather the making of agreements which will stabilize employment conditions and set fair working standards. Students of industrial relations are in most unanimous accord that it is practically impossible to apply two or more sets of agreements to one unit of workers at the same time, or to apply the terms of one agreement to only a portion of the workers in a single unit. For these reasons, collective bargaining can be really effective only when workers are sufficiently solidified in their interests to make one agreement covering all. This is possible only by means of majority rule.

Majority rule, as set forth in the present bill, provides that—

> representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

The CHAIRMAN. But minority groups may be heard?

Senator WAGNER. Yes; that is correct; minority groups may be heard.

This makes it clear that the guarantee of the right of employees to bargain collectively through representatives of their own choosing must not be misapplied so as to permit employers to interfere with

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the practical effectuation of that right by bargaining with individuals or minority groups in their own behalf after representatives have been picked by the majority to represent all.

At the same time majority rule does not even imply that any employee can be forced to join a union except through the traditional method of a closed-shop agreement with the employer. And since the bill specifically prevents discrimination against anyone either for belonging or for not belonging to a union, except through a closed-shop agreement, the majority will be quite powerless to make an agreement more favorably to themselves than to the minority who remain without. In addition, the bill preserves at all times the right of any individual or minority group to present grievances to their employer through representatives of their own choosing.

Those who contest majority rule, as thus circumscribed, are in truth avoiding the duty to bargain collectively by creating conditions which make collective agreements impossible. The National Labor Relations Board laid the issue bare in the *Houde case* when it said:

> It seems clear that the company's policy of dealing first with one group and then with the other resulted, whether intentionally or not, in defeating the object of the statute. In the first place, the company's policy inevitably produced a certain amount of rivalry, suspicion, and friction between the leaders of the committees. * * * Secondly, the company's policy, by enabling it to favor one organization at the expense of the other, and thus to check at will the growth of either organization, was calculated to confuse the employees, to make them uncertain which organization they should from time to time adhere to, and to maintain a permanent and artificial division in the ranks.

Proceeding to discuss the relative merits of so-called "proportional representation", the Board said:

> This vision of an employer dealing with a divided committee and calling in individual employees to assist the company in arriving at a decision, is certainly far from what section 7 (a) must have contemplated in guaranteeing the right of collective bargaining. But whether or not the workers' representation by a composite committee would weaken their voice and confuse their counsels in negotiating with the employer, in the end whatever collective agreement might be reached would have to be satisfactory to the majority within the committee. Hence the majority representatives would still control and the only difference between this and the traditional method of bargaining with the majority alone would be that the suggestions of the minority would be advanced in the presence of the majority. The employer would ordinarily gain nothing from this arrangement if the two groups were united, and if they were not united he would gain only what he has no right to ask for, namely, dissention and rivalry within the ranks of the collection-bargaining agency. He could, by lawful means, ascertain the views of particular employees regarding proposals which are under consideration, but he would have no right to insist that the representatives of the majority should, in the absence of any agreement, advance their proposals only in conjunction with some other group.

The CHAIRMAN. There is nothing in this bill that permits the issue of an order or the inflicting of any penalty upon any employer who receives representatives of the employees and who conducts conferences with them, even if the conferences end in the inability of the employer to agree to the terms of the employee?

Senator WAGNER. No; you could not do that very well. But I am sure there is in the legislation the implicit obligation upon the employer to bargain collectively.

The CHAIRMAN. How are you going to reach that?

Senator WAGNER. These things are not very difficult in actual practice, because it is easy to ascertain whether an employer refused to recognize the process of collective bargaining.

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The CHAIRMAN. Whether he is acting in good faith.

Senator WAGNER. That is it exactly.

The CHAIRMAN. Suppose he is not, what you going to do with him under this legislation? He receives the representatives of the employees, sits in the conference room with them, and says, "Thank you, gentlemen, but I cannot accept your proposition." The only thing left is for the employees to strike, is it not? There is nothing in the law to compel the employer to do anything.

Senator WAGNER. Of course, he need not reach an agreement. But if he evidenced bad faith by not really attempting to bargain collectively, that would be an unfair labor practice, because it would be interference with the right of employees to bargain collectively.

Senator MURRAY. We had that situation in Montana last summer. There was a strike for 3 months, and there were conferences held.

The CHAIRMAN. And after all of the conferences, the situation remained in status quo.

Senator MURRAY. Yes; and it was one of the longest strikes in our history.

Senator WAGNER. I think you will find, before we get through, that someone will suggest another unfair practice, putting upon the employer the obligation to use every reasonable effort to reach an agreement with employees, but that is a very difficult thing to carry out.

Senator BORAH. If you put it upon the employer to do something, you will finally have to have labor do it.

Senator WAGNER. I do not think that difficulty you have in mind will arise.

Senator BORAH. Do you avoid the legal questions raised by these recent decisions?

Senator WAGNER. There is only one on section 7 (a), and that is the case in New Jersey I shall discuss briefly.

Senator BORAH. There have been two other decisions, one in St. Louis and one in New Orleans.

Senator WAGNER. Not on section 7 (a).

Senator BORAH. I know, but on the question of whether the National Recovery Administration can have anything to say about labor when it is employed in purely intrastate business.

Senator WAGNER. I think the Supreme Court has held differently, in analogous situations.

Senator BORAH. You do not mean to say that Congress can legislate as to a man who is engaged in purely intrastate business, do you?

Senator WAGNER. If it is not interstate commerce or affecting interstate commerce in some way, of course not. But you know the courts have gone pretty far to hold that strikes seriously dry up trade channels and thus affect interstate commerce.

Senator BORAH. Here is a man working in an industry and that industry may ship its products in interstate trade, but his work has nothing to do with that at all, he is not engaged in the interstate part of it, but simply in producing it, and you cannot deal with him if that work is not connected with interstate trade.

Senator WAGNER. I am giving you not only my own views but the tendency of the United States Supreme Court to hold that industrial warfare may affect commerce.

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There is the *Bedford Stone Cutters case*, you remember, where the Supreme Court found justification for an injunction where workers refused to work upon some stone which had been brought from another State, although their work was to be done within one particular State alone.

Senator BORAH. Yes; but they extended their influence into other States by refusing to accept the stone.

Senator WAGNER. Certainly; but the courts have said that an industrial strike, though it may be entirely within a State, may extend its effects into other States and thus affect interstate commerce. I think the courts are going still further, for we cannot regard State lines as economic barriers. It all depends, of course, upon the facts in each case.

Senator BORAH. If a man is engaged in work which actually affects interstate commerce, that, of course, is a different proposition.

Senator WAGNER. Yes; or if the industrial warfare into which he may be drawn would affect interstate commerce in some way. Later on I shall read from the opinions of the Supreme Court.

The keen analysis of majority rule by the Board did not carry it afield from trodden paths. The principle of majority rule has been applied regularly by governmental agencies and recognized repeatedly by laws of Congress. It was followed by the National War Labor Board, created by President Wilson in the spring of 1918. It has been applied consistently by the Railway Labor Board, created by the Transportation Act of 1920. The 1934 amendments to the Railway Labor Act of 1924 provided for it. On February 1, 1934, the President issued an executive order, authorizing the National Labor Board to hold elections, and provided substantially that those selected by "at least a majority of the employees voting" should "represent all the employees eligible to participate in such an election for the purpose of collective bargaining." Public Resolution No. 44, approved in June 1934, in that it provided for elections, must have contemplated majority rule. Even those employers who set up employee-representation plans provided consistently that representatives for collective bargaining shall be elected by majority vote. And the rule prevails in the conduct of business.

The platform adopted by the Congress of American Industry and the National Association of Manufacturers on December 5 and 6, 1934, provides:

> Under appropriate safeguards the approved competitive practices and prohibitions submitted by the properly defined majority of a group, trade, or industry should be binding upon the minority.

Freedom for the individual worker does not mean that he should be free from the orderly processes of determining questions which prevail in business and in public affairs. That kind of freedom is the trade name for exploitation.

To determine the representatives of employees in case of controversy, the bill authorizes the National Labor Relations Board or its agents to hold election or to utilize any other appropriate method. Such determination by an impartial governmental body is the first prerequisite to establishing the foundation upon which collective bargaining must rest.

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SHOULD THE BILL PROHIBIT COERCION FROM ANY SOURCE?

Having outlined the main substantive provisions of the National Labor Relations bill I want to direct attention to one criticism that has been leveled against it. It has been claimed that in order to be fair, the bill should prohibit employees and labor organizations, as well as employers, from coercing employees in their choice of representatives. This argument rests upon a misconception of the needs which give rise to this measure. Violence and intimidation by either employers or workers are adequately prevented by the common law and do not require special treatment. This measure deals with the subtler forms of economic pressure. Such pressure cannot be exerted by employees upon one another to an extent justifying congressional action. But it can be directed against a worker by an employer who controls his job. It is this latter evil which has grown to a magnitude requiring a new public remedy. Furthermore, many courts have defined the term "coercion" to embrace all strikes or picketing, no matter how justifiable. They have drawn a line between legal and illegal coercion. Thus to prohibit employees from coercing their own side would not merely outlaw the undesirable action which the word connotes to us, but would make the result reached in the loudly condemned *Hitchman Coal Case*, 245 U. S. 229 (1917), the law of the land. It would defeat the very freedom of self-organization which the bill is designated to protect. All legislation strives not for an abstract or paper equality but for conditions which will produce actual equality in the light of concrete facts.

ENFORCEMENT PROVISIONS

At present, the National Labor Relations Board suffers most seriously from lack of adequate enforcement powers. Of course, it may refer its decisions to the National Recovery Administration, and that agency is backed by powerful sanctions. But it is well known that these sanctions have scarcely been utilized because the entire drift of N. R. A. has been toward self-government and self-enforcement by industry operated through the code mechanism. This may well be an admirable method of preserving canons of fair competition that have been not only approved but actually proposed by the majority of the businesses to whom they apply. But it is totally ineffective in maintaining the guaranties of section 7 (a), which was written by Congress, and which becomes a burning issue in those very cases when its validity is challenged by the powerful. Definite mandates of Congress must be enforced by the Government.

The CHAIRMAN. Do you contend that the codes are being drafted, or have been drafted, or can be drafted in such a manner as to impair and restrict collective bargaining by the employer and employee?

Senator WAGNER. The codes do not really deal with collective bargaining, except that they incorporate section 7 (a). My point is that the agencies which enforce or rather police the code provisions as to fair competition are neither eager nor able to enforce section 7 (a).

The CHAIRMAN. If the codes fix their wages and fix their hours of employment, how are you going to permit representatives of em-

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ployees to bargain with the employer. Has the employer not a defense in saying "here is my code."

Senator WAGNER. The codes merely fix minimum standards. They do not preclude collective bargaining for purposes of elevating these standards or dealing with other matters.

The CHAIRMAN. Is a good deal of collective bargaining today being carried on before the making of the codes and embodied in the codes?

Senator WAGNER. Collective bargaining?

The CHAIRMAN. Yes; the results of collective bargaining.

Senator WAGNER. Most of the codes have minimum wage provisions, which are not the result of dealings between employers and employees.

The CHAIRMAN. They fix hours of employment.

Senator WAGNER. Yes; they fix the hours of employment, but subject to the approval of the Government.

The Chairman. Any they set up in some cases arbitration boards to settle disputes.

Senator WAGNER. Not in the codes, unless there are separate agreements with the workers. There is no code, so far as I know, which provides compulsory arbitration.

The CHAIRMAN. Was not the textile strike a revolt against the cotton-textile code?

Senator WAGNER. Not so much against the code, although they did object to the low minimum wage. It was rather a protest because they were not given proper protection by the Labor Board created under the code. In addition, the code only fixed a minimum wage, but did not fix higher scales for the skilled worker. The strike, as I recall, was based partly upon the fact the skilled workers were being paid an inadequate wage.

The CHAIRMAN. With the result that the minimum wage in the code tended to pull down the wages in the higher scales?

Senator WAGNER. That is correct. The workers wanted to maintain the differential between the unskilled and the skilled workers that maintained before the codes were enacted. It had not been maintained.

To get back to the question of enforcement: The Board may refer its decisions to the Department of Justice. But since the Board has no power of subpena or investigation except in connection with elections, the records which it builds up are based, in most cases, upon the testimony of complaints alone, supplemented at best by the testimony of such witnesses as the defendant voluntarily presents. This makes it necessary for the Department of Justice in any event to make further investigations before bringing suit; and if the Department brings suit at all, it must commence entirely de novo in the courts, with the defendant having 30 days to answer, or moving to dismiss, or applying for a bill of particulars. Thus is defeated the very purpose of an administrative agency, which is to provide specialized treatment of the factual aspects of specialized controversies.

Thirdly, the present board has been forced to hold that section 7 (a) applies only to codified industries. This not only deprives a vast segment of our workers of a protection which they should have; but it also enables some codified industries constantly to utilize the threat that they will abandon their codes if 7 (a) is enforced.

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The almost complete breakdown of law observance in crucial cases merely reflects these weaknesses in existent law. During the last half of 1934, the National Labor Relations Board made 68 decisions requiring compliance. In 43 of these cases, compliance was not obtained. Twenty-one were referred to the Recovery Administration there to await the ineffectual removal of some "blue eagle." In the 19 cases sent to the Department of Justice, only one has found its way into the courts.

The CHAIRMAN. How many of those decisions were voluntarily complied with.

Senator WAGNER. Probably none, but I do not know. The board will tell you that.

In order to eradicate this evil, the present bill creates an independent and permanent National Labor Relations Board, composed of three members, appointed by the President by and with the advice and consent of the Senate. To prevent unfair labor practices, the Board is given power to conduct investigations, to issue subpenas, and to frame cease-and-desist orders. Such orders, if disobeyed, are enforceable in the Federal courts, and any party aggrieved by a positive or negative order of the Board may secure appropriate court review.

The CHAIRMAN. Do you provide for representatives of employers and employees on the board?

Senator WAGNER. No; three public officials.

Senator BORAH. Are all of the orders and decisions reviewable by the courts?

Senator WAGNER. Yes; it is provided that all of the orders are reviewable by the courts.

In contrast to the widespread charges that the board is to be invested with extraordinary powers, the procedure outlined has become part and parcel of the functioning of such agencies as the Federal Trade Commission, the Interstate Commerce Commission, and many others.

ELECTIONS OF REPRESENTATIVES

A second stumbling block in the pathway of the board has to do with the holding of elections. Under Public Resolution 44, passed last June, any attempt of the Board to hold an election may be contested at the outset in the Federal courts. As a result, the board, during the last half year, has been able to conduct elections in only 2 cases out of 8. In every case where the company has refused consent to an election, the board has been tied up so indefinitely that not a single controversy has yet been argued in any circuit court of appeals. When the Steel Code was renewed in May 1934, thus averting a great steel strike, it was with the express understanding that elections would be held promptly in the steel industry. But the Steel Board, after months of delay, has had no success in holding elections in the large plants.

The CHAIRMAN. That was under the resolution of last year.

Senator WAGNER. Yes; Public Resolution 44.

The CHAIRMAN. It was not effective in changing the conditions existing under the old law?

Senator WAGNER. That is correct. The present bill cures this difficulty by providing that the Board may conduct elections without

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anterior court review. An election is nothing but an investigation, a factual determination of who are the representatives of employees. There is no more reason why this should be delayed, than why an investigation by the Board as to whether there has been an unfair labor practice should be held up. But if the Board, after holding an election, gives it practical effect by ordering an employer to deal with representatives as chosen, the whole conduct of the election becomes part of the record reviewable in the courts, just the same as any other action of the Board upon which an order to refrain from an unfair labor practice is based. This provision insures full court review in any case where an election effects an employer in any substantial way. But it does not stoop to the folly of holding the Board up twice, once by court review before the election, and then by court review of the order based upon the election.

NEED FOR ONE SUPREME NATIONAL LABOR RELATIONS BOARD

Another factor which has contributed mightily to the emasculation of the rights guaranteed by section 7 (a), has been the intrusion of a wide variety of independent industrial boards. At the present time, there are 13 separate boards, exclusive of the National Labor Relations Board and the National Mediation Board, authorized to handle labor disputes, including 7 (a) cases. It is true that in most instances a right of appeal lies from a decision of some of these boards to the National Labor Relations Board. But the practical results of the existing set-up has rendered that right illusory.

The CHAIRMAN. Are those Boards set up in the code?

Senator WAGNER. Some under codes, and others are appointed by the President, such as the Steel Board and the Automobile Board. There are others which I cannot recall offhand.

In addition, the National Labor Relations Board now has no jurisdiction over the factual findings of boards established pursuant to any industrial code, or any power to reform their interpretations of the law. As there are now 103 codes which make some provisions for the creation of such boards, there is great likelihood of a proliferation of independent agencies dealing with collective bargaining rights.

Of course, these independent boards, like the National Labor Relations Board, have not sufficient power today to protect collective bargaining even if they wanted to. And certainly it would be very dubious policy to confer upon all of them the increased authority which is proposed for a single national board by this bill.

But that is not the main point. The entrustment of section 7 (a) or its equivalent to a variety of independent industrial boards is bad in principle. The very kernel of the industrial board idea is that each industry has special problems which require differentiated treatment. The boards are largely bipartisan, and live in an atmosphere of compromise, conciliation, and adaptation. This is perfectly suited to the settlement of disputes concerning hours and wages, where shifting scales are fitted to particular conditions. But it is unsuited to section 7 (a), which Congress intended for universal application, not universal modification. The practical effect of letting each industry bargain and haggle about what section 7 (a)

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means is that the weakest groups who need its basic protection most receive the least.

For these reasons the present bill gives the National Labor Relations Board exclusive jurisdiction to prevent unfair labor practices as defined in this bill. In connection with this work, it may establish regional agencies to make primary investigations and findings for the guidance of the Board, and, of course, it may denominate existing industrial boards to act as such agencies. Where industrial boards and the like are operating under some other statute, such as section 7 (a) of the Recovery Act, the National Labor Relations Board may, in its discretion, defer action under this bill until the other boards have had opportunity to prove their effectiveness in protecting these fundamental rights of employees. But the National Labor Relations Board, by such deference, will not lose its power at any time to act in its own right to prevent unfair labor practices, and to speak with final authority where conflicts of law or interpretation or administration exist. Only by the operation of a single unifying and coordinating administrative body can the law of Congress be kept true to its intent and receive respectful attention in the courts.

INDEPENDENCE OF BOARD ESSENTIAL

I cannot urge too strongly that the National Labor Relations Board should be maintained as an independent agency of the Government. There is nothing in the bill which interferes with the Conciliation Service of the Department of Labor, for that service performs a most useful function where it is now located.

The CHAIRMAN. Do you believe in retaining also in the National Labor Board the Conciliation Service of the Department of Labor?

Senator WAGNER. Yes; the Conciliation Service, for conciliation and mediation such as it now does, should be preserved.

The CHAIRMAN. What becomes of the National Labor Board?

Senator WAGNER. That is to enforce unfair labor practices, which are definite laws of Congress.

The CHAIRMAN. Is that not the Board you are going to set up here?

Senator WAGNER. Yes; that is to be a quasi-judicial body protecting rights, while the Conciliation Service of the Department of Labor is a conciliation body trying to adjust differences.

The CHAIRMAN. You mean the National Labor Board created in this bill is the judicial body to determine rights?

Senator WAGNER. Yes.

The CHAIRMAN. What is to become of the labor boards now operating under the N. R. A.?

Senator WAGNER. The National Labor Relations Board will be concerned with questions regarding collective bargaining rights. These other boards, to which you refer, may go on as conciliation agencies dealing with hours and wages.

The CHAIRMAN. Up to the present time they have been trying to enforce 7 (a)?

Senator WAGNER. I do not think they have been trying, but I know they have not been successful.

The CHAIRMAN. What Board do you have reference to, the Board of which you have been a member?

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Senator WAGNER. I was a member of the National Labor Board. That was succeeded by the National Labor Relations Board, appointed by the President under Public Resolution No. 44.

The CHAIRMAN. Do you repeal the law of last year?

Senator WAGNER. This bill displaces it.

The CHAIRMAN. The Labor Boards under the N. R. A. now pass upon questions relating to labor in these codes. Is that correct?

Senator WAGNER. Are you speaking now of the so-called "industrial boards" set up within an industry?

The CHAIRMAN. I am referring to the labor committee, the Board under the N. R. A., to whom all codes are submitted to make comments.

Senator WAGNER. You mean the Labor Advisory Board.

The CHAIRMAN. Yes; that is what it is called.

Senator WAGNER. They do nothing except to review the proposed codes and make recommendations as to the labor provisions.

Senator BORAH. Do you not think there should be some abolishing done? We have a multitude of boards, and there should be some simplification.

Senator WAGNER. That is why I am urging that all of the policies and interpretations regarding collective-bargaining rights should be centered in one supreme Board, instead of scattered among a number of boards.

Senator BORAH. That is something I think is pretty desirable.

The CHAIRMAN. How many members were on the Board of which you were a member?

Senator WAGNER. We had seven.

The CHAIRMAN. And that is to be reduced to three?

Senator WAGNER. Yes. The present Board also has three members.

The CHAIRMAN. Under the act of last year?

Senator WAGNER. Yes; under the resolution of last year.

There is no more reason why the Board should be connected with the Department of Labor than why the Federal Trade Commission should be attached to the Department of Commerce. For years lawyers and economists have pleaded for a dignified administrative tribunal, detached from any particular administration that happens to be in power, and entitled to deal quasi-judicially with issues with which the courts have neither the time nor the special facilities to cope. With such tribunal in the offing, its integrity should be preserved.

The Board is empowered also to arbitrate labor disputes upon voluntary submission. But its awards shall be binding only upon parties who have agreed in advance, and there is not the slightest flavor of compulsory arbitration.

CONSTITUTIONAL PROBLEMS

Finally, I desire to discuss the constitutional problems raised by this bill. There are two broad questions involved: First, does the regulation of the employer-employee relationship as herein provided violate due process of law; and, secondly, can Federal jurisdiction over this relationship be sustained under the commerce power?

The power of Congress to guarantee freedom of organization, to prohibit the company-dominated union, and to prevent employers

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from requiring membership or nonmembership in any union has been upheld completely in *Texas & New Orleans R. R. Co.* v. *Brotherhood* (281 U. S. 548 (1930)). This was a suit by a labor union to restrain the railroad from interfering with the right of its employees to self-organization and the designation of representatives, in violation of the Railway Labor Act of 1926. The decree of the lower court provided that the railway company should: (1) Completely disestablish its company union; (2) reinstate the Brotherhood as representative until the employees, by secret ballot, should make a choice; (3) restore to service and to stated privileges certain employees who had been discharged for activities in behalf of the brotherhood. The Supreme Court, with Chief Justice Hughes writing for a unanimous Court sustaining the decree, wrote:

> The legality of collective action on the part of employees in order to safeguard their proper interests is not to be disputed. It has long been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work * * * Congress was not required to ignore this right of the employees but could safeguard it and seek to make their appropriate collective action an instrument of peace rather than of strike. Such collective action would be a mockery if representation were made futile by interference with freedom of choice.

The CHAIRMAN. What is the date of that decision?

Senator WAGNER. 1930.

The CHAIRMAN. That is before 7 (a), of course?

Senator WAGNER. Yes.

Thus, the Supreme Court sustained a decree prohibiting in substance all except the last of the unfair practices listed in this bill, and it is particularly significant that this decree was based upon a law containing only the first of these practices.

Brushing aside that much criticized earlier cases that had declared the prohibition of the yellow-dog contract unconstitutional, Chief Justice Hughes said:

> The petitioners invoke the principle declared in *Adair* v. *United States* (208 U. S. 161) and *Coppage* v. *Kansas* (236 U. S. 1), but these decisions are inapplicable. The Railway Labor Act of 1926 does not interfere with the normal exercise of the right of the carrier to select its employees or to discharge them. The statute is not aimed at this right of the employers but at the interference of the right of employees to have representatives of their own choosing. As the carriers subject to the act have no constitutional right to interfere with the freedom of the employees in making their selections, they cannot complain of the statute on constitutional grounds.

When we realize that this prevailing and unanimous opinion of the Chief Justice follows precisely the line of reasoning that he followed when dissenting in the *Coppage case*, and that the two cases are really identical in principle, we cannot doubt that *Coppage* v. *Kansas* and *Adair* v. *U. S.* have been overruled. Let me quote the reasoning of the present Chief Justice. then an Associate Justice, in the Coppage case:

> There is nothing in the statute now under consideration which prevents an employer from discharging one in his service at his will. The question now presented is: May an employer, as a condition of present or future employment, require an employee to agree that he will not exercise the privilege of becoming a member of a labor union should he see fit to do so? In my opinion, the cases are entirely different, and the decision of the question controlled by different principles. The right to join labor unions is undisputed, and has been the subject of frequent affirmation in judicial opinions * * * the

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right to join them, as against coercive action to the contrary, may be the legitimate subject of protection in the exercise of the police authority of the States.

It is true that the *Texas case* involves the interests of railway workers, but its decision on the question of due process is equally applicable wherever congressional jurisdiction over interstate commerce can be established. Let us now examine the grounds for Federal jurisdiction.

A vast number of strikes have arisen in protestation against the denial of the rights guaranteed by section 7 (a) of the Recovery Act and reaffirmed by the present bill. Certainly many of these outbreaks would be prevented if these rights were secured. And that strikes burden commerce cannot be denied. In the *Bedford Stonecutters case* (supra) the stonecutters had refused to work upon a stone shipped into States from quarries in other States where non-union labor was employed. The court held this a violation of the antitrust laws on the ground that refusal to work upon this stone necessarily decreased the orders for more stone from the quarries in other States and thus affected interstate commerce. If the court can take so broad an interpretation of commerce, when the result of so doing is to frustrate the attempt of the wage earner to better his economic conditions, it certainly should take an equally broad view when acting to diminish strikes by preventing the unfair labor practices which provoke them.

And it is clear that these practices may be enjoined before the strike occurs. As Chief Justice Taft said in the first *Coronado case* (259 U. S. 344 (1933)):

If Congress deems certain recurring practices, though not really part of interstate commerce, likely to obstruct, restrain, or burden it, it has the power to subject them to national supervision or restraint.

In fact, none of the cases under the antitrust laws has gone to the constitutional limit of Federal power over interstate commerce. Where the court has refused to enjoin strikes, it has not been for lack of such power, but because the burden upon commerce was not deemed such as the antitrust laws intended to prohibit. Statutory construction of these laws as fixed the boundaries. But the Federal Government has the power within the Constitution to prevent any burden whatsoever upon interstate commerce. And there can be no doubt that Congress intends this power to be exercised in full to prevent unfair practices that cause or threaten to cause even the slightest burden.

I want to emphasize even more strongly the constitutional power and the intent of Congress to prohibit these unfair labor practices even where they do not lead or threaten to lead to strikes. Under our present economic system, collective bargaining is one of the essentials for maintaining an adequate distribution of purchasing power among the population generally. The impairment of collective bargaining is lkely to intensfy the maldistribution of buying power, thus reducing standards of living, unbalancing the economic structure, and bringing on depressions with their devastating effects upon the flow of commerce. The theory of the Recovery Act is that wage-fixing by means of codes may bear a direct relationship to interstate commerce. If that is true, other processes of fixing

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wages, such as collective bargaining, have an equally important bearing upon such commerce.

The Supreme Court already has recognized the relationship between prices and commerce. In *Chicago Board of Trade* v. *Olsen* (262 U. S. 1 (1922)), upholding the validity of Federal regulation of boards of trade at terminal markets, the court said:

> The question of price dominates trade between the States.

In effect upon commerce, wages are indistinguishable from prices.

In the more recent case of *Appalachian Coal* v. *United States* (53 Supreme Court 471 (1933)), the present Chief Justice recognized in dramatic language the relationship between general business conditions and the flow of commerce. He wrote:

> The interests of producers and consumers are interlinked. When industry is grievously hurt, when producing concerns fail, when unemployment mounts, and communities dependent upon profitable production are prostrated, the wells of commerce go dry.

This language is no less applicable when Congress has declared that the lack of enforcement of the right to bargain collectively is having an adverse effect upon the maintenance of sound economic conditions.

While this bill does not intend to go beyond the constitutional power of Congress, it goes to the full limit of that power in preventing these unfair labor practices. It seeks to prevent them whether they affect interstate commerce by causing strikes, or by destroying the equivalence of economic forces upon which the full flow of commerce depends, or by occurring in interstate commerce.

WEIRTON CASE

The recent decision in the Weirton case is based upon Judge Nield's finding that the activities of the Weirton Co. union did not interfere with the freedom of employees to organize, as guaranteed by section 7 (a) of the Recovery Act. It seems clear that this decision is far out of line with that of the United States Supreme Court in the *Texas and New Orleans case*, to which I have referred, and which held that activities similar to those at Weirton were illegal under the Railway Labor Act of 1926 an act no more specific in its terms than section 7 (a). Not a single lawyer with whom I have talked has been able to explain Judge Nield's failure not only to distinguish but even to refer to the *Texas case*. But even if it were to be conceded that Judge Nield's correctly interpreted section 7 (a), his decision merely emphasizes the need for strengthening that section and creating a permanent administrative tribunal, versed in the complexities of labor relations, to deal with such matters.

Since Judge Nields found that section 7 (a) does not outlaw the activities complained of at Weirton, his discussion of the constitutionality of that section is pure dictum. I cannot believe that this dictum of a single district judge as to the extent of the power of Congress to regulate interstate commerce will weigh very heavily with this committee, particularly since his limited concept of interstate commerce, while in line with many early decisions of the United States Supreme Court, is clearly at odds with later decisions of our highest court which I have discussed, and which are responsive to the changing character of our national economic life.

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CONCLUSION

I am sure that this review of the proposed legislation and its purposes will make people wonder why it has caused such opposition in some quarters. It has been branded radical by some and ultraconservative by others, but every one of its principles has been sanctioned by a long train of laws of Congress. It has been called inopportune and hasty. But is it not time to act upon the ominous industrial disturbances of last summer, when blood ran freely in the streets and martial law was in the offing? Is it not time to note that during the last half of 1934 and the first month of this year almost three-fourths of a million workers were sent back to their jobs or kept from leaving them by the National Labor Relations Board and its regional agencies?

This bill has been called one-sided and directed against industry. If this criticism could be sustained, it would certainly be decisive. American industry is deserving of every consideration. It has played a tremendous role in developing economically the greatest industrial nation in the world, with the highest standards of living for people in all walks of life. Industry as a whole has met the problems of the recent depression and the immediate problems of industrial unrest with heroic courage, resourcefulness, and public spirit. It will continue to exert the same profound influence and fine leadership in American life. Upon its welfare depends the welfare of all. The Congressional duty to help industry solve its difficulties is coincident with the duty to help workers or consumers.

But the proposed measure is not derelict in its duty to all. Is not economic strife a curse to every group? Is not industrial peace beneficial to all? Has not every step in the "new deal" program attempted to embrace the interests of the public at large? Is there a single right guaranteed to employees by this measure which employers do not already enjoy? The new law will apply the healing balm of an upright, impartial, and peaceful forum to industry and labor, and thus will benefit employers, workers, and the country at large.

The CHAIRMAN. Thank you very much, Senator Wagner. We appreciate having your comprehensive statement on this important proposal.

The hearing will be recessed until 10:30 o'clock tomorrow morning at room 335.

(Thereupon, at 12:05 p. m., the hearing in the above-entitled matter was recessed until Tuesday, Mar. 12, 1935, at 10:30 a. m.)

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NATIONAL LABOR RELATIONS BOARD

TUESDAY, MARCH 12, 1935

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D. C.

The committee met, pursuant to adjournment, at 10:30 a. m., room 335, Senate Office Building, Washington, D. C.

Present: Senators Walsh (chairman), Thomas, Murray, Donahey, La Follette, and also Senator Robert F. Wagner.

The CHAIRMAN. The committee will come to order, please. The Honorable Secretary of Labor is present. The committee would be pleased to hear from you, Miss Perkins.

STATEMENT OF HON. FRANCES PERKINS, SECRETARY OF LABOR

Secretary PERKINS. I understand you have before you, and I am very glad to appear on request, on Senate bill 1958, which is commonly known as the "Labor Relations Act."

The CHAIRMAN. The committee always wants your views on labor measures, and we will always send for you as we have in this case and put you in a position of giving your testimony not for one side or the other but as Secretary of Labor.

Secretary PERKINS. I think this bill which is before you is an important measure. The bill deals with the questions which have been very prominently before the public for the last 2 years, namely, the question of the proper relationship between employers and workers, all of these questions having come to the fore following the passage of the N. R. A. law, with its section known as "7 (a)", which attempts to define the relationship between employers and employees, and which expressly requires an employer to allow collective bargaining.

Those who were engaged in writing section 7 (a) of the N. R. A., and I think those who passed it, had in their minds a general conception of collective bargaining, but no clear legal definition of what collective bargaining is.

The term "collective bargaining" arose in the early nineties in England, when the trade unions began to come prominently to the foreground, trying to make arrangements with the employees, which covered all of their people in a plant.

I understand it was Beatrice and Sidney Weff who originated the term "collective bargaining." The term seemed appropriate since the workers were no longer carrying on individual negotiations with the employer, but they attempted to get agreements with regard to their work as a group rather than individuals, and the same rule was to apply to all of the groups rather than to apply to John Jones and Sam Smith.

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In this country, following the war, as you remember, it became the common practice for groups known as "company unions" to spring up in some plants, arising originally partly out of the exigencies of the war, which made it necessary for quick arrangement to be made with the people in trades where there was no organization.

However, the continuation of these unions and the further development of them came to be a conscious movement under the title of "company union." That brought us face to face with the question of whether or not a company union is a proper agency for collective bargaining, or whether only a union which is organized without any influence, assistance, or domination by the employer is the agency that is properly equipped for collective bargaining.

When the question began to arise under the N. R. A. in the interpretation of 7 (a) mainly, it appeared there was a great diversity of opinion and that opinions did not run in any one or two clear lines, but almost every case was treated differently, and an effort was made to patch up the situation.

What I want to point out is that the first steps of the original Labor Board, which was appointed rather hastily, to solve questions under section 7 (a), was along the line of conciliation.

If you will look at the records of what they did, you will see there was no effort to define collective bargaining, nor to determine judicially the rights of the various parties to the collective bargaining. Rather, there was an effort to conciliate and bring about settlements which would either prevent a strike, or if there was a strike, to settle it and put the people back to work on some suitable terms.

That drifted along until there came to be some rather definite conceptions as to what were the proper interpretations of the sections of 7 (a), which began to come definitely before the people in the various strikes or the various attempts at collective bargaining.

There was then one instance where the employer held the view that his employees did not wish to be represented by the union which was claiming to represent them, and some member of the Board suggested in a perfectly simple way, why not take an election, take a vote, and see whether they want to be represented by this union or not. This vote was taken, and at that time no one ever raised the question as to whether the majority ruled or not. It was taken for granted that in elections the American habit is so fixed upon the idea that the majority rules, that the question was not raised.

It was only after several such elections had been held that some one who was displeased with the result of the election, when the election indicated that the majority of the people in the plant desired to be represented by the outside union, that it was suggested that the minority group within that plant had no direct way of representation.

We began then to have this discussion and debate as to whether or not the majority did have a right to speak for all of the employees in the plant or not, and this issue came to be an issue which was debated publicly as well as in the circle of those who had the responsibility for bringing about a fair and proper adjustment with the various plants.

At any rate, these questions have been emerging in these past 2 years as issues, although previous to these years they never seemed

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to be issues at all, settlement of strike in the past having been made almost entirely on the basis of conciliation.

Until recent years there has been no attempt by the Federal Government to define the rights of workers and employers with respect to collective bargaining. But Congress in passing section 7 (a) of the National Recovery Act took the first steps toward writing a definitive law, and made a sort of basic structure of law on the rights of the parties, which was to be interpreted and applied in practice.

Before the passage of this law there were no legal rights and if there was no right, you would have no need of interpretation. The matter would be left not to interpretation but to conciliation. And conciliation would settle the differences between the groups, depending largely upon which were the larger, or more reasonable groups.

However, when Congress has definitely and specifically spoken and said that collective bargaining is to be permitted, and no man is to be discriminated against for belonging to a union, nor is he to be coerced into joining, or compelled to join any organization, then there must be some agency to determine in that structure exactly how it applies in a particular case, and what further definition can be worked out on the basis of experience.

Therefore, the proposals to establish a board with some such powers and duties was made a year ago you remember, and it was at that time that an attempt was made to make permanent what had been an informal procedure, and define its lines of duty, and to make it a quasi judicial body.

The Congress did not pass such a bill, but it did pass Public Resolution 44, which gave to the President power to appoint a board or boards to deal with such matters, and the President did, under Executive order, appoint several such boards.

We therefore have, not only in the experience of the Labor Board, commonly called the Wagner Board, this informal board which operated during the first year of the N. R. A., but in the experience of the boards which have operated during the second year under Public Resolution 44, and under the President's Executive order, some real basis of experience, some valuable examples from which to draw conclusions as to whether this line of activity is appropriate and useful.

I think if you will examine the records you will find it has been shown that this is a very useful method. I know you will be told by some that the board has been ineffective. I do not think that is correct, because I think the activities of these boards have demonstrated, first, that the principle of an impartial board to decide these broad questions which are defined by the act of Congress is very important and useful.

Moreover, I think we have established the principle that these boards should be quasi judicial and not conciliation boards.

Conciliation is a method of compromise, and is bound to impair the judicial quality. Conciliation is something to be done outside of the judicial action of the board, which is to interpret and apply a law which Congress has passed, and which it may from time to time elaborate.

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The board should not be making compromises, but should be confining itself to applying and interpreting the law.

Also, I think there has been established out of the experience of these boards a certain uniformity of rulings on this law, and although you may have been impressed by a lack of it at times, there has been over the period of a year a constant converging of the lines of thought in all of these boards.

If the experience of different boards operating at different points throughout the country is that their minds converge upon one line of thought, I believe we have the basis for going ahead in that line of thought, because it seems to those who have dealt with it, to be just and to have worked out well and practically in experience.

This bill sets up a National Labor Relations Board on a permanent basis and gives to it certain power of enforcing its own orders.

That, of course, has been a weakness of the boards created under the Executive order, that they do not have the power to enforce their own orders, and the Attorney General, as you know, and probably will testify before you, has found certain legal difficulties in the way of enforcing the orders of these boards, particularly on the ground that they cannot make the record of the board the record before the courts. This bill before you provides rather well, I think, for the enforcement of the orders of these boards, and for putting upon this board the right and duty of carrying through its orders and seeing they are enforced.

There are certain matters in this bill which I think, as your honorable body studies them, will seem to be necessary for amendment. I suppose any draft of any law put before you is never perfect, and there are certain things in here which the Labor Department, in studying the bill, feel it should be modified and changed in the interest of clarity and in the interest of strengthening the bill and making appropriate administrative activity.

You are, of course, familiar with the fact that the bill not only sets up a board to enforce 7 (a), but, if Congress passes this bill, it will definitely set up a definition of certain unfair labor practices, and by so doing Congress itself will have laid down certain lines of interpretation of 7 (a). The two principal ones are the provision that a majority shall be the agency for collective bargaining, and next that no union dominated by the employer shall be an agency for collective bargaining.

As to the changes I want to suggest to you, first, I think, is primarily in the matter of the board itself. The board as set up in this bill is described on page 5, section 3, as follows: "There is hereby created as an independent agency in the executive branch of the Government a board to be known as the 'National Labor Relations Board.'"

I think that should read as follows:

There is hereby created in the Department of Labor a board to be known as the "National Labor Relations Board."

That is, striking out all of the words after "created" down to the next line and inserting "in the Department of Labor."

I believe this board should be definitely located within the Department of Labor. An examination of the experience of other agencies of the Government leads me definitely to this conclusion. In the first place, I think it is a mistake to create any further inde-

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pendent agencies in the Government, if it can be avoided. The danger of too many independent agencies in government is the danger of setting up an executive and administrative system which is so large and complicated that no President can really know what the development is.

The relationship between any such independent agencies and other agencies of the Government is bound to be very difficult. Furthermore, there will be a tendency, and there is always that tendency in independent agencies, to set up activities which while useful in themselves, could be and frequently are being performed by other agencies of government. One therefore tends to get duplication of activity, which leads not only to expense but to confusion in the Government itself.

For instance, in the case of the National Labor Relations Board, it is bound more and more to infringe upon the field of conciliation. Sooner or later, not only the Board itself, but it will be found some of its subordinates will be engaged in conciliation, because of the fact there are strikes which should never come before the Board because they do not involve the defining and interpreting of 7 (*a*), but where perhaps there is a dispute due to a misunderstanding, and there should be a conciliatory effort to settle the case without making an issue or bringing it before the Board.

Whoever touches a case like that will be bound to realize that conciliation is what should be done, and if this Board itself begins to engage in conciliation, there will be confusion between conciliation processes and the judicial processes. It is a very embarrassing thing for a board to find itself in a position where in one case, just to get the parties back to work, it has agreed to a principle in conciliation, which as a judicial board interpreting the law it would not think of endorsing.

The Board itself, I assume, would never engage in conciliation, but more and more the subordinates are bound to do that, and there will be built up, I fear, a duplication of conciliation service of the Department of Labor or a transference of the same to the Labor Board.

The CHAIRMAN. We were very much troubled about that in this committee, when discussing this bill at the last session. The bill as originally drafted provided unmistakably for the exercise of the power of conciliation, such as has always been exercised, by the Department of Labor. We felt there should not be two agencies of the Federal Government exercising that authority and power, and in the bill we reported we sought to limit the power of conciliation to the Department of Labor.

Is there any language in this proposed bill that would seem to give a duplication of that power to this Board?

Secretary PERKINS. I think it is in the mere setting up of an independent agency.

The CHAIRMAN. Apart from the Department of Labor you mean?

Secretary PERKINS. Yes; apart from the Department of Labor. I think it is bound to develop that.

The CHAIRMAN. Is it bound, in certain particulars, to lead to a conflict or interference with the settlement of labor disputes?

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Secretary PERKINS. I think it is bound, in the long run, to lead to just that sort of thing.

The CHAIRMAN. It was definitely expressed in the bill of last year.

Secretary PERKINS. Yes; I know it was.

The CHAIRMAN. You, then, would set up this board in the Department of Labor, and you would limit and confine its jurisdiction to control of election and the settlement of all cases of disputes that might arise as the result of improper or illegal election by the employees to determine who should represent them?

Secretary PERKINS. Yes.

The CHAIRMAN. Then you would give the Board authority over unfair practices as defined by this act, and authority to impose penalties.

Secretary PERKINS. Exactly; and to enforce their own orders.

I think another reason why it is unwise to establish this Board as an independent agency, is not only the likelihood of duplication of conciliation activity, but also of duplication of other activities now carried on in the Department of Labor; particularly statistical and research work. I think there is bound to be an unnecessary duplication of that activity if it is an independent agency.

If the Board is lodged in the Department of Labor and is a part of the Department of Labor it will certainly have the right to utilize the activities of the Department of Labor dealing in the subject in which it is interested.

If it has need to know what has been the result of one type of settlement or another, it can call upon the Bureau of Labor Statistics to make that study and report its findings to the board, and not find it necessary to set up an independent agency or activity at some extra expense.

Moreover, I think, in addition to the unwisdom of establishing other independent agencies of government, it is highly important that all matters which relate to labor problems should be retained within the framework and structure of the Department of Labor.

It is one of the ministerial functions of the Department of Labor to look into as well as advise the Government, and to administer any laws relating to the problems of labor. The Department was created because it was recognized there were special problems that come to one group of our citizens because they were laborers and wage earners and had special problems not associated with or identified with the problems of other people in the population.

Working people have most of the problems other people have. They have problems of health, finance, banking, and such; but in particular there are special sects of problems that affect wage earners because of the fact they work for somebody else and not for themselves.

It was therefore realized in the early years of this century that those problems were of such importance to such a large group of the population of the United States, that they should be studied in a separate department and treated in a separate department, and that laws relating to them ought to be administered by a separate department.

I feel these problems which relate to the employer and employee relationship are among the most vital problems which we have known as "labor problems" in the past.

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It is a labor problem if there is an unsafe or unguarded machine which is likely to cut off the hand of an employee. That is a labor problem, although it is also an employer's problem, for he has the duty to change or so rearrange the machine to make it safe for the man who works on it.

The same principle applies to the employer-employee relationship. It is primarily an employee's problem, although it is an employer problem also because he has, among his duties, to cooperate in such a way as the law requires him to cooperate with his employees.

A problem arises in the case of complaints of injustices done to the employee, and it arises out of complaints and injustices done to the employer, and therefore it comes to public consciousness as a problem of people who work for wages and I think probably that this matter of establishing proper relationship between employer and employee is still in the problem field.

Congress has only within the last 2 years begun to take a position and to be definite, and we are still in the field of study of that relationship. Therefore it seems to me it is a matter that clearly belongs among the ministerial functions of the Department of Labor. I urge that this bill be amended to place this Board within the Department of Labor.

I think there should be a clause which states that the Secretary of Labor has no right to review, modify, or change the judicial decisions of the Labor Relations Board, which should have absolute independence of judicial decision and not in any way be interfered with. That, of course, is a very usual relationship.

I reminded this committee last year, and I would like to do so again now, that under the New York State law there is a quasi-judicial board in the Department of Labor, and whose decisions the head of the department cannot review or modify. You have one somewhat like it in the State of Massachusetts, and one not unlike it under the Pennsylvania law.

This board passes on all workmen's compensation cases, and although it is the duty of the commissioner to administer the compensation law and to appoint referees on these cases, and see that the money is paid, etc., on the appeal cases where the judicial board is operating, the board has the last word and there is no power of review resting with the industrial commissioner.

The same thing is true with regard to the same Board in the granting of exemptions and making modification from the labor law where the industrial commissioner has no choice but to issue an order with regard to the labor law, and the right of appeal lies to the industrial board to decide whether the order should be enforced or an exemption granted. The commissioner has no power to modify, influence, or review the ruling of that board.

So I think we have plenty of pattern in the development of administrative law in this country for an independent quasi-judicial Board within the framework of a regular organized Department of Labor, attached to that Department, utilizing all of the activities of that Department for its service and information, utilizing information of the conciliation service, and utilizing its agents when necessary; utilizing the information of the research bureaus of the Department, which are large, elaborate, and absolutely reliable; and utilizing the information of all of the other agencies of the Govern-

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ment, some of which rest in other departments, but the activity may be available to this independent agency through the comity which exists between the heads of the departments, due to the fact they are within the same Cabinet structure and are meeting frequently for advice and consultation.

Senator LA FOLLETTE. Pardon me, even if the Board were not put into the framework of the Department of Labor, there would be nothing to prevent its utilizing the services the Department now has.

Secretary PERKINS. Provided you can achieve that cooperation which it has always been found so hard to achieve between agencies which make up an independent body seeking an independent budget.

For instance, if I may indicate what is likely to happen—and I have seen it happen in other agencies—the Board wants some elaborate information with regard to a problem affecting its decision or the result of its decision, and it asks the Department of Labor to make this study. The Department of Labor answers, "Our budget is not large enough to make such a study as that; if Congress will give us the money, we will make it."

On the other hand, if they were both in the same administrative structure, the Secretary of Labor would then have the right and have the impulse to direct the Bureau of Labor Statistics to make the kind of study which meets the need of the Board. The Board would be impelled to study the budget situation and request a study which was within the financial ability of the Bureau of Labor Statistics at the particular time.

If you have an independent agency, you would certainly have set up an independent research and statistic service, because over a period of years, I am quite certain, there would be these failures in the human intention to cooperate, since there is no general central responsibility. The responsibility which lies through the Secretary of Labor directly to the President, I think, would be exercised both in the interest of the rest of the Department and in the interest of the increasingly important functions of the Labor Relations Board.

Senator LA FOLLETTE. I am sure that is true as long as you are Secretary of Labor, but assume for a moment we should have a very reactionary minded Secretary of Labor, would not this very power over the budget of the Labor Board enable the Secretary, out of sympathy with its activities, and as the executive officer in the Department making up the budget, to have additional opportunity to curtail the activities of the Board by being unsympathetic with their budget recommendations.

Secretary PERKINS. You are likely to have a reactionary-minded Secretary of Labor only if you have a reactionary-minded President, and the same power to retard activities in the labor relations will exist in that event through the President's control of the Budget.

Senator LA FOLLETTE. That is true, but this independent agency would certainly have the right to make its fight independently.

Secretary PERKINS. They would be appointed by the President.

Senator LA FOLLETTE. That is true, but they have 5-year terms, and I would like to see that term extended, because I would like to see this Board independent of immediate reversal of political fortune. It is true, the members are appointed by the President, but after all, it takes quite a long time to change the personnel of the Board,

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and the fact this is an independent agency created by Congress, it seems to me has been one of the things which has been helpful in leaving the Interstate Commerce Commission out of at least the immediate repercussion of political change, and has established it on a basis of judicial or quasi-judicial character.

I am not committing myself on the proposition, but I wanted to indicate there are arguments on both sides of the particular phase you are discussing now.

The CHAIRMAN. It seems to me the President has indicated a desire to have this Board within the Department of Labor, in that the Executive order which he issued June 29, 1934, from which I read, is in part as follows:

> The Board shall at the close of each month make, through the Secretary of Labor, to the President a report in writing of its activities and the activities of such regional, industrial, and special boards as have been designated or established in accordance with the recommendations of the Board under subsections 3 (a) (1) and 3 (a) (2) of this order. Such reports shall state in detail cases heard, decisions rendered, and the names, salaries, and duties of all officers and employees appointed under the authority of this order and receiving compensation directly or indirectly from the United States.

To get that information under this order, I have to communicate with you, and I have before me the report which the National Labor Relations Board made to you January 5, 1935, giving the salaries and duties of all officers appointed under the authority of the Executive order receiving compensation directly or indirectly from the United States.

Secretary PERKINS. Yes, that is at present being done, and I want to say I think a part of the value of retaining the Labor Relations Board in the Department of Labor is that this function of reporting regularly to the President, going through the Secretary of Labor, makes certain that at least once a month in a cabinet meeting problems of employer-employee relationships will be discussed in a meeting of those administrative officers of Government who gradually, out of their thinking, do develop the policy of the administration. The likelihood is great that otherwise this whole matter will be lost sight of except during periods of crises.

During periods of crises, everybody is interested in employer and employee relationship and the labor problems, because crises make those situations dramatic. People go on strike or are locked out, but during other periods in which the policies are being developed there is very little interest.

One of the reasons why we have crises when there is a sudden change in wage or hour situation, or a sudden slackening or increasing of industrial production, is that there has been no orderly and systematic pattern of labor relationship worked out in the years when there was not a crisis, and one of the things most important in the future employer-employee relationship in this country is that there shall be a gradual ground development of practical relationships between employer and employees worked out in times when there is not a crisis and people are not confused by fears and panics that haunt them in crisis time.

My opinion is that officers of the Government who are not closely attached to the problems of labor are not likely to think about that except during crises when everybody must have an opinion upon it. The officers of the Government who are dealing with all problems

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of labor cannot escape this constant and continual study of what are good sound employer and employee relationships and how they can be gradually built up and experimented with and made more desirable for the people who work in the industries, as well as for the employers who are directing the operations of the industry.

Those things can only be worked out quietly.

I think that to lodge this Board in the Department of Labor, where the Secretary of Labor will be charged with the duty of constantly examining, thinking, and studying about these problems and reporting at least monthly to the President upon the subject of what the activities of the Board have been, will do more than any other one thing to make the Government continually conscious of the proper development of labor-employer relationship in non-crisis times.

It is highly desirable that we should work out and make as a matter of habit a practical and just employer-employee relationship.

I think the conception of establishing a Board to act as a quasi-judicial body within the Department of Labor, and to confine its judicial activities to interpreting and enforcing those rules of relationship laid down by Congress, is admirable and is one of the most important steps toward a future proper relationship that this body can take at this time.

I very much hope that this bill will pass.

I have a number of other small amendments which I think should be made.

The CHAIRMAN. I wish you would proceed with the other amendments.

SECRETARY PERKINS. I think these amendments should be made for the sake of clarity, which I would be glad to make in a memorandum. They have been made in the copy of the bill I have before me, and this represents the best thinking of the groups of the Department of Labor who are confronted with this problem, namely, the Secretary, the two Assistant Secretaries, the Solicitor's office, the Division of Conciliation, and the various research divisions.

We have all worked on ths matter, and this represents the joint thought of the Department of Labor as to what would be the best form of the bill and what changes ought to be made in the wording throughout in order to get that clarification of unfair practices and clarification of the duties and powers of the Board, which is so necessary at this time. I will be glad to file that with the committee, if desired.

The CHAIRMAN. That may be inserted in the record.

(The said document, embracing changes suggested by the Department of Labor, is as follows:)

[S. 1958, 74th Cong., 1st sess.]

A BILL To promote equality of bargaining power between employers and employees, to diminish the cause of labor disputes, to create a National Labor Relations Board, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

DECLARATION OF POLICY

SECTION 1. Equality of bargaining power between employers and employees is not attained when the organization of employers in the corporate and other forms of ownership association is not balanced by the free exercise by employees

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of the right to bargain collectively through representatives of their own choosing. Experience has proved that in the absence of such equality the resultant failure to maintain equilibrium between the rate of wages and the rate of industrial expansion impairs economic stability and aggravates recurrent depressions, with consequent detriment to the general welfare and to the free flow of commerce. Denials of the right to bargain collectively lead also to strikes and other manifestations of economic strife, which create further obstacles to the free flow of commerce.

It is hereby declared to be the policy of the United States to remove obstructions to the free flow of commerce and to provide for the general welfare by encouraging the practice of collective bargaining, and by protecting the exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing, for the purpose of negotiating the terms and conditions of his employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization, or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment (but shall not include any individual employed as an agricultural laborer) (?) or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan in which employees participate and which exists for the purpose, in whole or in part, of bargaining collectively with employers concerning grievances, labor disputes, wages, rates of pay, or hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, or commerce, or any transportation or communication relating thereto, among the several States, or between the District of Columbia or any any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or affecting commerce, or obstructing the free flow of commerce, or having led or tending to lead to a labor dispute that might burden or affect commerce or obstruct the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by Section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183).

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NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created in the Department of Labor a board to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board with the approval of the Secretary of Labor shall appoint such employees, and, without regard for the provisions of the civil-service laws but with the approval of the Secretary of Labor, shall appoint an executive secretary, and such attorneys, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, and such agencies provided for by agreement, code, or law. But nothing in this Act shall be construed to authorize the Board to appoint persons to engage in mediation, conciliation, or statistical work, when the services of such persons may be obtained from other bureaus or divisions in the Department of Labor, as may from time to time be needed.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist; and all pending investigations and proceedings of the old Board, and all proceedings in the courts pursuant to Public Resolution 44, approved June 19, 1934 (48 Stat. 1183), to which the old Board is a party, shall be continued by the Board in its discretion. All orders made by the old Board pursuant to said Public Resolution 44 shall continue in effect unless modified, superseded, or revoked by the Board after due notice and hearing. All employees of the old Board shall be transferred to and become employees of the Board at their present grades and salaries, without acquiring by such transfer a permanent or civil-service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of

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their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this act, or in the National Industrial Recovery Act (U. S. C., title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the majority of the employees in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this act.

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of work or employment: *Provided*, That nothing in this section shall deprive any individual employee or group of employees of the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or other unit.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (d) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (f) or 10 (g), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered to deal, as hereinafter provided, with any person engaging in any unfair labor practice (listed in sec. 8) affecting commerce.

(b) In cases in which another means of dealing with an unfair labor practice or question of representation is provided for by agreement, code, law, or otherwise, the Board, in its discretion, may postpone, or refuse to exercise, its jurisdiction. But such agreement, code, or law, or such postponement or refusal, shall not be construed to prevent or limit the right of the Board in such cases to take jurisdiction under this act at any time in order to assure the effectuation of the policy of this act and the development of a uniform body of administrative interpretation and practice with respect to unfair labor practices as defined herein.

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(c) Whenever there is a charge or the Board shall have reason to believe that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than 3 days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer and to appear in person or otherwise and give testimony at the place and time fixed in the complaint, and to invoke the compulsory process of the Board in summoning witnesses in its behalf. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to appear in the said proceeding to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(d) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in this complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an appropriate order. Such order may require such person to cease and desist from such unfair labor practice, to restore a worker to his employment, to pay to him such compensation as he would have received if he had not been wrongfully discharged, and to make reports from time to time showing the extent to which he has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(e) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(f) If such person fails or neglects to obey such order of the Board while the same is in effect, the Board may petition any circuit court of appeals of the United States within any circuit wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, or the Court of Appeals of the District of Columbia, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and shall make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive, and its judgment and decree shall be final, except that the same shall be

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subject to review by the Supreme Court of the United States upon writ of certiorari or certification, as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(g) Any person aggrieved by an order of the Board granting or denying, in whole or in part, the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair-labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (f), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and shall in like manner make and enter a decree enforcing, modifying, or setting aside, in whole or in part, the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(h) The commencement of proceedings under subsection (f) or (g) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(i) When granting appropriate temporary relief or restraining order, or making and entering a decree enforcing, modifying, or setting aside, in whole or in part, an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes" (U. S. C., title 29, secs. 101–115).

(j) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

ARBITRATION

SEC. 12. (a) The Board shall have power to act and to appoint any person, agent, or agency to act as arbitrator in labor disputes, when parties agree to submit the whole or any part of a labor dispute to the arbitration of the Board or its appointees. A provision in a written contract or a written agreement to submit to the arbitration of the Board or its appointees, when accepted by the Board after the dispute has arisen, shall be valid and irrevocable as to the parties to the agreement, save upon such grounds as exist at law or in equity for the revocation of any contract. If any party fails, neglects, or refuses to perform under such contract or submission, the Board, its agents, or appointees, may nevertheless, in the discretion of the Board, proceed to hear the case ex parte, and the Board, its agents, or appointees, shall have the power to issue an award applicable to the submitting parties.

(b) The Board shall make and publish, pursuant to section 6 (a), rules for the conduct of arbitrations, and an agreement to submit to the arbitration of the Board, or its appointees or its agents, shall be deemed consent to the proceeding being conducted in accordance with such rules then obtaining unless otherwise specified in the arbitration contract or submission. An agreement to submit to the Board shall authorize the Board to appoint agents to take evidence and, in the discretion of the Board, to render a decision in the name of the Board on the findings thus presented, unless otherwise specified in the agreement. The Board may, however, in its discretion, render a decision on testimony taken before its agents.

(c) In any case in which an award has been made, the Board shall file the award in the clerk's office of the United States District Court that has been agreed upon by the parties, or, in default of such agreement, that of the district wherein the labor dispute arose or the Supreme Court of the District of Columbia. Notice of the filing shall be personally served or sent by registered mail to each submitting party. Unless a petition to impeach the award on the grounds hereinafter set forth shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment in accordance with the terms of the award: *Provided*, That no employee individually, and no group of employees collectively, shall be compelled to render labor or services without their consent.

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(d) A petition for the impeachment of any award may be filed not more than ten days after the communication of notice of the filing of the award to the submitting parties. Notice of filing of such petition shall be served personally or sent by registered mail to each submitting party. The petition shall be sustained by the court only on one or more of the following grounds:

1. That the proceedings were not substantially in conformity with the provisions of the arbitration agreement or rules adopted for the conduct of the arbitration.

2. That an arbitrator or member of the Board participating in the award was guilty of fraud or corruption; or that a party to the award practiced fraud or corruption which affected the result: *Provided*, That partisanship known, or which by the exercise of due care should have been known, by a party prior to the arbitration proceeding, shall not constitute fraud of which he may avail himself within the meaning of this section.

(e) The court shall not set aside an award on the ground that it is invalid for uncertainty. In such case the court shall suspend action pending its resubmission of said award to the Board for interpretation.

(f) Where there was an evident material miscalculation of figures, or an evident material mistake in the description of any person, thing, or property referred to in the award, or where the arbitrators have awarded on a matter not submitted to them, unless it is a matter affecting the merits of the decision on the matters submitted or where the award is imperfect in the matter of form not affecting the matter of the controversy, the court shall modify and correct the ward so as to effect the intent thereof and promote justice between the parties, and thereupon shall enter judgment in accordance with subsection (c).

(g) The court shall construe every award with a view to favoring its validity. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but that a part of the awards is valid, the court shall nevertheless enter judgment upon such part or parts of the award as are valid unless such part or parts are inseparable from the remainder of the award, in which case the entire award shall be vacated.

(h) If the petition for impeachment of the award is not sustained, the court shall enter judgment in accordance with the terms of the award, and in accordance with subsection (c). Where a petition for the impeachment of an award is granted, the award shall be vacated, and the court shall remand the arbitration to the Board, which may, in its discretion, accept the case for resubmission to arbitration in accordance with the terms of the original agreement or with such modifications as the Board deems fit, or it may refuse to take any further action regarding it.

INVESTIGATORY POWERS

SEC. 13. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9, section 10, and section 12 (in any arbitration affecting commerce)—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent, or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, and the Supreme Court of the District of Columbia, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before

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the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondents, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post-office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

LIMITATIONS

SEC. 15. Nothing in this act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 16. Wherever the application of the provisions of section 7 (*a*) of the National Industrial Recovery Act (U. S. C., title 15, sec. 707 (*a*), as amended from time to time, or of section 77 (*b*), paragraphs (*l*) and (*m*) of the act approved June 7, 1934, entitled "An act to amend an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (*l*) and (*m*)), as amended from time to time, or of Public Resolution No. 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this act, this act shall prevail: *Provided*, That in any situation where the provisions of this act cannot be validly enforced, the provisions of such other acts shall remain in full force and effect.

SEC. 17. If any provision of this act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 18. This act may be cited as the "National Labor Relations Act."

The CHAIRMAN. Mr. Biddle, if you would like, you may present your testimony.

Mr. BIDDLE. I will be glad to do so.

STATEMENT OF FRANCIS BIDDLE, CHAIRMAN OF NATIONAL LABOR RELATIONS BOARD, WASHINGTON, D. C.

The CHAIRMAN. Will you give your full name?

Mr. BIDDLE. Francis Biddle.

The CHAIRMAN. And your residence?

Mr. BIDDLE. 1302 Eighteenth Street, Washington, D. C.

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The CHAIRMAN. Have you always lived in Washington?

Mr. BIDDLE. No; I have lived here since the 17th of November 1934.

The CHAIRMAN. Prior to this, where did you live?

Mr. BIDDLE. Prior to that time, I lived in Philadelphia.

The CHAIRMAN. What is your official position?

Mr. BIDDLE. Chairman of the National Labor Relations Board.

The CHAIRMAN. That is a Board that was created by act of Congress last year?

Mr. BIDDLE. Created under Public Resolution 44 and the Executive order of the President.

The CHAIRMAN. Were you a member of the Labor Board that preceded the Board created under Public Resolution 44?

Mr. BIDDLE. That Board was not created under Resolution 44, but I was not a member of it.

The CHAIRMAN. I said the Board that existed prior to your Board; you were not a member of that Board?

Mr. BIDDLE. I was not, sir.

The CHAIRMAN. But the Board of which you are now chairman succeeded to the work and duties of the previous Labor Board?

Mr. BIDDLE. That is correct, of the old National Labor Board.

The CHAIRMAN. I was going to ask you the name of that Board.

Mr. BIDDLE. The National Labor Board.

The CHAIRMAN. How did that Board come into existence?

Mr. BIDDLE. The National Labor Board was appointed by the President, not under any resolution or act, to handle labor disputes and things of that kind.

The CHAIRMAN. It was created under the power given the President by the National Recovery Act?

Mr. BIDDLE. Yes, sir.

The CHAIRMAN. Was that Board larger than the Board created under the Public Resolution 44 of last year?

Mr. BIDDLE. Yes; my recollection is that there were 10, or possibly 11, members of the old National Labor Board.

The CHAIRMAN. Who are the members of your board, of which you are chairman?

Mr. BIDDLE. There are three members of our board. I am chairman, and Mr. Edwin S. Smith, from Massachusetts, formerly commissioner of labor of the State of Massachusetts, and Mr. Harry A. Millis, of Chicago, who prior to that was head of the economic department of the University of Chicago, are the other two members.

The CHAIRMAN. Were any of the members of this board, including yourself, ever employers?

Mr. BIDDLE. No, sir.

The CHAIRMAN. Have any of you ever been employees?

Mr. BIDDLE. I have been clerk of a legal office; I presume that is an employee.

The CHAIRMAN. You have not been an employee in the sense of working in any industry?

Mr. BIDDLE. No.

The CHAIRMAN. One is a college professor, the other was the chairman of the Labor and Industry Board of Massachusetts?

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Mr. BIDDLE. Yes.

The CHAIRMAN. And your activity prior to coming to Washington was what?

Mr. BIDDLE. I have been an active practicing lawyer for 20 or 25 years.

The CHAIRMAN. Have you read this bill?

Mr. BIDDLE. I have, Senator Walsh.

The CHAIRMAN. Did you have anything to do with the drafting of it?

Mr. BIDDLE. Senator Wagner consulted us with reference to various features of the bill while he was drafting it.

The CHAIRMAN. I presume you made some suggestions?

Mr. BIDDLE. We made some suggestions and comments.

The CHAIRMAN. Would you now like to discuss the bill in detail?

Mr. BIDDLE. I have a prepared statement. I would prefer to read it, and then answer any questions on the bill you would like to ask.

The CHAIRMAN. You may proceed.

Mr. BIDDLE. The policy of industrial recovery as declared by the National Industrial Recovery Act on June 16, 1933, is—

> to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof and * * * to induce and maintain united action of labor and management under adequate Government sanctions and supervision and * * * to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor * * *.

An expression of this policy was found in section 7 (a) of the act, requiring that every code of fair competition should contain, among other things, the condition—

> that employees shall have the right to organize and bargain collectively through representatives of their own choosing and shall be free from the interference, restraint, or coercion of employers of labor or their agents in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid and protection.

On August 5, 1933, the President appointed the National Labor Board, with Senator Wagner as chairman, and 10 eminent industrialists and labor leaders, among whom were Walter C. Teagle, Gerard Swope, William Green, and John L. Lewis, who handled complaints of violations of section 7 (a) until the passage of Public Resolution 44.

Subsequently, in Public Resolution 44, Seventy-third Congress, adopted on June 19, 1934, in order to effectuate the policy referred to, the President was directed to establish boards authorized to investigate issues, practices, and activities of employers or employees in controversies arising under section 7 (a) which were burdening or obstructing the free flow of interstate commerce. This resolution authorized such boards to hold elections to determine by what person or organization employees wished to be represented, so as to insure their right "of collective bargaining", and authorized such boards to order the production of pay rolls for such purpose. The President by Executive order dated June 29, 1934, appointed the National Labor Relations Board, with Lloyd K. Garrison as chairman, pursuant to the joint resolution. Among other things the

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Board was authorized to appoint the necessary experts and examiners and—

to hold hearings and make findings of fact regarding complaints of discrimination against or discharge of employees or other alleged violations of section 7 (a).

The Board was also directed to study the activity of other industrial boards dealing with labor relations and to make reports thereon and on its work to the President.

The President in a press release on the Executive order stated that Public Resolution 44—

establishes upon a firm statutory basis the additional machinery by which the United States Government will deal with labor relations, and particularly with difficulties arising in connection with collective bargaining, labor elections, and labor representation.

He stated that the common object of the Department of Labor, the N. R. A., and the old National Labor Board was to find an agency suitable for the disposition of the problems to—

be utilized in the interest of maintaining orderly industrial relations and justice as between employers, employees, and the general public, and enforcing the statutes and other provisions of law that relate to collective bargaining and similar labor relations.

The President pointed out that it was his hope that so far as possible adjustment in labor relations and the correction of labor disputes could be effectively made " at the source of the dispute without bringing the parties before national authorities located in Washington." The National Labor Relations Act before this committee defines collective bargaining in terms of the majority rule, and provides an adequate machinery for handling interferences with collective bargaining and self-organization, and discrimination against employees on account of their union affiliation.

Before coming to a discussion of this bill, which is a logical extension of the policy of section 7 (a) and of the joint resolution and the machinery set up in the framework of the resolution and Executive order, I shall state what I believe to be the economic theory behind collective bargaining.

During the past 5 years our domestic consumers' market has been gradually drying up. The national income between 1929 and 1934 has been cut in half and cannot absorb goods on a scale large enough to keep our large-scale industries running at capacity. The problem, therefore, is to increase consumption and broaden buying power.

As wealth shriveled it concentrated in the vortex of a shrinking market. In 1849 the wage earners' share in each dollar created by manufacture was 51 percent; in 1919, 42 percent; and in 1933, 36 percent. Over the period the share of the workers has shrunk 15 percent, although between 1919 and 1933 the average workers' producing capacity almost doubled and production per worker per hour increased 71 percent.

The theory behind the " new deal " was based on the conviction that to sustain our economic structure wealth must be more evenly distributed. The imposition of codes was a definite attempt to fix minimum wages. Section 7 (a) by making feasible and actual the power of labor to bargain with industry was an attempt to spread purchasing power by further increasing wages.

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But unemployment, according to the report on the operation of the National Industrial Recovery Act, just issued by the Research and Planning Division of the N. R. A., stands in December 1934, at 10,830,000 as against 10,613,000 the year before. The basic market, the broad consumers' market is still shrinking; and in this period there has been substantially no change in the real earnings of factory workers and unskilled labor, and yet profits have improved.

The CHAIRMAN. Have you read the assertions made by the administrators of the N. R. A. to the opposite effect?

Mr. BIDDLE. There is no doubt that wages have increased, but there is grave doubt whether real wages have increased. By that, I mean the cost of living has kept pace, it seems to us, in most industries, with that increase in dollar wages.

The CHAIRMAN. Has there been a total increase in the wages received per annum or per month by employees?

Mr. BIDDLE. I suppose the per annum basis would be the fairer one, and I would say from this N. R. A. report, from which I have been quoting, that in unskilled wages and factory wages there has not been any substantial real per annum wage increase.

The figures, of course, are not thoroughly reliable, not having been fully collected, but I am quoting, as I say, from the research report of the N. R. A.

I think it is fair to say that certainly the lower brackets have been increased, but largely at the expense of the higher brackets in wages, particularly in the textile industry.

The CHAIRMAN. That has been exactly my observation, and your whole statement is in accord with my views, but I find every time I listen to those in the N. R. A. they are inclined to make assertions that do not match the views expressed by you and entertained by myself.

Mr. BIDDLE. I think it is fair to say it is difficult to get an accurate summary of the picture.

According to a business survey of the New York Times, the average dividends of 600 companies rose through 1934 to $1.27 a share against $1.11 the year before; and in December 1934, $231,000,000 was paid in dividends as against $191,000,000 in December 1933. As the N. R. A. report points out, "although pay rolls in December 1934 were only about 60 percent of the total in 1926, dividends and interest were 150 percent of their total in 1926. In short, the income enjoyed by those who received dividends and interest was 50 percent higher than in 1926, even though the national income has declined nearly 40 percent since that date and volume of prodction has declined by one-third.

I am trying by this to illustrate the process we believe is going on.

Rough as the compilations are, clearly the recipients of profits have not failed to enjoy their proportionate share of the increase in industrial recovery.

I am urging these figures to show that the machinery of codes, though establishing certain minimum-wage requirements and largely eliminating child labor, has not yet effected any real distribution of income. If collective bargaining may be effective for such purpose, by all means let us attempt it. Profits rests on large-scale production, which cannot live on the small market of the few wealthy, but must be absorbed in the vast and general market of the masses.

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The CHAIRMAN. Are you going to give us figures indicating how much the cost of living has increased?

Mr. BIDDLE. I am not prepared to do that, and I think it would take an expert economist to do that, which I am wonderfully not able to do. However, I think the Division of Statistics of the Department of Labor could give you that information.

The CHAIRMAN. I received a statement from a retail chain grocery store merchant in my State, showing increases in prices of food product. The increase in the price of pork was 300 percent, and from that down to 50 percent in varying increases all through the food products.

Mr. BIDDLE. I do remember the figures of this particular report to which I have referred, which covers the period only through December, and the great increases have been since that time I should think; but the average increase is 10 percent in general products, and 5 percent in food.

The CHAIRMAN. To get a correct picture we should have the figures on the increase of the cost of living, together with the dividends and the increase, if any, in wages.

Mr. BIDDLE. I think that is correct. To buy them any one must have the means. Consumption is the ultimate test of wealth. The few can consume only a limited and vicarious scale. Where collective bargaining exists, where unions are well established and recognized, real wages are higher and work more regular. The tendency of minimum rates fixed by codes or otherwise to pull down higher wage scales in a given industry is checked by collective bargaining. If these results were otherwise, collective bargaining would not be opposed by employers.

Freedom to contract no longer means the theoretical freedom of an employee to make a contract with the steel corporation. There is no freedom where power is on one side only.

The theory of partnership between labor and industry, therefore, becomes descriptive only where both sides can form the partnership. It is equally absurd to talk about a partnership where an individual and his employer alone are concerned. A partnership is the result of agreement, and presupposes equality of bargaining. If we really want the industrial peace which flows from stable and balanced relations and from the real partnership of labor and capital, collective agreements are essential. And that is why company dominated unions, however effective for handling individual grievances, cannot and are not intended to bargain collectively, for a man within his shop is not free to bargain for his fellow workers. If he presses his bargaining too hard he loses his job.

The purpose and intent of company unions is well illustrated in the letter quoted in the Supreme Court's decision in 1930 in the *Texas-New Orleans Railway case*. The railway's vice president wrote the President explaining that to bargain collectively with a labor union under a Government arbitration award would cost wage increases amounting to $340,000, while to "make a settlement with our own employees" might cost only $75,000. To this blunt dollar and cents end, the railway formed and fostered a company union of its own employees (281 U. S. 548).

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COLLECTIVE BARGAINING

The basic features of the Wagner bill are that it establishes the right of collective bargaining and majority rule in unmistakably clear terms, defines unfair labor practices, and provides a simple and already well-recognized method of enforcing the law.

The right of employees to self-organization and to collective bargaining is defined in section 7 of the act. The National Labor Relations Board has in the Houde and other cases found a corresponding duty on the part of the employer to bargain collectively with his employees, since a declaration by Congress of their right would have been sterile without such a corresponding duty. Senator Wagner, in his testimony before the committee yesterday, argued along these lines—that the duty of the employer to bargain collectively was implied from the right of the employees to bargain, and that a failure to bargain would therefore be an interference with the right. However, there has been so much disagreement and confusion with respect to the employer's duty to bargain collectively that I believe this duty should be expressed in the act, and suggest that the following be added as subdivision (5) of section 8, which section defines unfair labor practices:

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

The CHAIRMAN. This is an entirely new suggestion.

Mr. BIDDLE. Yes.

The CHAIRMAN. This was not presented last year?

Mr. BIDDLE. I think it was in one of the bills last year.

The CHAIRMAN. It is possible, but I do not think in the bill Senator Wagner advocated or the bill we reported this was suggested.

Mr. BIDDLE. Without speaking for Senator Wagner, of course, I have made this suggestion to him, and I think he is very open-minded about it.

Section 8 defines unfair labor practices, and there are four subdivisions of this question; and the proposals I have just given would be the fifth subdivision; and it makes it a violation of the act to refuse to bargain.

The CHAIRMAN. Will you read it again, please?

Mr. BIDDLE. It reads:

To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

Section 9 (a) is the majority-rule provision.

The CHAIRMAN. What would constitute a refusal, Senator Murray suggests?

Mr. BIDDLE. When they turn them down flat and say, "I will not deal with the union", that is the most obvious refusal of this, as we frequently have such cases. Or when they string them along without any real purpose of intent of bargaining.

You may say that to tell a man he must try to make a contract does not mean much, but it means a great deal in actually dealing with these problems, because it means that the employer must make a bona fide genuine effort to come to an agreement.

The CHAIRMAN. Refuse to meet, are the words you give?

Mr. BIDDLE. I said to refuse to bargain collectively with the representatives. I thought it could be very simply stated in that way.

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The CHAIRMAN. Why would it not be more definite and direct to say, "to refuse to meet and confer for the purpose of collective bargaining with his employees"?

Mr. BIDDLE. I think that is an excellent suggestion, Senator.

The CHAIRMAN. A man sailing direct in the face of his employees, certainly would be committing an unfair practice if it was so defined, if after they entered into his presence he refused to talk with them. It would be an unfair practice under such conditions, but if he sat in conference with them and permitted them to present their views and made an effort to confer with them it would not be an unfair practice.

Mr. BIDDLE. I like the suggestion you have made very much, and it seems to me much better.

Senator MURRAY. We had a strike in Montana last summer that lasted 3 months, and they met and conferred constantly during that period, but nothing was ever arrived at.

Mr. BIDDLE. I remember the strike very well, and was that not an example of an employer stringing his men along?

Senator MURRAY. Yes; and yet they did nothing which you could say established a refusal to agree. They simply met and did nothing.

Mr. BIDDLE. The principle of collective bargaining is expressed in the Norris-LaGuardia Anti-injunction Act, in section 2, which recognizes that "the individual unorganized workers is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor"; and section 77 of the bankruptcy act provides that no judge or trustee acting under the act—

> shall deny or in any way question * * * the right of employees to join the labor organization of their choice, and it shall be unlawful for any judge, trustee, or receiver to * * * use the funds of the railroad in retaining so-called "company unions" or to influence or coerce employees in an effort to induce them to join or remain members of such company unions.

This finds an analogy in section 8 defining it as an unfair labor practice for an employer to contribute financial or other support to a labor organization.

The CHAIRMAN. This is a digression, Mr. Biddle, but how many Executive orders have been issued by the President since your Board was created?

Mr. BIDDLE. Affecting our Board?

The CHAIRMAN. Yes.

Mr. BIDDLE. Two orders, I believe, were issued, the order of June 29, and next the order appointing me.

The CHAIRMAN. There were no orders affecting the policy other than the one of June 29?

Mr. BIDDLE. No; there were no orders except the one of June 29 and the one appointing me, which did affect the policy of the Board.

The CHAIRMAN. The order appointing you is as follows:

EXECUTIVE ORDER NO. 6905

Appointment of a Chairman of the National Labor Relations Board, etc.

By virtue of and pursuant to the authority vested in me under title I of the National Industrial Recovery Act (ch. 90, 48 Stat. 195, title 15, U. S. C., sec. 701) and under joint resolution approved June 19, 1934 (Pub. Res. 44, 73d Cong.), it is hereby ordered as follows:

SECTION 1. Francis I. Biddle is hereby appointed as Chairman of the National Labor Relations Board at a salary of $10,000 a year, vice Lloyd K. Garrison, of Wisconsin, resigned.

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SEC. 2. In appointing and retaining officers and employees, and incurring financial obligations, the National Labor Relations Board, created by Executive Order No. 6763, dated June 29, 1934, shall act only with the approval of the Secretary of Labor; but this section shall not be construed to give the Secretary of Labor any authority to review the findings or orders of the National Labor Relations Board in specific cases subject to its jurisdiction.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, *November 15, 1934.*

The CHAIRMAN. You may proceed, Mr. Biddle.

Mr. BIDDLE. The majority rule has been adopted in substantially similar form by every important board created for the continuing and regulating of labor relations, including the War Labor Board, the National Mediation Board, the National Labor Board, the Textile Board, the Steel Board, and the National Labor Relations Board. Section 7 (a) provided, as does the Wagner bill, that employees should have the right to bargain collectively. Without majority rule bargaining would result in the playing-off of groups against each other, resulting in no agreement. Actual collective bargaining in industry has always been conducted on the theory that a bargain made with one group in a unit sets the standard for the entire unit, and a wide study of trade agreements has disclosed none which does not attempt to establish uniform conditions throughout the unit. Failure of the employer to give equally advantageous terms to nonmembers of the union negotiating the agreement would immediately result in a marked increase in the union's membership, and, on the other hand, the giving of better terms to nonmembers of the union negotiating the agreement would immediately result in a marked increase in the union's membership, and, on the other hand, the giving of better terms to nonmembers would result in a strike. It is, therefore, academic and a little silly to discuss the rights of minorities and individuals to negotiate for more favorable terms than those in the collective agreement. The purpose of the bill is to give workmen power to bargain effectively by collective action. It is obvious that they cannot do better by individual action.

The experience of this Board in the cases before it has indicated that the insistence of the employer on individual bargaining has been for the purpose of interfering with collective bargaining and not for the purpose of preserving the individual liberty of contract of the American workman. Nor does the making of a collective agreement applicable to the entire plant preclude the adjustment of individual grievances or particular employment relations in individual cases. In sum an employer who refuses to recognize the majority rule right does not intend to bargain collectively in any realistic sense.

As I have said, trade agreements were considered as establishing custom or usage for the entire plant, and were never construed as being for the benefit only of union members (161 Miss. 4).

It seems unnecessary to refer to the political analogy of the majority in any election choosing representatives who shall represent all of the people; to refer the committee to the acceptance of collective bargaining in England for many years, or at any great length to stress its presence in our own law. In the Railway Labor Act, as amended June 21, 1934, the language is very similar to the language of the Wagner bill. Section 2 (4th) provides:

Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of

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employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this act.

And before that the majority rule was established by administrative interpretation, under the act.

In many cases arising before this Board, after a company union has been successfully formed by an employer, he has refused to deal with the trade union on the ground that the company union represented a majority of the employees. In the *Guide Lamp Corporation case* (I NLRB 48) the company wrote:

If we begin to practice a negotiation with each group which presents itself, we will not be complying with the provisions of the N. R. A. and a great deal of confusion would result * * * any negotiation or collective bargaining must be with the committee representing the great majority of our employees.

The CHAIRMAN. That is a constant source of trouble, is it not?

Mr. BIDDLE. Yes; and I should think a source of trouble equally to the employer and employee. An employer who must deal with half a dozen little units in his plant cannot run his business successfully.

The CHAIRMAN. More of this kind of complaints have reached your Board than any other?

Mr. BIDDLE. A great number of the complaints, about 80 percent, are a question of discrimination because of union activities, and about 30 or 35 percent of those involve company-dominated unions.

The CHAIRMAN. What percentage of your cases are cases where there is a dispute as to who the representatives are?

Mr. BIDDLE. In those cases there are always disputes, and I would say approximately 30 percent. The other cases are involving discrimination. The big fight is over representation, and you put your finger on the main problem there.

The major problem connected with the majority rule is not the rule itself, but its application. The important question is to what unit the majority rule applies. Ordinarily, of course, there is no serious problem. Section 9 (b) of the Wagner bill provides that the Board shall decide the unit appropriate for the purpose of collective bargaining. This, as indicated by the act, may be a craft, plant, or employer unit. The necessity for the Board deciding the unit and the difficulties sometimes involved can readily be made clear where the employer runs two factories producing similar products: Shall a unit be each factory or shall they be combined into one? Where there are several crafts in the plant, shall each be separately represented? To lodge the power of determining this question with the employer would invite unlimited abuse and gerrymandering the units would defeat the aims of the statute. If the employees themselves could make the decision without proper consideration of the elements which should constitute the appropriate units they could in any given instance defeat the practical significance of the majority rule; and, by breaking off into small groups, could make it impossible for the employer to run his plant.

Senator LA FOLLETTE. The Board could do that, too. It seems to me that is what the automobile trade has done in Detroit, they gerrymandered the district around until they have defeated the purpose of collective bargaining.

Mr. BIDDLE. You are entirely right, Senator La Follette, and, of course, you have to take a chance to an extent on your Board. We

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have three choices, and the employer obviously is not the person to determine the unit. If your employees determine it, any group can break off from the main bargaining union and constitute itself into a little bargaining unit.

Now, it is true you run the risk, as you do in all governmental boards, of your Board gerrymandering and not carrying out the purposes of the Board. I think that is a risk you must run in all

Senator LA FOLLETTE. You think this is the lesser of the evils democratic governments.

involved?

Mr. BIDDLE. Yes; I think that is the lesser of the evils involved. We studied and discussed that at great length, and we all felt that the unit must be determined by the Board, but, of course, the Board can gerrymander in any case.

The determination of the unit, therefore, must be made by an impartial agency which is aware of the industrial relationship existing in various types of industry, and of the history and experience of craft, trade, and industrial unions.

In that connection, I would be very interested to hear the point of view of labor, and I am inclined to think from my discussion with them they realize the necessity of the boards deciding this point.

Moreover, any arbitrary act of the Board in selecting the unit is subject to check on review by the court. It is impossible, however, to lay down a definite rule for the determination of the appropriate unit, for such an attempt would result in rigidity and confusion. The whole system of industrial control and development depends on flexibility, and such considerations must be taken into account as the question of management and supervision, routine employment contracts, existing plans of collective bargaining, and the distinctiveness of the occupation.

The CHAIRMAN. Your statement will take some further time, Mr. Biddle?

Mr. BIDDLE. Yes; I think it will.

The CHAIRMAN. I think we had better adjourn for this morning and we will hear from you further tomorrow morning at 10:30.

(Thereupon, at 12 noon, the hearing was adjourned until 10:30 a. m., Wednesday, Mar. 13, 1935.)

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NATIONAL LABOR RELATIONS BOARD

WEDNESDAY, MARCH 13, 1935

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D. C.

The committee met at 10:30 a. m., room 335, Senate Office Building, Washington, D. C.

Present: Senators Walsh (chairman), Murray, and La Follette.

The CHAIRMAN. The committee will come to order. Mr. Biddle, you may proceed with your statement.

STATEMENT OF HON. FRANCIS BIDDLE—Resumed

Mr. BIDDLE. Mr. Chairman, you asked me to give you some figures indicating costs, and so forth. I have them here, with the references from which they are taken, and rather than take up the time of the committee I will hand them to you for your consideration.

I am also handing up a copy of the Executive order referred to, with certain memoranda in connection with it, and will not take the time of the committee to read it.

In my judgment, and that of my associates on the Board, the provisions of section 3 (a) of the bill, establishing the Board as an independent agency in the executive branch of the Government, is one of the most vital provisions of the bill. I had intended to discuss this provision in my statement; and in view of the able presentation by the Secretary of Labor yesterday on the matter, I welcome this opportunity to state at greater length the view of the present Board.

I do not believe the very important questions of policy involved can be settled only by considerations of general administrative convenience, or should be determined by fears that the creation of an independent agency would in the future lead to possible duplication of governmental work. I wish to say also that all my observations are made from the long-range point of view.

The value and success of any quasi-judicial Government board dealing with labor relations lies, as the Secretary stressed, first and foremost in its independence and impartiality. After all, although the bill deals with the rights of labor, for the success of the machinery contemplated by the act it must in the long run have the confidence of industry and of the public at large. It seems to us that if—as is provided in the amendments offered by the Secretary—the employees and agents of the National Board and any regional boards set up by it are appointed subject to the approval of the Secretary of Labor and are a part of the Department of Labor, and the Board is subject to the budgetary control of the Department, the machinery cannot be considered either impartial or independent.

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In our view, it is inconsistent with such impartiality and independence to attach the Board to any department in the executive branch of the Government, and particularly to a department whose function, in fact and in the public view, is to look after the interest of labor.

The Secretary has stressed the difference between the decisions of cases by the labor boards and mediation and conciliation by the Department. We believe that this distinction is absolutely sound, and it is precisely for that reason that the present bill does not give any powers of mediation or conciliation to the Labor Board. Again for that very reason, therefore, labor boards of the type contemplated should be made completely independent of a department whose present function in this connection is to mediate and conciliate.

May I be permitted to expand on these points?

1. Independent status: The Board is to administer an act of Congress laying down a specific policy. If the Board is subject to the control of the Secretary of Labor as to personnel and budget, there will be an inevitable tendency to conform the administrative policies of the Board to the policies of the particular administration in power. The Secretary herself yesterday argued, as a reason for including the Board within the Department, that there was a danger in setting up too many independent agencies in the executive branch of the Government, expressing their individual points of view and not conforming to any general Government policy. We submit that in the proposed legislation it is the Congress, and not the Executive, that is defining in careful detail the law and the policy.

Where Congress has defined a policy and created an administrative board to carry out that policy, it has with marked consistency recognized that the board so created should be appointed for comparatively long terms of office and be free of control by the executive departments or by any particular administration. The arguments advanced by the Secretary yesterady, if accepted by the Congress, would have resulted in putting the Interstate Commerce Commission, the Federal Trade Commission, and the Communications Commission in the Department of Commerce, and the Reconstruction Finance Corporation in the Treasury Department, instead of their being given an independent status.

The CHAIRMAN. What about the Railroad Labor Board created at the last session?

Mr. BIDDLE. The Railroad Labor Board is entirely independent, as I understand; and that is another example, and I am using that example, you will see, as I go along.

A similar observation may be made with reference to the Securities Exchange Commission and the National Mediation Board. It is of profound significance that the four outstanding permanent administrative agencies created by the last Congress to effectuate declared congressional policies were established as independent agencies; these are the Securities Exchange Commission, the Communications Commission, the Federal Housing Administration, and the National Mediation Board. Considering the specific quasi-judicial functions of the proposed National Labor Relations Board, there are even stronger reasons why it should have the prestige of independent status than there were for establishing the National Media-

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tion Board, to quote the words of its organic act, "as an independent agency in the executive branch of the Government."

In other words, it is more like a court than the other boards I have mentioned.

It may be further observed that the multiplication of the functions of Cabinet officers has already proceeded to such a point that the practical supervision of any further agencies set up by the Congress, if intrusted to the departments would necessarily be exercised by subordinates, themselves often overworked and often not intimately acquainted with the special problems.

Senator LA FOLLETTE. As a matter of fact, we really ought to have more Cabinet positions right now, because the present Cabinet officers have so many divergent duties that they cannot look after them and even give them the necessary supervision they ought to have so far as policy is concerned.

Mr. BIDDLE. That is quite so. Now, with respect to the question of conciliation that has been discussed, I wish to point out with all possible emphasis the essential difference between mediation and conciliation in adjusting disputes over wage and hour demands and the work of the National Labor Relations Board in handling 7 (a) complaints under the present law, or, more particularly, complaints that an employer has been guilty of unfair labor practices under the pending legislation. Wages and hours, apart from minimum standards prescribed by the codes, are a matter of give and take, in which conciliation serves a useful function. But the rights of labor under section 7 (a), or under the Wagner bill, are written into the law to be enforced, not to be bargained about or compromised. When a complaint of law violation is presented to the National Labor Relations Board or one of its regional boards, it is the function of the Board to see that the law is vindicated. Compliance with the law is often obtained without the necessity of formal hearings, or after hearing and before enforcement processes are invoked; but obtaining such compliance is quite different from the mediation which is the function of the conciliation service of the Department in settling a dispute for higher wages or better working conditions.

As Senator Wagner said in introducing the bill to the committee:

> The atmosphere of compromise and adaptation is perfectly suited to the settlement of disputes concerning hours and wages where shifting scales are fitting to particular conditions. But it is unsuited to section 7 (a), which Congress intended for universal application not universal modification. The practical effect of letting each disputant bargain and haggle about what section 7 (a) means is that the weakest groups which need its basic protection most receive it the least.

The CHAIRMAN. I want to ask you now or later, if you prefer, how complaints reach your Board, because last year there were some suggestions made to the effect that complaints should come through the Labor Board to your Board. Will you tell me just how the complaints are received?

Mr. BIDDLE. Senator, I am dealing with that later in great detail, because that is a most important point, and if I may, I will continue with this statement, and all of that will appear later.

The CHAIRMAN. Yes; just as you would desire. That really relates to whether the Board shall be independent.

Mr. BIDDLE. You have put your finger on the essence of it there.

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The National Labor Relations Board, as set up by Executive order of June 29, 1934, though it was directed to make its reports to the President through the Secretary of Labor, and directed not to duplicate the mediatory and statistical work of the Department, has nevertheless been, in its administration of section 7 (a), and in its control of its own personnel and expenditures an agency independent of the Department. This independence has not resulted in the duplication of work which the Secretary fears as likely to result from Senator Wagner's bill as now drafted. The Board has taken pains not to encroach upon the work of the conciliation service of the Department. It has proceeded under a harmonious working arrangement with the Department, specifying the respective functions of the Board and the Department. It has found no difficulty, indeed, has had the warmest cooperation of the Department in the matter of making use of the Department's statistical and research agencies and other facilities. To make it abundantly clear that there shall be no duplication of work the Board is entirely agreeable to the insertion in the bill of a provision forbidding the Board to appoint persons to engage in mediation, conciliation, or statistical work, when the services of such persons may be obtained from the Department of Labor. A similar provision in section 1 (b) of the Executive order under which we now operate has proven entirely satisfactory.

The fact that the administrative and quasijudicial functions of the Board should be kept distinct from the work of mediation and conciliation is an additional reason why its functions should not be transferred to the jurisdiction of the Secretary of Labor. The tendency toward confusion of the two functions is enhanced by confiding them both to the Labor Department. As a pointed illustration of this danger allow me in all deference to refer to section 8 of the bill as reported out of the committee last year. Under that section the Board would have taken jurisdiction "whenever the Secretary of Labor shall notify the Board that there is reasonable cause to believe" that an unfair labor practice has been committee. As explained on page 7 of the committee report, the Board would usually act "only when a case is drawn to its attention by the Secretary of Labor (who through the conciliation service of the Department of Labor will presumably first utilize every appropriate means for a voluntary adjustment of the matter)." The Board would thus not exercise any control over the complaints at the initial stage, though the very nature of the complaint calls for enforcement of the law rather than the compromising which is characteristic of the conciliator's function. In other words, a man has been fired on account of union activity and he wants to file his complaint in a court, and not to have the matter conciliated.

The Board would have no control, of course, over the actions of the conciliators, and the compromise they might undertake to negotiate, and the legal interpretations upon which they might presume to act. The right to file a complaint of a violation of the law would rest upon the personal decision of the Secretary, rather than on the determination of the judicial body provided by the act for the enforcement of such right; and such decision by some future Secretary might well be tinged by considerations outside of the merits of the case.

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This would clearly be possible in view of the statement made at page 3 of the committee's report last year on the Wagner bill which followed upon recommendations made by the Secretary to the committee similar to the recommendations made this year putting the Board in the Department of Labor.

The CHAIRMAN. Did the bill of last year require all complaints to come through the Secretary of Labor?

Mr. BIDDLE. Yes; as I understand your report on the bill as it first came out.

The CHAIRMAN. Of course, the argument you make is almost unanswerable that it might be possible for the Secretary of Labor to choke complaints that really ought to reach the Board.

Mr. BIDDLE. I think it is, and then it occurs to me also that you may be having a duplication of functions. Let us assume this machinery of conciliation was used, what would happen is, that complainants first would have to go before the conciliatory division in his locality, because you would have to have conciliation machinery set up all over the country, and he would testify as to the complaint before the conciliator, then if no conciliation could be effected, the injured person would then have to file his complaint before another body as a formal complaint of violation of the law.

The CHAIRMAN. Of course, it might be desirable to permit the Secretary of Labor to file complaint in behalf of other people.

Mr. BIDDLE. I am sure she would do it now.

The CHAIRMAN. As a matter of fact, do you get complaints in that way?

Mr. BIDDLE. We do continually, Mr. Chairman. The President and the Secretary are continually referring to us complaints of violation of law which we immediately refer to the regional board.

This was the section I had reference to, and this deals very much with your question of a few moments ago.

> So far as possible all disputes will continue to be adjusted by conciliatory methods, such as those used in the Division of Conciliation of the Department of Labor. When a case cannot be adjusted because of the continuance of an unfair labor practice or because of disputes over representation, it can be referred to the Industrial Adjustment Board which can then judicially consider it. This makes two things plain: (1) The Board is to enforce the law as written by Congress; and (2) the Board acts only when enforcement is necessary and adjustment has failed.

Now, I am going to deal with the essential necessity of promptness in all of these disputes. Negotiation is necessarily a slow thing, we have to talk to both sides and bring them together, and where a man is fired and out of a job he wants to get the decision as quickly as he can, and we have in the machinery of getting it, the first chapter of going through conciliation efforts.

A final problem in the status of the regional agencies above referred to. It is not clear just what position these agencies would have under the set-up contemplated by the Secretary. One of the amendments offered by the Secretary takes away from the Board the authority to appoint regional directors, now given it under section 4 (a) of the bill. We believe that the effective administration of the act can come only through utilization of regional agencies, which are a vital part of the Board's machinery. The President in his press release, which I quoted yesterday, urged the importance of handling disputes at the source. The National Labor

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Relations Board has its office in Washington. Under it there are 17 regional boards scattered throughout the country, with 24 offices. Each office is in charge of a director or associate director. A complaint of a violation of section 7 (a) is first lodged with one of the regional offices. That complaint is determined under our present practice by a panel of three members, consisting of a representative of labor, a representative of the public, and a representative of industry, the representative of the public being the impartial chairman. This panel acts in effect as a trial court to hear the evidence and determine the validity of the complaint.

We cannot expect the witnesses and parties to present their cases before the Board in Washington, and we cannot expect the Board to travel to the source of the dispute in every case. Either alternative would deprive employees almost entirely of the real benefits of the bill now before you. It is well recognized to be the very purpose of an administrative or quasi-judicial tribunal to cut through forms and to provide an expeditious method of carrying out the mandate of Congress. For this reason the Board must have complete control over the regional agencies, upon whose efficiency rests in large measure the efficient administration of the bill. We cannot have investigations carried on at the scene of the dispute by individuals in other departments or other branches; since the reports of such investigators cannot be substituted for the testimony given before the regional boards by both parties to the dispute; and are not the records contemplated by the act to be made the basis of cease and desist orders.

The practical effect of the amendments offered by the Secretary is reflected in the bill as reported out of the committee last year, as witness the following statement at page 7 of the committee report:

> Section 5 allows attorneys and examiners to be appointed by the Board without regard to the civil-service laws, but other employees are subject to those laws. This section also allows the Board to establish voluntary regional or local boards, but it is not intended to have the Board create numerous paid tribunals throughout the country subordinate to it. Indeed section 5 (d), by giving the Secretary of Labor power to put at the disposal of the Board the personnel, services, and information of the Department of Labor, emphasizes the importance of utilizing existing agencies of government, and of curtailing expenses.

We conclude that every consideration of congressional precedent in like cases, of efficiency, of giving the Board an assured independence in its judicial and administrative work, requires that the Board be established as an independent agency in the Executive branch of the Government, as provided in the bill before your committee. To call the Board independent is not in fact to make it independent if it is within the Department of Labor and subject to the direct control of the Secretary of Labor both as to the appointment of its personnel and as to the control of its expenses.

The present working arrangement between the Board and the Department is, of course, tentative and subject to executive control. We believe, therefore, that Congress should in this act clarify this arrangement by making the Board completely independent of the Department, at the same time excluding any power of mediation from the Board, as recommended by the Department.

Senator LA FOLLETTE. Mr. Biddle, I would like to ask you if you have an opinion as to the advisability of lengthening the terms of

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the members of the Board beyond that provided in this bill. The 5-year term would result in the entire membership of the Board expiring during the administration of any President who had two terms. Now, as far as the Interstate Commerce Commission and some of the other independent agencies are concerned, the Congress has provided longer terms, largely, as I believe, in an effort to assure their independence insofar as that is possible, and to prevent them from being subject to immediate political reactions at elections.

What is your view concerning the advisability of providing say 10-year terms or 8-year terms for the members of the Board?

Mr. BIDDLE. In answer to that, may I first take the two views that have been taken, and then in expressing my view I want to say it is a personal view, and I do not know if all of the members of the Board would concur.

The two views are that it may be difficult under this new act to obtain as good men to serve if their terms are long. My own view is rather the contrary, because I think if a man is interested in serving he always can resign if the work is distasteful to him.

My view coincides with what seems to be yours, as expressed yesterday, that the terms probably should be longer, as they are in Congress.

In Pennsylvania, for instance, the terms of the trial judges are 10 years, and I believe that even is too short.

Therefore, it would seem to be wiser to extend the terms under the bill, but I want to add there are two different views. Some people believe you would get more able men to sit in this work if they knew when they took their job their term was only for a few years, and they could then go back to their work.

Senator LA FOLLETTE. On the other hand, if you had a constant changing personnel you would not have a very advantageous situation so far as the continuity of the work of the Board is concerned.

Mr. BIDDLE. That is true, but there is a certain advantage, if you have the right terms of freshening of what might otherwise become a rather formal and dead system, as very often happens with administrative tribunals. Their history is that they very often get into a rut, but my own view is the longer terms would certainly not be distasteful to most of the men who have considered this.

The CHAIRMAN. Are any of the employees under your Board under civil service?

Mr. BIDDLE. I think if you will refer to the original order, it specifies precisely who are under civil service and who are not. You will find in section (b) of the order of June 29 the Board shall have authority to appoint such employees and without regard to the provisions of the civil service, such as lawyers, experts, and examiners as it seems necessary—no, I am mistaken, it does not.

All of our staff officers, and I have a list of all of the officers I can give, are not under civil service, but the stenographic work and the clerks are.

The CHAIRMAN. The rest of your staff are not under civil service?

Mr. BIDDLE. That is correct.

The CHAIRMAN. Where do the funds come from for that Board? There is not a special appropriation, is there?

Mr. BIDDLE. No. It is allotted.

The CHAIRMAN. The fund is allotted by the President?

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Mr. BIDDLE. Yes; the funds were allotted to this work.

The CHAIRMAN. Do you know where the funds come from?

Mr. BIDDLE. I have forgotten precisely what fund it is, but it is one of the funds allocated to our work.

The CHAIRMAN. Of course, when we get this permanent Board set up there would have to be an annual appropriation.

I am not saying this in criticism, but it strikes me the personnel of your Board has grown very rapidly.

Mr. BIDDLE. The Board has functioned since last June, and it took over the machinery already set up. Since I have been chairman, since November 17, we have actually dispensed with more employees, with the question of stenographers, in the National Labor Board, than we have added to them. The legal department has stayed about the same.

The CHAIRMAN. You have 10 attorneys in your legal department.

Mr. BIDDLE. It grew very rapidly in the beginning, but the legal department has been stationary in the last few months. The rapid growth was in the organization of the Board during the first 3 or 4 months.

The CHAIRMAN. You inherited the force of the previous Board?

Mr. BIDDLE. Yes; but there were very few lawyers in the Board, and the main work of the National Board is passing on records which come from the regional boards, and make up from those records the memoranda which are the bases of the opinions of the Boards.

In other words, you will often have 2, 3, or 4 very large records coming in every day. Those have to be analyzed and gone through in great detail and with great care, and we find that now the legal department is greatly overworked, many of them working at night and all of them working very late, until 6 or 7 o'clock. It is very difficult under the present set-up to keep our work up to date.

The CHAIRMAN. What is your budget?

Mr. BIDDLE. Of course, we have no budget, but we are running now on the average of approximately $50,000 a month, which includes all of the work of the national board and the work of all of the 24 officers of the regional boards.

It is a very large and wide-spread machinery.

The CHAIRMAN. If you retained the same personnel and had to go to Congress for an annual appropriation, you would have to ask for about $600,000?

Mr. BIDDLE. Yes. I said the average was about $50,000 per month, but the average has been slightly pulled down by the fact that during the earlier months of our work, when we had a much smaller organization, we were spending less than that. In my own estimate, depending upon whether we considered any functions were added by this bill, a budget of approximately $60,000 per month would be appropriate.

The CHAIRMAN. You may proceed with your statement.

Mr. BIDDLE. Coming to the question of enforcement now, the experience of the National Labor Board and the National Labor Relations Board in obtaining compliance and enforcing their decisions must be reviewed briefly in order to determine the value or necessity of those provisions of the Wagner bill dealing with enforcement. Of approximately 5,309 cases brought before the regional labor boards

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between July 1, 1934, and March 1, 1935, about 3,950 have been disposed of. The cases brought before these boards involved approximately 1,500,000 workers. Of these approximately 80 percent involved violations of section 7 (a). To test, however, the question of whether the law is being enforced, we must look to the appeals brought from the regional boards to the National Board and see what has happened to them. Ultimately the protection of the right to collective bargaining and the prevention of discrimination rests upon proper enforcement in the courts. The law has raised sharp conflicts and has been stubbornly and bitterly opposed. No one can doubt that unless the Government can secure certain and swift action in the courts in those cases where it is necessary to resort to judicial sanctions, section 7 (a) will become a dead letter in the law. Let us, therefore, turn to the record of the attempts by the two boards to obtain enforcement. Between July 9, 1934, the date of its creation, and March 2, 1935, the National Labor Relations Board issued findings and decisions in 111 cases. In 86 of these the Board found that a violation had occurred. In only 34 of these did the employer make appropriate restitution in accordance with our decision. In the remaining 52 of the 86 cases such compliance was not obtained. In these 52 cases, therefore, it was necessary for the Board to attempt to obtain enforcement through the removal of the "blue eagle" or through court action. Of these 52 cases the Board referred 33 to the Department of Justice.

The status of these 33 cases is as follows: In one case a bill in equity has been filed in the district court. Seven cases have been referred to the local United States attorney, on the understanding that further evidence must be secured by him in cooperation with the Board before instituting suit. In none of these cases has suit been brought. In nine cases the Department of Justice has advised the Board that further investigation on certain points is necessary before the case can be referred to the local United States attorney, and in three cases the Department has advised that as a matter of law no suit is justified. In 13 cases the Department has not proceeded for various reasons.

The CHAIRMAN. Was it the opinion of your general counsel that there was ground for action by the Department of Justice in those cases referred to it?

Mr. BIDDLE. I do not think you could generalize. We agreed that in some of the records the chances of success were not very good. We did think in other cases the chance of successful prosecution or of filing a bill in equity were good, and as there is always a difference of opinion on those matters, there was some such difference on these.

What I am getting at is not in any sense a criticism of the Department of Justice, but to show that the system under which we are working and the machinery under which we are trying to enforce the law makes inevitable the break-down of legal enforcement, and the necessity for such machinery as the Wagner bill includes.

The CHAIRMAN. It may not be a matter of criticism, but it is quite possible you would not be able to find in the Department of Justice any sympathy, or very little sympathy with your suggestion.

I mean your broad understanding and knowing this problem, and having a keener interest in it, would naturally enable you to prosecute

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the cases better than a group of attorneys who only deal with these cases incidentally.

Mr. BIDDLE. That is excellently put, and continually knowing the problems of labor, it would seem more normal for us to be able to carry out the work of enforcement, than the Department dealing with them only incidentally.

During the National Labor Board's existence, in the first year of the act, one case, the *Weirton case*, was referred to the Department. Section 7 (a) has been in effect for nearly 2 years. During that time, therefore, one case charging a violation of law has been tried and no violation found. One suit against an alleged violator has been filed in court, but so far no answer hase been filed to the bill of complaint, which was ordered amended. In no other case has suit been brought or is there any immediate likelihood that suit will be brought.

The failure to obtain enforcement goes far beyond the mere failure to carry out the decisions of the Board. It affects and undermines the right to collective bargaining throughout the whole country and threatens to make the law a nullity. The reasons for this failure were not hard to find. First and most important is the fact that the National Labor Relations Board has a responsibility for the administration of section 7 (a) but is devoid of the power required to carry through the responsibility. The Board has no power to subpena witnesses and therefore cannot make up records which from a legal point of view are adequate. It has no power to enforce its own decisions but can merely refer them to the Department of prosecution, and in spite of the hearings held before the regional boards and of the appeal from the Regional to the National Board, the record compiled and the decision announced by the Board are merely recommendations and the case must be tried de novo.

I am not criticizing the Department of Justice, which has properly enough taken the position that, since the National Labor Relations Board is empowered by the Executive order which creates it to investigate issues of fact, the cases referred to the Department by the Board for prosecution should be fully and completely prepared in all legal details, but under its existing power the Board cannot accomplish what is expected by the Department and the result, as already indicated, has been a virtual suspension of enforcement.

A very common case is where a complaint of violation of section 7 (a) is made to one of the regional boards. A hearing is set and the employer is requested to attend. He refuses to appear. There is no way in which his attendance can be compelled. The regional board proceeds with the hearing in the employer's absence. It issues findings of fact and a decision. The employer refuses to comply with the decision and the record is forwarded to the National Board. The N. L. R. B. prepares tentative finds of fact, based on the findings of the regional board, and sends a notice to the employer that a hearing will be held at which he will be given an opportunity to show cause why the tentative findings should not be made final. The employer again refuses to attend the hearing and N. L. R. B. makes its tentative findings of fact final. The case is then sent to the Department, but the Department, not wishing to prosecute on ex parte findings, sends the record back to obtain further facts. These cannot be supplied without the powers of subpena, and there is no enforcement.

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It is necessary in all these cases to prove interstate commerce. This proof depends almost entirely on knowledge which can be furnished only by the company itself. An employee cannot prove whether or not his employer is engaged in interstate commerce, but this is necessary information before the Department can file a bill in equity. It becomes impossible to proceed further with the case.

To sum, after many months of hearings and delay, the case is sent to the Department, which almost invariably feels that certain additional facts must be secured before a formal case is filed with the courts. These facts cannot be obtained by the board under its present powers.

Moreover, responsibility for the administration of the law is vested in the National Labor Relations Board, a specialized body created solely to deal with labor-relations problems. The law permitting self-organization and collective bargaining raises numerous problems, economic, social, and legal, which require expert knowledge and special training to handle. Section 7 (a) is difficult of enforcement even under the most favorable circumstances. The language of the section is broad and subtle measures of evasion are countless. Adequate enforcement requires agents who are sympathetic with the basic purposes of Congress. The Board should be responsible not only for the administration of the preliminary hearings but for the enforcement of its own orders. The division of responsibility create chaos. The local district attorneys, upon whom falls the responsibility of instituting and conducting litigation, are not familiar with the problems involved, have had no experience in the field, and cannot be expected to give its administration the same sympathetic support given by the Board.

The solution advanced for these difficulties is written into the proposed bill. Under this bill the Board will be given power to order the testimony of witnesses and the production of documents. With these powers the Board can make findings of fact in the same manner as other quasi-judicial tribunals. These findings, if supported by evidence, will be accepted in the courts. The Board may itself issue cease and desist orders which it can take directly to the circuit courts of appeals for enforcement. This provides a procedure that is full, swift, and efficient. It gives to the Labor Board powers necessary to secure enforcement and at the same time provides adequate safeguards through review by the courts. It is not in any sense a novel procedure but on the contrary is one which has been adequately tested by the experience of other administrative tribunals, notably the Interstate Commerce Commission and the Federal Trade Commission.

Another aspect of the problem of enforcement second in importance only to the failure to bring cases before the courts is the delay involved in the present machinery.

In cases involving discrimination against workmen who have lost their jobs through union affiliation time is of the essence. This is equally true where the employer has failed to bargain collectively. A union, particularly a newly established union, is not a static organization. If an employer can strike a swift blow the organization may disappear entirely; if he can deny it the rights guaranteed by the law for a substantial period of time it will decline and disappear.

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Senator LA FOLLETTE. As a matter of fact, that is what happened to a lot of these so-called "Federal unions", is it not?

Mr. BIDDLE. It is continually happening. The union, let us say, asks for an election, and the matter is delayed 6 or 7 months and the union is gone. Forty men are locked out, the union files a complaint, and the success of the union may depend upon getting those men back to work. Four months pass and nothing is done and the union is gone.

It happens continually, in our experience.

Restitution of damage done to an established organization through a violation of the law is ordinarily possible only if secured promptly after the damage occurs. In perhaps the majority of situations the case becomes for all practical purposes moot at the end of 3 to 6 months. Successful administration of this law is possible only if it is swift and efficient.

The present procedure for the administration of section 7 (a) wholly fails to meet this primary requirement of speed. The work of regional boards and of the National Board in every case where the employer is recalcitrant consumes months of time. When the case is finally passed through the machinery of the boards actual enforcement of the law can scarcely be said to have begun. The case must still be prepared in minute detail and commenced de novo in the courts, and when the case finally gets to court the long legal process of trial and appeal occupy many more months of time.

The two cases to which I have referred which have reached the courts give some indication of the period of time necessary in the present procedure to obtain a legal and enforceable decision. In the *Weirton case* the events which constituted the basis of the suit occurred in the summer and fall of 1933. A bill in equity was filed in the Federal District Court of Delaware in the spring of 1934. The Government attempted to speed up action by obtaining a temporary injunction on the basis of affidavits rather than trial. This method of procedure was overruled by the court. An amended bill of complaint was filed in September 1934. Trial of the case occurred in the winter of 1934 and occupied over 6 weeks of time. Briefs were submitted and the case argued in January 1935. Decision was made in the end of February 1935, a year and a half after the events complained of had occurred, and even then the case had, of course, traveled only through the trial court.

In the Houde Engineering Corporation case the company acts against which an injunction was sought began in the latter part of 1933, and have continued since that time. After numerous hearings by the old National Labor Board and the National Labor Relations Board a final decision was rendered by the latter board in August 1934. A bill in equity was filed in the Federal district court on November 30, 1934. The company at the end of its allotted period of 20 days moved to require the Government to make the bill of complaint more definite and certain. This motion was argued on January 7, 1935. Decision was rendered on the motion on January 26, 1935, requiring the Government to amend the bill in one particular. Since that date there has been a dispute as to the meaning of the court's decision and the Government's amended bill has recently been filed. It is hardly necessary to labor the point that such delays as this amount to a complete nullification of the law.

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I emphasize again that I am making no adverse criticism of the Department of Justice or of any other branch of the Government. The present powers of the Board make enforcement virtually impossible.

The solution in the proposed bill is that adequate powers be given to a single experienced agency to find out the facts and carry through enforcement of the law up to the point of review in the circuit court of appeals.

Senator LA FOLLETTE. Even that will be slow enough.

Mr. BIDDLE. Yes; but you may notice that Senator Wagner has eliminated one step by providing they should go directly into the circuit court of appeals rather than the district court.

I should now like to say a word about elections, if you will bear with me a little longer.

The CHAIRMAN. We will be glad to have you take all of the time you desire.

Mr. BIDDLE. A special feature of the enforcement problem which again sharply illustrates the collapse of existing machinery is the matter of elections. An election is conducted by the Board for the sole purpose of ascertaining a single question of fact—what person or organization a majority of the employees in the plant wish to have as their representative for collective bagaining. The election imposes no obligation upon the employer except in cases where necessary to furnish his pay-roll lists. The Board is given the power to subpena pay rolls. Not until the election is complete and the question of the employer's duty to bargain collectively arises is the employer put under any substantial obligation by the Board's decision to hold an election.

Although Joint Resolution 44, to which I have referred, attempted to secure to the Board an effective power to order and conduct elections by permitting a subpena of pay rolls, the resolution in this respect has been wholly nullified. Many elections (191 from October to March) have been held by the regional boards by consent; but in every case where the employer has not consented to the holding of the election and the National Board has been compelled to use its power to order an election the employer has succeeded in tying up the enforcement of the order almost indefinitely in the courts. In six cases the Board has ordered an election over the objection of the employer and in all six cases the employer has filed a petition with the circuit court of appeals to review the Board's order in accordance with the provision of resolution 44, providing that any election order issued by a Board may be reviewed in the same manner as is provided in the case of an order of the Federal Trade Commission under the Federal Trade Commission Act. Of the 6 cases the Board's decision in 2 was issued in November 1934, in 1, in December 1934, and in 3, in January 1935. In no one of these cases has the matter even come before the court for argument.

May I further say Mr. Leiserson informs me in his elections no railroad company employer has any part in it. He is not considered, and has no part in any sense whatever.

The proposed bill attempts to solve this problem by reducing the holding of an election to its proper status as a mere inquiry into the facts. The bill allows the Board to order the election without

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provision for review of the election order. The bill provides in section 9 (c) [reading]—

> In any such investigation the Board shall provide for an appropriate hearing either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees or utilize any other suitable method to ascertain such representatives.

Moreover, the employer has no place in elections. Elections deal with the problem of the men as to whom shall represent them and here the employer has no place. I am informed that in elections held by the National Mediation Board the employer is not a party in any way to the election proceeding. Obviously an employer should not be allowed to hold up an election. When the election ascertains the majority and the employer is then ordered to deal with such majority, the order is subject to review in the circuit court of appeals.

It is interesting to trace the results of the consent elections for the period from July 10, 1934, to January 9, 1935. The National Board conducted at the 17 district boards 100 elections during this period. In many cases one election covered several separate units. There were 528 units involved. Of these the trade unions won 301, or 57 percent, employee representation plans and company unions won 162 units or 30.5 percent and no representation was chosen in the other 65 units, representing 12.5 percent.

It should be remembered that since these elections were all by consent, it is not probable the employer would not win, or he would not have consented to it, so if anything, it would be supposed that the figures would have shown strongly in favor of company unions, but the exact reverse has happened.

The CHAIRMAN. What do you mean by no representation, that the employees voted not to form a union?

Mr. BIDDLE. Yes; not to form anything. In terms of votes, 20,682 votes, or 56.8 percent of the total, 36,433 were cast for trade unions; 12,139, or 33.3 percent were cast for employee representation plans, and 2,213, or 6.1 percent, were for some other representation; 45,397 employees were eligible to vote.

As a matter of interest we followed down the result of these elections. In other words, my evidence given yesterday was that collective bargaining was desirable, and the methods proposed by the Wagner bill will make collective bargaining easier to obtain. Now, let us see what happened as the result of the election, because we have taken the trouble to follow up each of these cases I have referred to as to collective bargaining.

In 250 units the company bargained with elected representatives and in 201 tentatively so. In 207, written agreements had resulted, in 246 none had been written. In 242 units, however, harmonious results, even though not expressed in written agreements, were achieved.

The CHAIRMAN. Were there any cases where the employer refused to abide by the election?

Mr. BIDDLE. No; because these were only election cases by consent.

It may be said therefore that these elections show that where men are given a fair chance to express their desires in a secret ballot the trade union is far more usually selected than the company union and the technique of elections definitely results in the signing of collective

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bargaining agreements which, as I have said, is the underlying economic purpose of the law of collective bargaining.

The CHAIRMAN. Are there any questions from any of the members of the committee. Mr. Biddle, you have given an excellent presentation and we appreciate very much your assistance, and we will feel free to call upon you for further suggestions and advice when we go into our executive session.

Senator LA FOLLETTE. Just one more question, Mr. Biddle; I understood you to say yesterday that about 35 percent of the controversies resulted from controversies over company unions?

Mr. BIDDLE. That is correct.

Senator LA FOLLETTE. When you are reviewing your testimony, would you be kind enough, if the information is available, to give the committee data showing how large a number of employees were involved. In other words, to break it down on the percentage basis does not reveal necessarily the relative importance of dispute over company unions, and if you have that information, I would be very pleased to have it in the record.

Mr. BIDDLE. I will certainly try to get it. With the permission of the committee, Mr. Smith of our Board whom I understand you have asked to testify at some future date, will give you these figures that you asked for, Senator.

Senator LA FOLLETTE. That will be very satisfactory.

The CHAIRMAN. The hearing will be adjourned until 10:30 a. m. tomorrow, when Mr. Green will testify.

(Thereupon, at 11:45 a. m., the hearing in the above-entitled matter was recessed.)

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NATIONAL LABOR RELATIONS BOARD

THURSDAY, MARCH 14, 1935

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D. C.

The committee met, pursuant to adjournment, at 10:30 a. m., room 335, Senate Office Building, Washington, D. C., Senator David I. Walsh, presiding.

Present: Senators Walsh (chairman), Murphy, Murray, Donahey, La Follette, and also Senator Wagner.

The CHAIRMAN. The committee will come to order. Mr. Green, the committee will be pleased to hear you. Will you give your name and official position to the reporter, as a matter of public record?

STATEMENT OF WILLIAM GREEN, PRESIDENT OF THE AMERICAN FEDERATION OF LABOR

Mr. GREEN. Mr. Chairman and members of the committee: I shall attempt to present to you today the conditions which show why the Wagner National Labor Relations Act is necessary not only for the best interest of the workers but of the country. I believe I may say that the position I happen to hold in the American Federation of Labor has given me a unique opportunity to know what workers all over the country are thinking and feeling, and the experience through which they are passing. For that reason I want today to put before you the story of the millions of workers who cannot themselves appear, so that you can see just what the passage of this bill means to them, in human terms, in terms of jobs, and homes, and freedom from constant fear and anxiety.

The adoption of section 7 (a) 18 months ago was followed by a veritable uprising of wage earners throughout the length and breadth of the country, to organize into unions for collective bargaining with their employers. I want you to see something of what has happened to those wage earners. Every unfair labor practice provided against in the bill has been experienced by workers again and again; they have found themselves frustrated at every turn in their efforts to enter into true collective bargaining.

Employers have not recognized their corresponding duties and responsibilities under that law; they have resorted to every kind of subterfuge to evade the law and the machinery set up to enforce the law has not been given sufficient power. Those evasions of employers have been consummated through discrimination of every sort, through discharge, through the creation of company unions and the subsequent evolving of the doctrine of minority representation

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to protect those company unions; by the use of the great financial resources which many employers control to prevent or destroy organization, and by the use of the courts to delay and prevent the holding of elections. The effect of all these practices has been direct and tragic upon millions of workers. It is to correct these conditions that the Wagner bill has been proposed.

Nowhere or at no time has this sound economic philosophy been more clearly expounded or stated than in the declaration of labor policy set forth in the Norris-LaGuardia Act, passed by the Seventy-second Congress.

I mean, of course, the economic philosophy propounded in the Wagner Disputes Act. I quote from the Norris-LaGuardia Act as follows, because I think it worth while:

> Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection * * *.

Now, that is the declared public policy of the United States, and policy of the Nation as set forth in the Norris-LaGuardia Act, and this bill contemplates translation of this policy into a substantive law.

The economic conditions which exist today can be corrected only when the bargaining power of the employees is made equal to that of the employers. That equalization of bargaining power is the fundamental purpose of the bill we are discussing.

The individual worker has no power to bargain. The obvious natural thing then, is for them to find strength in unions and to select someone to bargain for the group. This natural development has been relentlessly opposed by employers because it limits their power to accumulate wealth for themselves by paying the smallest possible wages to employees. Only by organization of wage earners into self-controlled unions can workers bargain with their employers on an equal basis.

A worker who singly and alone matches his bargaining strength against United States Steel Corporation, for example, or against General Motors, must in reality accept any conditions placed before him if he wants a job. He is in no position to bargain, when there are 11,000,000 men and women looking for work. There are hundreds of men waiting at the gates; his desperate need drives him, he must have a job and he accepts a wage upon which he knows he cannot live and support his family; he agrees to working conditions which are cruel and unjust; in many cases he even agrees to connive with the employer to violate the provisions of the code. He must or lose his job. The use of this power on the part of the employer by no means ends when the man has the job. It continues all the time the man continues on the job. He is always in fear of losing it. He knows how difficult it is to prove that he has been unjustly

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discharged, and what delays and uncertainties must be encountered in securing reemployment.

What is this collective bargaining which we are striving to achieve on a universal basis? Collective bargaining, if it is to be true collective bargaining, must mean a frank discussion between the duly and freely chosen representatives of both parties involved. There must be mutual confidence and it must be recognized by both parties that the goal sought is not achieved until a definite agreement has been reached. The agreement, however, is only the framework upon which a sound relationship will be built. No matter how meticulously the clauses of the agreement are drawn, there are bound to be certain points for which complete provision has not been made. Where there is mutual confidence, mutual respect, and a genuine willingness to give and take until an equitable settlement is arrived at, real progress is assured.

Why has the protection of the right to organize and bargain collectively on a basis of equality by Federal statute come to be an issue of such tremendous import? The guarantee to American working men and women of the right to organize in unions of their own choosing, and to be represented in genuine collective bargaining by their own freely chosen representatives, must not be looked upon as emergency legislation. Section 7 (a) was at the same time emergency legislation and long-time planning. For a definite program of long-time planning, we must have Federal legislation. Such legislation is by no means unknown. We have already before us the railway labor legislation which has shown the way.

I cannot point to any development of human relationship in industry where cooperation and industrial peace has been established in such a wide and large way as the railroad industry. There, it seems to me, is the answer to those who oppose this measure. Nobody is afraid of a strike on the railroads of the country; we do not go to bed fearful that the railroads are going to stop.

Why? Because the machinery for adjusting disputes between employers and employees has been set up, and there are feelings of security in the hearts and minds of the people of the country, and I think I can safely say, without fear of being challenged, that there exists a perfect feeling of genuine satisfaction in the hearts and minds of the railroad workers through the operation of the Railway Act.

Can we not extend those principles into other fields and bring about a feeling of that same degree of industrial and social security as now exists with regard to the railroad situation?

Employers have nothing to lose through this program and, in fact, they have much to gain. They could not more surely go about the complete destruction of sound labor relations and of cooperation between men and management than through their attempts to interfere with the self-organization of their employees and the free choice of labor representatives. As I have pointed out, strikes and industrial warfare are the only possible answer of the workers to the course of action the employers have apparently elected to follow.

What is the alternative? Well, it is industrial warfare, the war of force, and we are trying to avoid that.

It is essential for the future of industry that the relations between management and labor be put on a more constructive basis; that the defense attitude of the employees and the antagonism of man-

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agement be replaced by an attitude of cooperation on the part of both employers and employees. I shall, for the moment pass over those sections which deal with the nature and duties of the Board to be set up under this Act, and discuss first the reasons for the unfair labor practices. I shall later offer a few amendments for your consideration.

We have by now, through thousands of cases all over the country, to clear picture of the course which has been pursued by employers to prevent self-organization on the part of their employees. Many of these cases have been before the regional labor boards, the National Labor Board, and the National Labor Relations Board, so that complete records are available. Others have come to us in letters or have been told to representatives of organized labor. It becomes clear that there is a well-defined pattern of action on the part of those employers who are determined to prevent the enforcement of section 7 (a). The artifices which have been employed by management to defeat self-organization and collective bargaining are legion.

While discriminatory discharge is the single practice which is most frequently brought to our attention, countless other tactics are equally effective in breaking the spirit of the worker and convincing him that he must choose between the union and his job. When an employer has the intent to evade the law, he can find ample excuses for doing so. An infringement of factory rules and regulations which might ordinarily be overlooked can immediately become cause for discharge, where interest in the union has arisen. Work which for years has been wholly satisfactory may become defective when the worker becomes involved in the formation of a bona fide labor union. Without refusing to deal with the union he may meet again and again with union representatives with no honest intention of ever reaching an agreement.

We have gone through that experience, and they say yes, we will meet and we will argue, we will discuss the matter, but it becomes clear and obvious that there is no intention on the part of the employers participating, to reach an agreement.

Often there is concerted action agreed upon by employers throughout an entire locality or an entire industry. In this, employers are very often assisted by the local chambers of commerce, or other employers' association. In Clinton, Mass., as an example, the Ralph A. Freundlich Co., which manufactures toys and playthings and which had already been convicted of violation both of section 7 (a) and of the terms of an agreement it had with the union of its employees, called upon the local chamber of commerce to help bring the necessary pressure to bear upon their employees to prevent them from organizing. A representative of the chamber of commerce addressed the employees, who were paid by the company to listen to him. He offered to take upon himself the settlment of any of their grievances and gave them to understand that it would be dangerous to them to form a union.

The CHAIRMAN. What disposition was made of that Clinton case finally, by the Board. do you know?

Mr. GREEN. The National Labor Relations Board decided that the efforts of the employer and the chamber of commerce constituted intimidation and coercion.

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The CHAIRMAN. Did the employees organize afterwards?

Mr. GREEN. I am not in a position to tell you, but I will find out.

The CHAIRMAN. I know of that case because it has been called to my attention. It is only fair to say that the position of the chamber of commerce was that the closing-up of so many factories and shops made them desperate to get any kind of employers who would establish plants in the town.

Mr. GREEN. That is the trouble, they threaten to take the plant away if you organize. Certainly that is coercion, and that is the basis of the attempt to form a compact now, as I understand, among these States, the basis of the Healey bill pending in Congress, authorizing this group of States to enter into a compact to stabilize the situation.

The CHAIRMAN. I do not quite understand that.

Mr. GREEN. They have been attempting to form a compact between these States—Connecticut, Massachusetts, New Hampshire, Vermont, and the others—in order to make it effective, and Congressman Healey has introduced a resolution in the House of Representatives which I would consider an enabling act authorizing them to meet and enter into a compact. That is in order to prevent this drifting of concerns from one State to the other merely because the workers organize and seek to bargain collectively.

The CHAIRMAN. Does that compact apply only to the attempt to get uniform legislation in the different States on labor, or does it apply to a variety of subjects?

Mr. GREEN. On a variety of subjects, I understand. You know they have the 8-hour law in Massachusetts for women, but they do not have it in the other States.

The CHAIRMAN. Have you seen the book recently published by a Philadelphian, known as the "Flight of Capital and the Flight of Industry from Massachusetts"?

Mr. GREEN. I have not read that; no.

Mr. CHAIRMAN. It is a terrible story of the closing up of industry and the removal of industry to other sections where the labor laws are more lenient, and where the laws and regulations are not up to the standard of Massachusetts.

Mr. GREEN. You refer to the textile industry, I assume?

The CHAIRMAN. The textile and the shoe industries.

Mr. GREEN. And the textile industry has moved to the South?

The CHAIRMAN. It is said we have lost 50 percent of our shoe industry in the last few years, and it was almost a monthly if not a daily occurrence in the shoe industry, where the union workers were able to get reasonably decent wages, the factories were packing up and moving out to some border State, or some backward community in Massachusetts where they could not or would not unionize.

Mr. GREEN. In Massachusetts the workers have developed fair standards of living, and now they are offered the choice between maintaining that standard of living or accepting lower wages and keeping the factories there.

The CHAIRMAN. It is really directed against unionizing, and it has succeeded to a remarkable extent.

Mr. GREEN. Yes; we appreciate that, and that is the attitude of these manufacturers' associations and organizations to just relentlessly drive and drive in order to interfere with the organization of their workers.

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As an example of how an employer may suddenly become conscious of the infringement of a rule of the company, let me cite the case of an employee of 4 years' standing in Patrick, Inc., of Duluth, who, upon becoming a member of the Amalgamated Clothing Workers of America, was suddenly alleged to be holding back tickets from week to week. Yet, the National Labor Relations Board found it had been customary for the employees with the knowledge of the company to hold back tickets during busy weeks in order to assure the earnings of the minimum wage during slack weeks.

Another example of subterfuge employed was shown in the discharge of seven members of a local of the International Association of Machinists by the Available Truck Co. of Chicago. One of those employees had worked for almost 10 years for an official of the company and for the company itself. The reason given for his discharge before the Board was that he spent too much time on small jobs; another one of the seven, employed for 4 years, was alleged to have been discharged because a truck he had repaired 30 days before had broken down, although in fact he had not worked on the truck. No complaint had ever been made about the work of the men before they joined the union.

In seasonal industries, discrimination has taken the form not only of discharge but of failure and refusal to rehire men after a layoff, if it is known that those men have shown interest in the union. This has been particularly effective in the automobile and the automotive-parts industry. I have talked personally with a large number of men who have worked in automobile plants for many years, and whose work has always been satisfactory. They were called back year after year at the end of the layoff season. But in the production season of 1934, they were not called back and many of them have not worked since.

Unless you have been in an automobile town like Flint or Pontiac—a one-industry town, where everything turns about the automobile plants—you cannot realize what this means to those men. They have not only lost their jobs, they have lost the homes they were buying, they have been forced to borrow, and finally to depend upon relief. Many of them will never again get work in any automobile factory, yet they have given many years to that work and are not able to move to other parts of the country in search of jobs, even if there were work to be had in other cities. The same condition exists generally throughout seasonal industries where employers are seeking to discourage organization.

I am stating these instances as evidence of the existing of unfair labor practices. I think these concrete cases should be brought to the attention of the committee in support of the allegation that unfair trade practices exist.

In their attempt to interfere with and prevent the organization of their workers, employers have instituted espionage systems and have employed "stool pigeons" to such an extent that workers are afraid to talk to the men who work next to them. Many companies have spy systems so effective and so elaborate that they receive immediate reports on any employees who have the courage to assert their rights of self-organization.

There are two kinds of spy systems. In one an employer hires an agency to do his spying for him. The agency furnishes men who

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are put to work in various parts of the plant, where they are in contact with the workers. They profess interest in the union, and in many cases it is they who initiate talk of the union. They join any union which may be started and attend all meetings, and report at once to the employer the fullest details.

If the employer does not retain an outside agency to do his spying for him, he uses foremen and "straw bosses", or other employees whom he calls "loyal" as "stool pigeons", and they make it well worth the while of workers to drop the union, through giving them better jobs, higher wages, or assurance of more extended work. The Charles Pfizer & Co., Inc., in a hearing before the National Labor Relations Board, admitted that the company had an espionage system through the use of which it hoped to break up the union. "We knew there was some kind of an attempt to organize these men and we wanted to head it off if we could", the company's counsel said. So they used spies, and when they found the men who were interested in the organization of the union, they discharged them. In the automobile industry, the Division of Research and Planning and the Bureau of Labor Statistics, appointed by President Roosevelt to make an investigation of conditions in the industry, found espionage systems very widespread and conducive of much bitterness on the part of the employees, who, as the report said, know they are being spied upon night and day.

Senator MURPHY. May I ask if that condition obtained in the automobile industry and the steel industry?

Mr. GREEN. Yes; it does. That report made clear how determined and widespread the violation of section 7 (a) has been in that industry. When genuine collective bargaining is established, the report states, most of the shocking conditions now existing in the industry will be corrected.

That is the report of the Research and Planning Bureau of Labor Statistics, a group of experts, not labor men, and they say that collective bargaining is the remedy to give courage, hope, and strength to the workers.

I want to read a letter I received recently from a textile worker in Georgia, so that you may hear in a worker's own words what is going on.

I just want to tell you about how they are doing the working people. If anybody here talks in favor of the union they will get some kind of excuse and fire them and won't tell anybody what they are fired about. They layed off about 45 here last week including me too; their excuse for laying me off, they said my work was not suitable and couldn't work me any longer and the bosses goes over the mill and ask the help what they think of the union and if they are in favor of it they are payed up in a short while afterwards.

If there is no other way of breaking up the union the plant is shut down. Then when operations are resumed union members are not rehired. At the National Battery Co. of Chicago, the following incident occurred.

Mr. Shields (the president of the company) called Killion (the president of the union) over long-distance telephone and in a conversation—a conversation heard by the plant manager and the president of the company union—Mr. Shields, after stating that he would never recognize the union and would never enter into any kind of an agreement with his employees, said: "If you will quit and get out of there, I will give you a thousand dollars." Killion replied: "I am sorry, but I cannot do that. It would appear too much like

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selling out the men, and I absolutely refuse to do that." Mr. Shields then said: "Well, you will either do that of I will shut the plant down. It is one of the two, you get out of there, or I will shut it down." When Killion again stated that he would not get out, Mr. Shields said to the plant manager who was listening to the conversation over an extension: "Shut the plant down." The plant manager inquired: "Now or tonight?" Mr. Shields replied, "Shut it down immediately." The plant was closed immediately and remained closed until June 29." (This conversation took place early in June.)

Other companies may not merely close down for a time, but they may reorganize in order that former employees may have no claim whatever for reinstatement. The Ely & Walker Dry Goods Co. of St. Louis, when it found that the employees of several of its departments were very thoroughly organized and wanted to bargain collectively, transferred the organized departments to a new corporation especially created for that purpose, called Handling, Inc., and advised its organized employees that they must secure employment through that new corporation, if at all. The men active in the union did not succeed in getting jobs.

Some companies move from one town or city to another, to break up the union.

That is what we were referring to a moment ago, Senator Walsh.

The CHAIRMAN. That has increased a good deal during the last 2 years, has it not?

Mr. GREEN. Yes; it has increased quite a good deal. Other companies which have more than one plant move their equipment from an organized to an unorganized plant. Two fur dressing firms in New York moved from Brooklyn to Farmingdale, Long Island, refusing to take their organized employees with them. The New York regional labor board and the National Labor Relations Board found their move was in order to avoid dealing with their organized workers. We today are trying to prevent a canning company in Indiana from moving its equipment from one of its plants to another, because its employees have dared to organize. That move will leave several hundred men and women without a means of livelihood. The cannery is located in a small town and is the only industry in the town.

Intimidation and coercion as practiced by employers also include such things as ejection from company houses, where the workers are employed in companies which own or control the towns in which they are located. Or if the workers and their families are not ejected from the company houses, they may suddenly be pressed to pay their company-store bills; or no longer given credit at the company store. It takes courage these days, gentlemen, to join a union, even though the right to do so has legal sanction. Yet so desperate is the worker's need and so great his desire for help that he does join. He still looks to the Government to give him the protection he was promised on June 16, 1933.

I have given you a picture of the methods by which employers have evaded their responsibilities and violated the law in the past 2 years. I have not, however, as yet mentioned one of the most insidious and most prevalent methods of coercion, intimidation, and discrimination used. This is the company union. The company union menaces every principle of democracy and fair play which we have for so long associated with the name of this country. It is direct coercion aimed to destroy the very fundamentals of free action on the part of millions of workers.

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Although company unions have had a tremendous growth since the adoption of the National Industrial Recovery Act, they were used by employers before that time to defeat genuine organization. They first became significant at the end of the World War, as a less crude substitute for the open-shop movement. The organizing agency for the company union movement is the conference committee, made up entirely of management representatives.

Company unions flourish especially in the great industries, such as steel, automobiles, rubber, and chemicals. They are a creature of the employer, the result of well thought out and considered effort on the part of trade associations and employers associations to confuse and mislead and defraud the workers of their legal rights. From its very nature, it is at once obvious that a company union has nothing to offer the worker. It is initiated by the employer, fostered by him, guided and controlled by him, and paid for by him.

The illegality of the company union has been long established in law. The Supreme Court of the United States in 1930, after a careful review of evidence in the case of *Texas & New Orleans Railway* v. *Brotherhood of Railway Clerks*, found that by setting up the company union the employer had attempted "to corrupt and override the will" of the workers and the Court ruled this to be in definite violation of the Railway Labor Act and ruled the company union set up by the railroad to be an illegal organization.

The Supreme Court, in defining the terms "interference", "influence", and "coercion" as used in the Railway Labor Act, said emphatically that "the phrase covers the abuse of relation or opportunity" and gives unmistakable evidence that a company union constitutes an attempt to corrupt the free will of the employees.

I want to read to you a few excerpts from trade journals on the subject of the company union, which will show you more clearly than anything I might say just what company unions are and what they are intended to do. In volume 61, page 62, of the magazine Industrial Management, is to be found the following:

> The time for a company to make a move is when all is peaceful and no organizers are about. The employer must be ahead of the game if he expects to win. Let him put it off until the unions are on the ground and getting better entrenched every day, and he will have the fight of his life when he wakes up and tries to put across an organization that leaves the union in cold storage.

Surely nothing could show more clearly than this that employers themselves have since the adoption of the N. R. A. fully recognized the great desire on the part of their workers to organize freely. It shows also that they have been determined from the very beginning to fight organization.

Automotive Industries of December 9, 1933, informed automobile and automotive parts employers that—

> Even though a union has started its propaganda and has made some headway, the plan (employee representation) seems to be good business. It prevents the union from assuming complete control * * *. It enables the employer to maintain contact with loyal employees who may find * * * that the company can do more for them.

Again, the same magazine, in its issue of December 23, 1933, in a discussion of possible company union plans, warned against the adoption of any plan which permitted employees representatives to

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hold meetings at which company representatives were not present, because—and I quote the exact words—

> It is thought to be bad policy to permit employee representatives to meet privately since there is no control over the issues that they bring up, and also, because the group forms a majority opinion on any issue which is hard to change in subsequent arbitration.

In the automobile industry, it was pointed out, the type of company union most preferred is that one in which employee representatives meet only when company representatives are present.

In order that the company unions might fulfill the interpretations which the employers themselves placed upon the collective bargaining portion of section 7 (a), Automotive Industries in its December 23, 1933, issue gave instruction to employers as follows:

> It is evident after listening to the experience of those who have experimented in this field that while a successful employee representation plan primarily must meet the immediate practical needs of the situation, it must also be skillfully drafted so as to comply with the legal aspects of the plan as a contract between the employer and his employees * * * from a strictly practical point of view if the plan is drawn up so as to meet certain interpretations of article 7 (a) of the National Industrial Recovery Act, the employer at least has the semblance of right on his side and is placed in a better strategical position in his dealings with regional labor boards or the National Labor Board.

It would be difficult to find a more cynical and open attempt to destroy, deliberately, the rights of the workers in this major American industry, the industry which has benefited perhaps more from the recovery program than has any other.

I do not wish to give the impression that the automobile industry is the only one which has adopted this plan of evading the law. Probably the most aggressively supported company unions in the world are those in the steel industry. The United States Steel Corporation, shortly after the adoption of the National Industrial Recovery Act, appointed a vice president whose duty it is to promote the company unions. The lumber manufacturers have their Four L's, the Loyal Legion of Lumbermen and Loggers; the Standard Oil of Ohio has its Sohio Plan; the rubber companies have their Employees' Conference Plan and their Cooperative Plan; a textile mill in Alabama, employing 70 men and women, has a Goodwill Adjustment Club; a fur company in Danbury, employing 200 workers, has a shop union; I have in my office now hundreds of reports on company unions in practically every industry in the country. They may have different names; they may be in plants or factories employing thousands of men or employing 10 to 100 men, but in all essentials they are the same.

Of the company unions on which we have reports, only 18 percent were formed prior to N. R. A.; 61 percent of the total were not started until an attempt was made by the employees to form a bona fide labor union. The plan originated directly with an officer of the company in 94 percent of the cases, and in 51 percent of the cases organizers were paid by the company.

There is where it originated; the facts in our possession make it clear that the company union plan originated with the company in 94 percent of the cases.

Senator WAGNER. Mr. Green, at the time were both members of the National Labor Board in the hearings we had which involved company unions, do you recall that in every case that came to our

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attention the company itself had initiated the company union, provided the constitution, and all the rest of the machinery?

Mr. GREEN. Yes; they always formed the unions and provided the constitution and the machinery, and frequently they provided the secretaries and the reporters to report their meetings.

Senator WAGNER. And financed them.

Mr. GREEN. Yes; financed them. The significant part of it is that in most every instance an equal number of managements must sit in with an equal number of representatives of the company union when questions and grievances affecting the company are discussed.

Bylaws were submitted by the company for 59 percent of these company unions; employees automatically became members when hired in 44 percent of these unions.

I have an interesting case to bring to your attention in reference to these activities of corporations in organizing company unions. Labor has appealed to the National Labor Relations Board for elections in cases arising in the rubber manufacturing industry, the steel industry, and the automobile industry particularly, and, of course, in many others, but in these three major industries the workers went before the National Labor Relations Board in every instance.

We challenged the right of the company union to bargain collectively for the workers, because the company union did not represent the workers, and in order to determine that we appealed for elections to be held under the direction and supervision of the National Labor Relations Board, and I say to you that in no one special instance where the National Labor Relations Board ordered an election in these major industries, has an election been held and the order of the Board carried out.

The management has opposed the decision of the Board, and they have said no election shall be held, the decision of the Board shall not be carried out, and every one of them has been taken into court.

The election ordered at the Firestone Tire & Rubber Co., at the Goodrich Tire & Rubber Co., and the Goodyear Tire & Rubber Co. were taken into the Circuit Court of Appeals in Cincinnati, where they are now pending.

The case of Duquesne & McDonald Steel Co. has been taken into the court, and, of course, you know the *Houde Engineering Corporation case* has been taken to the court.

I was advised by our representative in Akron, that following the decision of the National Labor Relations Board ordering an election at the Firestone Co. plant, the company had become extremely active in employing organizers in the plant to organize the workers into a company union. In the interim between the date when the election is held, and when the decision will finally be reached in the Court of Appeals, the company is becoming extremely active. This representative wrote me a letter and stated that 90 more men had been employed as organizers for the company union. I wrote back to him and told him he must be mistaken, that the company would not take advantage of the situation to employ such a large number of special organizers in the plant, and asked him to take it up and write me again, and here is his letter:

Since the receipt of your letter of January 10, in reference to my letter dated January 8 in regard to our organizing the rubber workers into unions directly affiliated with the American Federaation of Labor and other matters, I have verified my previous statement that 92 men are employed by the Fire-

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stone Tire & Rubber Co. on behalf of the company union established at this point. One hundred and fifty men are employed by the B. F. Goodrich Co. and 60 men are employed by the Goodyear Tire & Rubber Co. in the organization and maintenance of company unions.

That is 150 men in one, 60 men in another, and 92 in the other. These organizers move about in the plants when the men are working, they have access to the men, they are allowed in there by the company, and they are inside organizers. Our representatives are denied admission to the plants when they are in operation, of course.

This letter goes on further to say:

In addition to the above, the Goodyear Tire & Rubber Co. paid the salary of a full-time secretary for the Goodyear Industrial Assembly, which is a company union. Also in the Miller division of the B. F. Goodrich Co., 10 additional company-union representatives were placed on the salary list. This division, 1 year ago, refused to accept or have anything to do with the company union, but since our hearings on our demand for a majority-rule election, the company has forced this plan on over a thousand workers in the Miller division. This makes a total of 160 paid representatives at the B. F. Goodrich Co., who are carrying on organizing work for company unions within this rubber manufacturing plant.

The above statements can be proven and the records and briefs in the hearings before the regional labor board and the National Labor Board will also verify the above statements. They may not have the actual figures in the brief, but nevertheless, the evidence will show that the company has sponsored, organized and financed those company unions and are still financing them. That is a matter of record.

Trusting this will be satisfactory. With best wishes and kind regards, I am

Fraternally yours,

COLEMAN CLAHERTY.

That is how they have taken advantage of the situation following the decision of the National Labor Relations Board.

Senator LA FOLLETTE. When he says these facts are a matter of record, to what record does he refer?

Mr. GREEN. I think the record of the hearing before the Board is what he refers to.

Following this, we appealed for the removal of the "blue eagle", because they had violated section 7 (a), and at that hearing these facts were brought out.

Now, Senator Wagner will remember the case of the Weirton Steel Co., where an honest direct agreement was made with Senator Wagner, the Chairman of the National Labor Relations Board that an election would be held at the Weirton plants under the supervision of the Board. In referring to that, I want to quote from the record, which I think will refresh Senator Wagner's memory, because we both passed through that case together. Here are some of the questions and answers I want to read to you:

Chairman WAGNER. I have made my statement. I am sorry we are in this position, in this situation.

Mr. WEIR. I want peace in this industry. I want peace in all industries.

That is why I think this election should be held at this early date in December. There is more chance of that bringing peace than having an earlier one.

Chairman WAGNER. You say you are not going back on that?

Mr. WEIR. Don't misunderstand me. Mr. Reed is not responsible for this.

Chairman WAGNER. I understand.

Mr. WEIR. I take the responsibility. I am running the company.

I know the conditions. We can only have peace within this industry within 7 weeks.

Mr. GREEN. Mr. Weir, suppose that on an election on December 2, they would select representatives of their own choosing, along the lines of this act, you would be willing to recognize whoever they would select?

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Mr. WEIR. Why, certainly. I am not making the law. I am trying to consider the law.

You handle the election.

That is Mr. Weir's statement made at that hearing.

Senator WAGNER. When he said, "You handle the election", he meant the Board.

Mr. GREEN. Yes. He was speaking to you, and to me, and he says, "You handle the election."

I read further from this same record as follows:

Mr. GREEN. Would it be well to allow this board to handle the election?
Mr. WEIR. We want you to oversee it.
Mr. GREEN. Supervise it.
Mr. WEIR. Supervise it and oversee it so that there is not any question.
Mr. GREEN. Supervise the election and see that it is held properly.
Mr. WEIR. There is not a question of coercion.

That is Mr. Weir's statement, and then it goes on further:

Mr. GREEN. That there is no question of coercion. That is what I mean; on the part of the board.

Chairman WAGNER. Can we do this

I am willing to adjust it—I am willing—I do not know how these men will feel about it, but if somebody else is going to be obdurate, I will not be the one.

Suppose we have the election as it is scheduled under your bylaws, whatever it may be.

Can we agree that the election will be held in this respect, that the men will have the right to choose, either within or without the organization?

Mr. WEIR. You mean whether an outside man or person not an employee?

Chairman WAGNER. No limit as to who they may choose.

Mr. WEIR. It does not have to be an employee of ours?

Chairman WAGNER. Secondly, will you permit representation from the National Labor Board to supervise the election?

Mr. WEIR. That is what we want.

There are two places where Mr. Weir positively stated, you handle the election, you supervise it and oversee it.

We left that meeting with a perfect understanding that the Board would supervise and hold the election. When Chairman Wagner sent a representative of the Board to Weirton to supervise and hold the election, this representative was denied access to the records and the pay roll, and was prevented from supervising and holding the election, and that is a matter of record. Mr. Weir took us into court, and you will remember the decision in the case in Delaware, a decision which I do not think will be sustained by the Supreme Court of the United States.

I referred to this record to show you the opposition of the employers even to the holding of election. Why would not they let the workers say we want this or that, we want the company union or the independent union; is there anything more fair? They say no.

Senator MURPHY. May I ask how long a period elapsed from Mr. Weir's commitment to this election, and the sending of representatives there to conduct the election?

Mr. GREEN. I think the time which intervened was a few weeks.

Senator WAGNER. As a matter of fact, at the time he agreed to have the election supervised by the Board, we fixed the date of the election, and that was an agreement between us.

Senator MURPHY. There were no acts in the intervening period on the part of the American Federation of Labor or any one of its representatives that might have any bearing upon his change of mind?

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Mr. GREEN. No; and in fact the strike that was in existence there was declared off on the basis of this understanding, and the men went back to work, and they were tricked.

Senator MURPHY. You regard it as a clear case of faith?

Mr. GREEN. It was certainly a clear breach of faith. He had said directly "You handle it."

Senator MURPHY. Then you were tricked into calling off the strike?

Mr. GREEN. Yes; we were tricked into calling off the strike, because we accepted this in good faith, and then the Board was denied the right to supervise, hold, and oversee the election. When Mr. Weir said "You handle the election", I then said, "Would it be well to allow this Board to handle the election?" Then Mr. Weir said, "We want you to oversee it." I then said, "Supervise it", and Mr. Weir said "Supervise it and oversee it, so that there is not any question."

I wish to make this observation just now, that there are two ways in which we can promote cooperation and human relationship in industry. One is through the application of orderly processes, the rule of reasons, collective bargaining, discussion face to face, and in a frank way, and then if you cannot agree let the arbitration boards make their awards. Now, that is one way, through a national board set up by the Government, representing all of the people, to determine questions of collective bargaining as provided for in the Wagner bill.

When an issue is drawn between the employer and employee, let the board decide and settle it in an orderly way while the plant is in operation.

Now, the other plan is to abandon it all, to deny industry and workers of the country the benefit of a bill such as the proposed Wagner bill, and go back to the old method of the survival of the fittest. The workers still have their economic strength; they can strike and fight; but that is not what the people of the United States want.

Now, what is the best way to set up the board provided for in this bill to make it possible to bargain collectively, or go back to the old processes, the law of the jungle, the tooth and the jowl, the survival of the fittest, force rather than reason. I draw the distinction, this is the road of reason, and without it you follow the road of force.

Now, I favor the setting up of the board as provided for in that bill with this exception, that I am of the opinion the board should be lodged in the Department of Labor. I concur in the recommendations of the Secretary of Labor that it should be connected with the Department of Labor, independent, however, with no right of review of any of its decisions or interference with its judicial processes.

It appears to me, that inasmuch as the Department of Labor is the real Department of Labor where the activities of the Government regarding labor matters are carried on, that the Board set up to deal with labor and labor problems ought to be separate in the Department of Labor.

Senator MURPHY. Independent of review by the Secretary of Labor.

Mr. GREEN. No; I would not have the Secretary of Labor review its decision.

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Senator MURPHY. That is what I say, without review by the Secretary of Labor.

Mr. GREEN. Oh, yes; I would want to have the Board to be absolutely independent and free to utilize the machinery of the Labor Department such as the Statistical Department, the Mediations Department, and the Research and Planning Division, but without review by the Secretary.

You know labor is a bit sentimental, because it feels that the Department of Labor is set up for labor. We appealed to Congress for the creation of a Labor Department for years and years. Congress responded, the Labor Department is there, and we have a peculiar interest in that Department.

Senator WAGNER. Of course, we do not agree upon this proposition, but I was going to ask, do you think the Secretary of Labor should have control over the personnel of the Labor Relations Board?

Mr. GREEN. No; I think they should be appointed by the President.

Senator WAGNER. I am speaking about the personnel within the Labor Relations Board. Do you think the Board should appoint their own subordinates, such the secretary, and the people they need to conduct its operations.

Mr. GREEN. That has been the policy, and I should favor the continuation of that policy.

Senator WAGNER. I understand the Secretary now thinks the Secretary of Labor should have the veto of any appointments made by the Board.

Mr. GREEN. I did not understand that.

The CHAIRMAN. I do not understand she made that suggestion.

Mr. CHARLES E. WYZANSKI, Jr. (Solicitor, Department of Labor). I think Senator Wagner has correctly interpreted the Secretary's testimony.

Mr. GREEN. That is a detail I had not taken into account.

Senator WAGNER. I think it is important, because we are not going always to have Miss Perkins here. If Miss Perkins was here I would not contend for any of these things, but she is not going to be here forever, and we are providing for the future, and I think for the Department of Labor to have control of the personnel carrying out quasi judicial functions might inject politics or political influences into a board that ought to be free.

The CHAIRMAN. Mr. Wyzanski, you understand Miss Perkins desires to give her approval or sanction, or veto to any appointments made by this Board.

Mr. WYZANSKI. I understand that as regards the members of the Board the Secretary feels the President ought to appoint them, and as regards the employees of the Board she desires that the Board should make recommendations with the right of veto in the Secretary of Labor.

Mr. GREEN. I had not gone into that, but what I had in mind, the Mediation Department is in the Department of Labor, and the Statistical Research Department is in the Department of Labor, and the services of these bureaus are available for the use of the Board, and the people in these departments are appointed by the Secretary of Labor, as I understand.

The CHAIRMAN. There is a situation that may be corrected in the bill, where people doing the same kind of work, employees doing the

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same kind of work under the Board, in many instances paid more than the employees in the Department of Labor doing the same kind of work.

Mr. WYZANSKI. I think that is probably true.

Senator WAGNER. What I had in mind, or at least my aspiration is to have a board of this kind to be absolutely free of any kind of political influence, or even a suspicion of being under any political influence, because if it is, it will be a failure. The moment you have an administrative officer controlling a judicial body of that kind, you are apt to have an interference with truly judicial functions by a political appointment.

That is the reason I though the board ought to absolutely control its own personnel. I am speaking not personally now, because I want to repeat I have the utmost faith in Miss Perkins, and if we could guarantee she would be here forever, I would not raise that question.

Senator DONAHEY. This act attempts to create a quasi-judicial board on matters of labor?

Mr. GREEN. Yes, sir.

Senator DONAHEY. In our own State of Ohio, Mr. Green, of which I have knowledge, we created an industrial commission, and they have the board. The commission was appointed by the Governor, with the quasi-judicial board to pass on compensation matters, and the duties were different. Each and every session of the general assembly during my incumbency as auditor of that State there was a constant fight between them on appropriations, and the changing of duties one to the other, and that exists today. In my opinion, for the benefit of labor, I would keep this quasi-body free and apart and give it full and reasonable power so that you can hold them responsible at all times.

Mr. GREEN. I recall that matter to which you refer in Ohio. I am not going to question your point of view, but I am saying what we think would be the best thing.

Senator MURPHY. Of course, Mr. Green has already explained he was not familiar with that provision.

Mr. GREEN. I think the board ought to be in the Department of Labor, free and independent in the exercise of its judicial functions, with a provision that the Secretary of Labor or anyone else should not review or veto any of its decisions. It could be free and independent in that respect, but with a close relationship existing between the Department of Labor and the board so that there could be perfect harmony and cooperation, and the utilization of the machinery of the Department of Labor by the board, such as the mediation machinery, the conciliation machinery, and the statistical machinery of the Department.

The CHAIRMAN. Do you think it would be helpful also to have this board report to the Department of Labor from time to time its activities and its decisions, so that the Secretary of Labor may be informed of the contests and the settlement of the contests between labor and employees that come to the attention of the board?

Mr. GREEN. Yes; I think that should be done.

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At this time, let me quote at random from a few of the reports in my office. From the State of Washington comes this:

Membership solicited by officials of the plant. Application cards bearing notation "company union members to be given preference in work, promotion, etc." Meetings held in plant, cards and literature given out by management.

From New York City we hear:

This company union was formed by forcing the workmen to sign up by the foremen of the various departments, under threat of layoff if they did not sign.

A union in Michigan reports:

The company union was put to a vote by the workers and voted down. And then we, the workers, were given application blanks to join the company union anyway.

From Pennsylvania we receive a report that:

When the N. R. A. took effect, the employees were forced to vote for officers to form this company union. The men had to vote before they could receive their pay on a pay day, and that is the way it started.

From Augusta, Ga., we hear this:

The company union was organized as the Good Citizen Club by the mill management. A worker has to join the company union to get work in the mill.

While this report comes from North Carolina:

Management persuaded two of our members to start it, and the workers not members of our union were first to be added. Then our other members were approached, and a small percentage turned into members of the Loyalty Club, the company union.

Employers must keep hands off, completely, so far as labor organizations are concerned. Any other course of action cannot be reconciled with the belief which we all profess that employees are free citizens of the United States, and are not a menial or servant class, subservient to and controlled by the employing class.

Employers should bear no part of the expense of a labor organization. Labor unions are maintained for the benefit of employees, and they should be maintained by the employees themselves. It is a fundamental principle that a real contract can be made only when each party to the contract is free from control by the other. When employers contribute financially to any organization of their employees, they are in a position to bring direct influence to bear on the actions of that organization.

It is highly significant that section 7 (a) has been interpreted in substantially the same manner by every board set up to interpret and enforce its provisions, with the one exception of the Automobile Labor Board. I do not want at this time to enter into a discussion of the Automobile Labor Board and the failures of its chairman to fulfill honorably his high office. It is also highly significant in this regard that the Automobile Labor Board is the only Board whose constitutionality has not been challenged by employers, and which is not prevented from action by injunction.

Now I want to go to the question of majority rule as my next point. The National Labor Relations Board early established the principle of majority representation in collective bargaining through the Houde and other decisions. The Executive orders of President

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Roosevelt which created the Steel and Textile Labor Relations Boards contained provisions for majority rule in collective bargaining.

The Executive order of the President established the principle of majority rule in these words:

Whenever the National Labor Board shall determine in such manner as it sees fit, that a substantial number (as defined in the discretion of the Board) of the employees, or of any specific group of employees, of any plant or enterprise or industrial unit of any employer subject to such a code or agreement, have requested the Board to conduct an election to enable them to choose representatives for the purpose of collective bargaining or other mutual aid or protection in the exercise of the rights assured to them in said section 7 (a), the Board shall make the arrangements for and supervise the conduct of an election, under the exclusive control of the Board and under such rules and regulations as the Board shall prescribe. Thereafter the Board shall publish promptly the names of those representatives who are selected by the vote of at least a majority of the employees voting, and have been thereby designated to represent all the employees eligible to participate in such an election for the purpose of collective bargaining or other mutual aid or protection in their relation with their employer.

That is the Executive order issued by the President on February 1, 1934. Is there any mistake in that language?

Thereafter the Board shall publish promptly the names of those representatives who are selected by the vote of at least a majority of the employees voting, and have been thereby designated to represent all the employees eligible to participate in such election for the purpose of collective bargaining.

Senator MURPHY. Mr. Green, may I ask a question?

Mr. GREEN. Certainly.

Senator MURPHY. If it is embarrassing to you do not answer it, but as the chairman knows, I find myself in sympathy with the Wagner bill as reported out of the committee at the last session, but on that very point you are discussing I had a good many doubts. I could not give them expression, but the question in my mind was as to whether a majority expression should be accepted. Now, the question I want to ask you is this: Did you hear that there was objection from this same source you quoted—did you hear as a matter of general report that a different view was subsequently taken of a majority action being sufficient?

Mr. GREEN. Yes; that is the point I am going to bring out just now. In a statement signed by General Hugh S. Johnson and Donald R. Richberg, general counsel, to show you the difficulties we have encountered with. There is a clear-cut Executive order I do not think anybody misunderstands the language, by which the President established the principle of a majority rule for collective bargaining purposes.

Here is a statement made on February 4, 3 days afterward, a press release, no. 3125, which reads as follows:

National Recovery Administrator Hugh S. Johnson and Donald R. Richberg, the Administration's general counsel, today issued the following joint statement:

"Because of an erroneous press interpretation issued yesterday of the Executive order of the President, which empowered the National Labor Board to supervise the conduct of elections to determine employee representation in certain cases it is desirable to explain what is and what is not covered by the Executive order.

1. The Executive order provides a method whereby any specific group of employees or all of the employees of a plant or of one employer may select, by

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a majority vote, representatives clearly empowered to act for the majority in their relations with their employer."

The Executive order said for all of the employees.

2. This selection of majority representatives does not restrict or qualify in any way the right of minority groups of employees or of individual employees to deal with their employer.

3. Section 7 (a) affirms the right of the employees to organize and bargain collectively through representatives of their own choosing; and such concerted activities can be lawfully carried on by either majority or minority groups, organizing and selecting such representatives in such manner as they see fit. Also, in affirming this right of collective action, the law lays no limitation upon individual action.

In other words, they say that the majority can deal for the majority, the minority group for the minority, another group for another group, and the individual for the individual.

The CHAIRMAN. What is the date of that?

Mr. GREEN. That is February 4, three days after the President's Executive order.

We have protested against this interpretation made by General Johnson and Mr. Richberg, and we hold it is contradictory of the Executive order, but labor has been compelled to meet that difficulty, and we feel the President was right, and the other two are wrong We accept the interpretation of the President, and in my judgment the majority-rule section you have so well written into this law is carrying out the Executive order of the President issued on February 1.

Senator WAGNER. The majority rule also prevails in the railway industry now, and I think Mr. Biddle in his testimony, Mr. Chairman, the other day, brought out the fact that in a case where there was a company union, the company union had the majority vote and the employer protested and refused to deal with the minority on the ground the company had the majority to deal with, but that is not always the case where an outside union has the majority rule.

May I say just one other thing, that the platform adopted by the Manufacturers' Association at their conference at White Sulphur Springs has in it a provision that, when a majority of the association agrees upon certain trade practices, that agreement binds the minoriy of their own industry. In other words, for their own association they have adopted the majority rule, although they refuse to recognize it when it comes to dealing with their employees.

Mr. GREEN. Where is there an organization or government founded upon the principles of democracy that does not recognize the majority rule and is governed by it. That is how we decide questions, what does the majority wish.

I might say I could be arrested for what I thought of Mr. Richberg when I read his interpretation of the President's order.

Now, I will go into this just a little further. The former National Labor Board had already established that principle in the *Denver Tramway case*. Majority representation is the principle upon which our Government is based. Collective bargaining can obviously succeed only when majority rule is made effective, just as government can succeed only under majority rule. Employers themselves give up the benefits which can come to them through collective bargaining when they attempt to bargain with many groups. Through col-

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lective bargaining with responsible majority groups, employers secure a stability in their labor relations which they can secure in no other way. The attempt to bargain with a number of groups not only destroys that stability but it makes possible the control of the employer over the organization of his employees.

Minority rule can have only one aim, and that is to confuse and divide the workers—to play one organization against the other. Let me give you a very concrete example of just what happens under minority rule. A bona fide union of furniture workers in Menominee, Mich., won an election by a very considerable majority. The employer consistently refused, even after that victory, to bargain with the representatives of the union selected by the employees as their collective bargaining agency. He had initiated a company union. The bona fide union was induced to sign an agreement by which the employer agreed to bargain with it only for the employees it represented—some 400 or 500 out of 600 employees. No sooner was that agreement signed than the employer entered into what he termed collective bargaining with his company union also. He posted large notices throughout the shop that he would bargain with more than one union; he gave the company union very considerable concessions which he denied the bona fide union, and in this way has succeeded in breaking down the union which was chosen by the employees in a Government-supervised election. This is, of course, exactly what employers who fight majority rule intend to do. In upholding majority rule we do not, and never have, denied that individuals and even minority groups must have the right to present grievances to their employer.

There is only one satisfactory way of determining by whom employees want to be represented when an employer challenges the right of a union to bargain for all of the employees in a certain class or craft. That is by Government-supervised election—by secret ballot. If the employees and the employer are not able to agree as to what constitutes the bargaining unit, I believe the National Labor Relations Board should decide what the bargaining unit shall be.

The right to elections by which employees may determine their collective-bargaining agency must be made a part of the law. Three of the major industries of the country have refused to recognize the right of those boards to hold elections. Those industries are steel, automotive parts, and rubber. Other smaller industries have followed these major industries in their defiance of the boards set up by President Roosevelt. Even in the instances in which elections have been held, continued bargaining with minority groups has, in large measure, made the election idle gestures only.

I want to make a very short statement on the relationship between the establishment of majority rule in collective bargaining and the agreement for the closed shop. There is a contention on the part of many employers and their spokesmen that the establishment of majority rule means the establishment of the closed shop. Nothing could be further from the truth. The closed shop is a matter for negotiations between management and union, which depends entirely upon the circumstances involved in each particular situation. There is nothing in the proposed law we are considering today which even tends toward the establishment of the closed shop. All the act does, indeed, is to make the closed shop legal if both employer

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and employees want it. Many employers desire a closed shop agreement. They believe that it insures a stability in their labor relations which they can secure in no other way.

In the case of *Farulla* v. *Freundlich*, decided as recently as last December, Justice Black, of the New York Supreme Court, emphatically declared section 7 (a) to permit employers to enter into closed-shop agreements with the trade unions.

Certainly the law should not outlaw the closed-shop agreement. Closed-shop agreements meet certain situations and assure responsibility on the part of the union. They must, therefore, be possible when they are mutually agreed upon. Some unions do not want them; others do. Some employers do not want them, while others do. The present act clears up the uncertainties of the past 18 months and defines the status of closed-shop agreements and makes possible those agreements when they result from negotiations.

A board which is so important to our entire country as is the National Labor Relations Board must not be placed in a position where it does not have complete support from the courts. It must be so established that both employers and employees will have complete confidence in it. The National Labor Relations Board and its series of regional boards represent the first efforts in this country to establish and develop a system of labor courts and a body of labor law. For this reason, the National Labor Relations Board must be given supervision of all other boards set up to resolve industrial disputes, and must act as a court of final appeal from the decisions of all such boards. There should, for example, be an appeal from the decisions of such a board as the Automobile Labor Board.

President Roosevelt, in his Executive order of June 29, created the National Labor Relations Board in connection with the Department of Labor. I believe section 3 of the proposed bill should be amended so that it will be in full accord with the terms of that Executive order. The board should be created to operate in connection with the Department of Labor, but should be independent.

One other amendment which I wish to propose to section 3 (a) is that, of the 3 members of the board to be appointed by the President, by and with the consent of the Senate, 1 member shall be representative of labor, 1 of industry, and 1 of the general public.

In closing my presentation to you, I want to urge again that nothing be permitted to stand in the way of the adoption of this bill. Unless this action is taken, we must face the fact that we are only at the beginning of a series of strikes which will upset the entire industrial life of our Nation if we continue to deny to workers their rights. We have had isolated instances within the past year of very real, armed industrial warfare. When a strike was threatened in steel plants last year, those plants were immediately turned into fortresses by the installation of machine guns and barbed-wire entanglements. Flood lights were installed, and preparations were made for taking care of workers inside the plant. In addition, private armies were recruited, ready for use should the strike occur. The steel workers were threatening strike because their legal right of collective bargaining was denied them, and because company unions were forced on them. The strike did not occur, because the National Steel Labor Relations Board was formed to hear and act upon the complaints of the workers. Yet, that Board has been openly flouted and challenged by the steel companies.

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You know the cost of the recent textile strike in human lives. Neither you nor I can ever know its cost in human suffering. Let me remind you very briefly of what happened in San Francisco, in Toledo, in Minneapolis, in those struggles which are, in effect, armed warfare. There is only on way to avoid a recurrence of such events. That is by an assurance to the workers that their rights will be observed by employers.

The working people of this country have during the past 2 years been very patient. They have suffered discharge and want and humiliation, believing that the Government was behind them in their struggle. They have waited for Government enforcement of their rights through the agencies set up to enforce section 7 (a). The Department of Justice has failed to act; the National Labor Relations Board which has the responsibility for enforcement of section 7 (a) has not the power of enforcement. The Department of Justice has not the experience and perhaps not the sympathy with collective bargaining legislation to make an effective enforcement agency; its attention is divided among many phases of law enforcement. Collective bargaining is a new field and requires specialized study and interest.

The Board which is dealing constantly with collective bargaining problems is the only logical enforcement agency. The present method has caused and in the future would cause delays which are destructive to the unions. The very nature of a union requires swift action. Delay, beyond the power of the board to prevent, has in the past 2 years been the means of completely destroying many unions and of bringing great hardship and bitterness to the members of those unions. You have heard the very able analysis of Mr. Biddle on what has happened in cases under the present set-up.

We have counselled patience and the use of peaceful means of settlement; we have assured groups of workers that they do not need to strike in order to secure their legal rights; that much of the difficulty they experience is due to misunderstanding on the part of the employers of their new responsibilities under section 7 (a) and that when employers have had more time to adjust themselves to the new situation, they will cooperate with their employees to fulfill the purposes of that section. We cannot and will not continue to urge workers to have patience, unless the Wagner bill is made law, and unless it is enforced, once it becomes law. There is growing in the masses of American people a bitter resentment at the position in which they find themselves and a deep conviction that only their own economic strength will avail them in their struggle against the injustices and inequalities under which they work. We must face the consequences of a deliberate destruction of that faith. Working men and women throughout the land are demanding justice, demanding the rights and privileges to which they are entitled.

On the one hand, we have employers banding together and compelling workers to accept their terms by use of armed force. On the other hand, we have subversive influences at work, influences which, if permitted to continue, will develop very real power to overthrow our present economic system. Where deprivation and injustice prevail over a period of time, men and women rebel to secure their rights.

Stockholders and directors of a corporation have a voice in the operation of that corporation because their money has been invested

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and their future will be affected by the policies of management. Is the employee who has invested his skill in the plant, his very life, to be denied a voice in the determination of those policies which directly affect his welfare?

The individual employee cannot longer be considered as a robot, as an automaton whose every action is in direct response to the pressure of management. Groups of employees cannot longer be considered as lifeless matter, held within the palm of management, whose very being will be extended or contracted at the will of the management. True collective bargaining is the main shaft upon which our whole economic machinery revolves. This economic machinery cannot function unless there is true collective bargaining by which Nation-wide organizations of employers will be counterbalanced by nation-wide organizations of employees in bona fide labor unions wholly removed from any control or interference by management.

The CHAIRMAN: This hearing will be adjourned at this time, and will be resumed tomorrow morning at 10:30 o'clock.

(Thereupon, the hearing in the above-entitled matter was adjourned at 12 o'clock noon, to resume at 10:30 a. m., Friday, Mar. 15, 1935.)

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NATIONAL LABOR RELATIONS BOARD

HEARINGS

BEFORE THE

COMMITTEE ON EDUCATION AND LABOR
UNITED STATES SENATE

SEVENTY-FOURTH CONGRESS

FIRST SESSION

ON

S. 1958

A BILL TO PROMOTE EQUALITY OF BARGAINING POWER BETWEEN EMPLOYERS AND EMPLOYEES, TO DIMINISH THE CAUSES OF LABOR DISPUTES, TO CREATE A NATIONAL LABOR RELATIONS BOARD, AND FOR OTHER PURPOSES

PART 2

MARCH 15, 18, AND 19, 1935

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CONTENTS

Statement of:	Page
Axton, Wood F	215
Cook, Morris L	225
Cooke, Wm	234
Donham, Wallace B	230
Farquharson, J. A	199
Frey, John P	200
Garrison, Lloyd R	125
Goldstein, Dr. Sidney E	221
Handler, Milton	231
Helck, Edwin J	212
Lewis, John L	188
Mahoney, Jeremiah T	236
Kephart, Edw. E. S	219
Millis, H. A	172
Myles, James M	204
Myers, James	223
Ogburn, Charlton	146
Robertson, H. M	217
Ryan, John A	221
Smith, Edwin S	157

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NATIONAL LABOR RELATIONS BOARD

FRIDAY, MARCH 15, 1935

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D. C.

The committee met, pursuant to adjournment, at 10:30 a. m., room 335, Senate Office Building, Washington, D. C., Senator David I. Walsh (presiding).

Present: Senators Walsh (chairman), Thomas, Murray, and La Follette.

The CHAIRMAN. The committee will come to order. Mr. Garrison, will you come forward, please?

STATEMENT OF LLOYD K. GARRISON, DEAN OF THE LAW SCHOOL OF THE UNIVERSITY OF WISCONSIN

Mr. GARRISON. My name is Lloyd K. Garrison. I am the dean of the law school of the University of Wisconsin. I am appearing in my own behalf.

I served for some 4 months as the first chairman of the National Labor Relations Board.

Mr. Chairman, I wholeheartedly endorse the bill which is before you. I have gone over it very carefully. I think it is drawn with extreme care and intelligence. It is a very important measure which ought to be supported.

I am for it first as a safety measure, because I regard organized labor in this country as our chief bulwark against communism and other revolutionary movements.

I think that those employees, who are out to strangle organized labor, are simply playing into the hands of the extremists. This bill will put a stop to destructive antiunion tactics which have long flourished in this country, particularly in large industries. And I think that they should have a stop put to them.

I am also for the bill as an economic measure. As costs decrease and profits increase it is absolutely essential that the level of wages should be increased. The mass of the consumers are to have the necessary purchasing power to keep industry going. The wage level cannot be maintained and increased as it should be merely by legislative enactment. All that you can do by law is to provide for the barest minimum wages. Over and above that it is essential to have collective bargaining, preferably through industry-wide agreement between organized labor and organized management. In no other way will the wage structure of the country be maintained at a proper

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level. This bill encourages collective bargaining and therefore should be supported.

I am also for the bill as a matter of simple justice. The economic power of employers, particularly in the large industries, completely overshadows the economic power of the workers unless the latter are organized. And it seems to me utterly unfair and unjust, apart from the economic and other results, for employers to prevent the free organization of their workers by the various forms of discrimination which have been prevalent in this country.

All that this bill is in substance is a restatement of section 7 (a) of the Recovery Act, putting it in somewhat more explicit form, and backing it up for the first time with a real effective procedure for enforcement. Section 7 (a) cannot now be enforced except in a handful of cases, and unless this bill can be passed I would think it very doubtful whether section 7 (a) should be retained at all. It is perhaps worse to have a law that cannot be enforced and that holds out false hopes than to have no law at all. I think it is worthy of note that all of the opponents of the Wagner bill, who appeared before this committee last year, with one or two exceptions, endorsed the principle as to section 7 (a) of the Recovery Act. And when you go over their arguments before this committee last year you will find that they all boil down to one thing. They are for 7 (a), but they do not want to see it enforced. And that was the sum and the substance of the opposition last year, and it will be the sum and the substance of the opposition that will be made before this committee this year.

If the opponents of the Wagner bill and the opponents who will appear here this year are for the principles of 7 (a), then there can be no excuse whatever for not providing the adequate enforcement machinery, which is in this bill.

I suppose that the opponents who will appear here will also have a good deal to say about this majority rule, and I shall address myself to that for a few minutes. This bill adopts the principle that where the majority of the employees in the collective bargaining union have collective representatives for the purpose of collective bargaining, those representatives shall be the exclusive representatives of all the employees in the unit for the purpose of negotiating collective agreements. There is nothing new or startling about this principle.

The National War Labor Board, appointed by President Wilson, with William Howard Taft and Frank P. Walsh as joint chairmen, speedily found out that in practice no other rule in collective bargaining could possibly work out, and so they adopted it and applied it consistently during the war years.

In 1920 Congress passed the Railway Labor Act with a clause in it more or less like 7 (a), with nothing said about majority rule. The Railway Labor Board appointed under that act at once perceived that collective bargaining would be perfectly meaningless without the majority rule, and so they promulgated it and stuck to it consistently. And in the Railway Labor Act passed by Congress last year this principle adopted by the Board was written specifically in the laws of the country.

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Coming now to February 1934, the President promulgated the majority rule in an Executive order relating to the elections to be conducted by the old National Labor Board.

Congress in June of last year adopted Public Resolution 44 providing for elections of employees to determine their representatives for the purpose of collective bargaining. It was quite clear from that resolution that majority rule was intended, because otherwise an election would be quite meaningless; the only purpose of the election being to determine who the representatives are as decided by a majority of the employees. The public resolution was so interpreted by the President in two subsequent Executive orders, one creating the Steel Board, and the other creating the Textile Board. Therefore, everybody that has had to deal with this problem, including the old National Labor Board in the Denver Tramway case, and the National Labor Relations Board in the Houde Engineering case, the National War Board, and the Railway Labor Board, and I might also add the Petroleum Labor Policy Board, have all, without exception, applied the majority rule.

This is no mere coincidence. What other rule could possibly work? Here is a collective bargaining unit, let us say, for the sake of simplicity, a plant; all the men in the plant are doing more or less the same kind of work. If a collective agreement regarding wages and hours it to be worked out with the employer it must necessarily apply to everybody in that unit, everybody in the plant. So that it is not a question of negotiating an agreement with this little group or that little group, because no such agreement is practical. An employer cannot give one set of wages and hours to one group and another set to another where they are all doing the same type of work. It has to be an agreement applying to all. Then the only question is where there are two groups of employees, a majority and a minority group, with which shall the agreement be negotiated? It cannot be negotiated with both, because there is going to be only one agreement, and it is to apply to everybody. Is it at all sensible that the employer should negotiate that agreement applying to everybody with the group which represents the fewest employees? That is obviously silly. And it could only lead to trouble and to strife. As a practical matter he must negotiate it with the majority, with the group that represents the bulk of the employees. This seems so obvious that one wonders why any other rule should ever have been thought of.

Senator LaFollette. Obviously, in a country like ours where that rule underlies our whole theory of government.

Mr. Garrison. Exactly. It seemed to me last summer, as I sat on the Board and listened to these cases, quite evident that the opposition to this rule came down simply to this, that the employer who opposed the rule merely wanted to avoid doing any collective bargaining at all so long as he could keep his responsibility diffused. So long as he could say, "I will bargain first with this group, then I will bargain with that group, and then I will run back to the first and see what they think about the proposals", and so on ad infinitum, he would end up by reaching no collective agreement at all. And that is why the majority rule is opposed. It is opposed because collective bargaining is opposed. But the purpose of this bill is to encourage

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collective bargaining, just as the purpose of section 7 (a) is to encourage it.

And what does collective bargaining mean? It means that process whereby collective agreements are ultimately reached. And how can you reach a collective agreement unless the employer's responsibility is fixed and determined? You must fix his responsibility to deal with one or the other of these groups exclusively, otherwise, you will get nowhere. And, as I have said, it is silly to put the responsibility on him to deal exclusively with the minority. He must be made to deal exclusively with the majority.

The opponents, who have severely criticized the Houde decision, have placed their main reliance on the interpretation of section 7 (a) and also by General Johnson, in which he came out against majority rule. I merely note for the record here that General Johnson in two of his recent articles has stated his view that the majority rule is the only practical method of working out collective bargaining.

I also wish to note that every company union plan in the country goes on a basis of majority rule, every company union plan provides in substance that the representatives selected by the majority of the employees shall run the company union and shall represent the employees in the dealings with the employer.

A great deal of tenderness is expressed by opponents of the majority rule for these minority groups. Crocodile tears are shed over the fact that these little minority groups are left out in the cold. It is thought to be some sort of an oppression, it is thought to be unjust that the majority groups should speak for all. What about the poor little minority group? The tears that are shed for the minority group would carry a little more conviction if it did not happen to be the case that nine times out of ten this little minority group is a company union, sponsored by the employer, and looked upon by him with favor as the more convenient of the two groups with which to do business.

Senator LaFollette. These company unions are looked upon with favor by the employers, are they not, because they are in control of them in most instances?

Mr. Garrison. I think that I would not put it quite that way. I should say that in most of the company union plans the vice is not that the employer controls the organization, because I think in most he does it. The real vice is that no company union, however set up, can possibly be effective as a collective bargaining agency for the very simple reason that the representatives of the company union are themselves employees, who are subject to being fired at any moment, who are looking for advancement, and therefore subconsciously anyway hope to curry favor with their employer by being polite and courteous, and not bringing up disagreeable matters. They enjoy the prestige of their little position. They like to sit around the table with the employer and get free cigars and talk pleasantly about a lot of things, but when it comes to actually attempting to negotiate wages and hours for the plant they are absolutely helpless.

The Chairman. Do you think that is better done by representatives chosen by majority of the workers, but who are not connected with the industry?

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Mr. GARRISON. Why, absolutely, Senator. It seems to me essential, if collective bargaining is to mean anything, that the representatives who speak for the employees should be absolutely free.

The CHAIRMAN. As a matter of fact it has not been done that way very often, has it?

Mr. GARRISON. How do you mean?

The CHAIRMAN. Are not the negotiations usually carried on by employees in the particular plant where there are grievances to be righted?

Mr. GARRISON. Where there are grievances to be righted, yes. Where there is the matter of some particular workman needs something changed, or you have got to fix up the backstairs, or put a new window in the top story, that sort of thing, yes, sir; company unions do that with a good deal of success, and the employees within the plant can do it.

The CHAIRMAN. I am not speaking about company unions. I had supposed—I would like to be enlightened—that such collective bargaining as has been done in the past has been largely done by representatives of the employees in the particular plant where they were undertaking to negotiate in collective bargaining.

Mr. GARRISON. I may be mistaken, Senator, but I think not. I think in the typical case the representative is an official of the union who is not employed in the plant, and who therefore is free.

The CHAIRMAN. I did not know that. I thought that they first bargained in the plant itself, and only when it reached a serious stage, or a major case of differences, that the higher officers outside the plant of the particular union were called in.

Mr. GARRISON. I think not; I think not.

The CHAIRMAN. So that the practice now is that if a union, a majority of the employees in a particular plant belong to a union, some branch of the American Federation of Labor, let us say, and they desire to take up the question of wages or working conditions, or number of hours they shall work some of the officers other than those working in that plant of the union appear and negotiate with the employer?

Mr. GARRISON. Oh, yes; normally it will be the local representative of the local union, who will normally be a full-time man, devoting his entire time to the business of the union in the district which he covers. And when he goes to see the employer he is a free man; he is not afraid of his job; he has no favors to ask.

The CHAIRMAN. Of course, the only unions that I know of, and they have a number down in my own State, where there is a local man that is a free man is in the larger industries. That condition does not exist in the smaller industries.

Mr. GARRISON. I suppose once in a while you may find a very small union that is too small to support a representative outside the plant, but I think those are the exceptions.

The CHAIRMAN. It is possible that they have regional representatives?

Mr. GARRISON. Yes.

Senator LA FOLLETTE. Does it not come down to this, Dean Harrison, that, however, it may be accomplished, that where the employer

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has the economic power he does to all intent and purposes dominate and control these company unions?

Mr. GARRISON. I think in the sense that the representatives of the company union cannot as a practical matter do anything but talk about the picnic, and the——

Senator LA FOLLETTE (interposing): Precisely; that is what I had in mind when I said what I did, or asked the question.

Mr. GARRISON. Yes.

Senator LA FOLLETTE. That these company unions to all intent and purposes are dominated and controlled by the employer?

Mr. GARRISON. In that sense, precisely; yes, sir.

The CHAIRMAN. I did not think that same situation extended to the trade union organizations in these plants. I thought they had a spirit of independence, and a devotion, if I may use that word, to their fellow employees such that they themselves were not afraid to go up and talk to the employer.

Mr. GARRISON. As I say, I think normally the representative of the union comes from the outside.

The CHAIRMAN. Yes, sir; I am interested to hear that.

Mr. GARRISON. Yes.

The CHAIRMAN. I did not know that that was the fact.

Mr. GARRISON. There is another fundamental vice in the company union, however it may be set up, which is this: That the company union representatives, being simply employees within the plant, have no means of knowing what the conditions of the industry are, what other plants are paying, what the wage level of the industry is, and they simply have not the information necessary to make them competent representatives of the men, whereas your trade-union representative makes it his business to study the business and to know what can be done and what should be done.

The CHAIRMAN. That is quite important.

Mr. GARRISON. That is very important.

The CHAIRMAN. I remember sitting in an arbitration once in a case, and the most important evidence was the evidence presented showing the wages paid in factories that were producing a comparable material.

Mr. GARRISON. Yes.

The CHAIRMAN. Which you say a general trade organization is in a position to obtain more easily than company unions?

Mr. GARRISON. Yes. And, finally, I would have this further observation about company unions: It seems to me the great thing to work for in this country is the making of industry-wide agreements such as we have in the coal industry and in the garment industry, and several others.

Where you attempt to do collective bargaining simply on a plant to plant basis, here a little agreement and there a little agreement, you are bound to run into trouble and difficulty. The great thing to work out is the industry-wide agreement, whereby a union representing all of the workers in this particular industry will negotiate the same agreement with all of the employers in that industry with possible adjustments for regional differences. But it has the great advantage of putting all of the employers of the industry on a par so far as competition is concerned. It is not a question of getting what you can out of this employer, and a little less out of the next fellow.

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They are all on a par, and they start competing from that basis, which is highly desirable.

With the company union set-up it is impossible ever to conceive of reaching industry-wide agreements, because each plant there is treated as a thing in itself, and the talks go on within the plant without the least reference to the other units in the industry. Personally, it would seem to me altogether very desirable, if it could be done, to legislate the company unions altogether out of existence, regardless of whether they are dominated by the employer, or set up by the employer, or financed by him, because I think we shall make no progress under them whatever.

The CHAIRMAN. This bill does not go so far?

Mr. GARRISON. This bill does not go so far as that, and I suppose that Congress constitutionally probably would not go so far as that.

I would make this one reservation about company unions, that if they restrict themselves exclusively to adjusting grievances, to individual cases, to social events, athletic activities, and that sort of thing they are quite all right, but unfortunately the effect of setting up a company union which does go in for that sort of thing, while it is perfectly harmless in itself, it has the effect of discouraging the employees from joining a bone fide union. The company union cannot be set up in any form without it becoming perfectly apparent to all of the employees that the employer is for this sort of thing. He is for it and he is friendly to it, and it is perfectly apparent to the employees that they are expected to join it, that the thing for them to do is to join it, and they are rather lulled to sleep by the false activity of the company union, which has an appearance of representing them and of acting for them, but which is in fact quite incompetent and quite powerless to do anything for them. So that while a company union might arrange for picnics and talk about little grievances and individual adjustments I think that by and large the whole institution is a bad thing, and should be altogether eliminated. The bill, as I have said, does not go that far. It merely makes it an unfair labor practice for an employer to dominate or control or finance these company unions.

Senator LA FOLLETTE. Have you any suggestions, Dean Garrison, as to how the bill could be strengthened in that regard?

Mr. GARRISON. No; I have not. I think it is admirably drawn, Senator. I think the less detail and the less verbiage you have in it when you come to that crucial spot the better you are. I think these words are chosen with great care, and I think they hit the nail right on the head. It think it as far as Congress can go.

There are a couple of family matters more or less that I would like to discuss for a minute. This bill creates an independent board not under the Department of Labor. I realize that the Secretary of Labor has appeared here to urge a contrary set-up. While I have the greatest respect and admiration for the Secretary of Labor, I feel it incumbent upon me to express my disagreement at this point. Under this bill the National Labor Relations Board is to be exclusively a judicial body. It is given no functions in the bill at all except of a judicial nature. It is not a strike settling agency. It is not a mediating agency. It is not an agency for conciliating disputes. It is a judicial body. Now, it seems to me the first principle

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of a judicial body is that it should be absolutely independent of any other body of any other organization.

As Justice Brandois, I think, once said, "It is not enough that a moving-picture house shall be safe from fire hazards. The public must also believe that it is safe." And so I would say that it is not enough that this National Labor Relations Board should in fact be independent. The public generally should believe that it is independent. And the Department of Labor, I think, in the popular view is that Department of the Government which has at heart the interests of the labor people. It is charged with the functions of promoting the interests of the labor people. I think it would not be in accordance with sound principle to have that kind of agency responsible in any way for the work of a judicial body which has got to pass on controversies between laboring people and their employers. I think it would be a vital error to put this Board under the Labor Department, not because the Labor Department would interfere with it, not at all; not because the least pressure would be brought upon it to make a decision this way or that, not at all; but solely because of the impression on the public and the effect which it would necessarily have by being placed under the Department of Labor.

Senator LA FOLLETTE. To a certain extent the Secretary has recognized that phase of the situation by suggesting that if a Board is placed in the framework of the Labor Department that it would have to be amended to provide that the Secretary should have no power to review or set aside the decisions of the Board.

Mr. GARRISON. I do not think that would beat my point.

Senator LA FOLLETTE. No; I do not say that, but I say to that extent.

Mr. GARRISON. Yes.

Senator LA FOLLETTE. She has recognized the necessity of not trying to convince the public that the Board is not under the domination of the Department.

Mr. GARRISON. Yes. Of course, the Secretary of Labor recognizes that, and the Secretary of Labor would be the last person in the world, whatever was in the law, to attempt to interfere with the Board in any way.

Senator LA FOLLETTE. I agree with you entirely about the present Secretary in that regard. Of course, we are establishing a permanent agency here, I hope.

Mr. GARRISON. Yes.

Senator LA FOLLETTE. And we cannot always be sure about who is going to be Secretary of Labor.

Mr. GARRISON. Furthermore, the public is not given to examining with minute care the details of legislation. If it goes out to the public that this is a Board under the Department of Labor no amount of statement in the bill that it is to be independent and not interfered with will do the slightest good in my judgment so far as the impression abroad is concerned.

One other family matter: This bill creates the National Labor Relations Board as a Board of supreme power in the settlement, or in the decision, of the controversies under the bill——

Senator LA FOLLETTE (interposing). Before you leave this other point, Dean Garrison, would you care to comment upon the Secre-

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tary's suggested amendment that the personnel of the Board should be selected by the Secretary, or by the Department?

Mr. GARRISON. You mean the salaried personnel of the employees?

Senator LA FOLLETTE. Be approved by the Secretary of Labor.

Mr. GARRISON. There again I am forced to disagree, Senator. It seems to me of the essence of independence that the Board shall select its own employees. These employees are of vital importance to the work of the Board. Their work is quite confidential. It seems to me unthinkable that an independent Board should not have full authority in determining who its lawyers are to be, and who its staff members are to be, and so on.

The CHAIRMAN. I think she claimed she desired the right of veto, not the right to initiate appointment. Is not that the distinction?

Senator LA FOLLETTE. That is what I understood, but nevertheless the power of the veto——

Mr. GARRISON (interposing). Is the power of selection with it?

Senator LA FOLLETTE (continuing). Is the power of selection in the last analysis.

Mr. GARRISON. Yes.

Senator LA FOLLETTE. To my mind it is the same and analagous to having the personnel of the Interstate Commerce Commission having to be approved by the Secretary of Commerce, or some other cabinet officer.

Mr. GARRISON. Yes, sir; I think that would be a mistake.

I do want to add before going on that while I was chairman of the Board I had nothing but the most splendid cooperation from the Secretary of Labor, and from everybody in the Department of Labor. We saw each other almost daily; not the Secretary of Labor and myself, but various persons in the Department of Labor. We worked very, very closely. I would expect such a cooperation to continue under this bill. In fact, it is essential that it should.

Senator LA FOLLETTE. If I understood the Secretary correctly, one of the reasons which he advanced for placing the Board in the Department of Labor was to provide for close cooperation between the fact-finding agencies of the Department of Labor and other agencies operating in this same field. And in that connection I should like to ask you whether or not such cooperation has not existed under the present set-up and did not exist during the time you were chairman of the Board?

Mr. GARRISON. It existed throughout, Senator.

Senator LA FOLLETTE. And, therefore, there is no reason to believe it could not exist in the future, assuming that the fitting personnel were chosen, or existed in both the Department of Labor and the Board?

Mr. GARRISON. No reason at all why it should not go on. In fact, the very nature of the work makes it inevitable that it should take place, this cooperation, because here is the National Board with regional boards scattered all over the country. These regional boards, each under a salaried full-time regional director, are showing perfectly incalculable service now in the handling of controversies under section 7 (a). Inevitably these controversies shade into the field which is properly that of the Conciliation Service

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of the Department of Labor. The Conciliation Service of the Department of Labor has the primary function of trying to settle strikes. Now, there are strikes which do not involve any question of 7 (a), and which will not involve any question under this bill, because this bill is simply a restatement of 7 (a), and all those strikes which do involve 7 (a) questions and the strikes which involve 7 (a) questions or get under this bill should properly be the province of this Board and its regional boards, and the strikes which do not involve any of these judicial problems under this bill, or under 7 (a), are properly the function of the Conciliation Service, of the Department of Labor.

Now in practice it is very hard always to be certain what the nature of the strike is. Some of them you may think involve 7 (a) questions, or the type of question under this bill, and you found out later that it does not, and vice versa. So in practice there will necessarily be, as there has been since the inception of the National Labor Relations Board, the closest day-to-day and week-to-week collaboration between Mr. Kerwin, the head of the Conciliation Service of the Department of Labor, and the national Board. Here is a case here, and here is a case there. Are you going to handle it, or are we going to handle it? Sometimes one of the regional-board directors may pitch in and help out where a member from the Conciliation Service is not readily available, and sometimes the contrary will take place. Those are exceptional situations in which the one goes into the field of the other, and it is worked out over the telephone and in the closest sort of cooperation. So that in the very nature of the structure of this Board and its work, cooperation of the closest sort with the Department of Labor is going to take place. And I should think that it would be quite unnecessary to put it under the Department of Labor in order to promote that cooperation.

With regard to the supremacy of this Board over all the other existing boards I think that that also is highly important. Nothing but confusion can result from having a whole separate set of boards, this one for this industry and that one for that, each dealing with the same judicial problem, making contrary and conflicting decisions.

The CHAIRMAN. You would exempt the Railroad Labor Board?

Mr. GARRISON. Oh, yes; of course, as this bill does a statutory board.

It seems to me very important that this Board should be a sort of "supreme court" of judicial authority in the interpretation of this bill. Now it does not mean at all that there cannot be other boards in fact, because of the sheer volume of the cases, I think it will probably be necessary that there shall be additional boards to this. It may well be that some particular industry, or for some particular groups of industries, it would be desirable for the President to appoint a special board to deal with these same problems in that industry. Nothing would prevent that being done. The National Labor Relations Board under this bill could then designate that other board as its agent to administer the provisions of this act in that industry.

The CHAIRMAN. Could not the President break down the powers of this bill a good deal if there was a general law permitting Presidents to name special boards in special industries?

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Mr. GARRISON. I think so, if he were permitted to name special boards with powers equal to the powers of this Board; yes.

The CHAIRMAN. We have in mind now the permanency of this legislation.

Mr. GARRISON. Yes.

The CHAIRMAN. And a permanent Board?

Mr. GARRISON. Yes.

The CHAIRMAN. And while we might not object to the present President any more than we object to the present Secretary of Labor——

Mr. GARRISON (interposing). Yes.

The CHAIRMAN. We could conceive of a President being able to break down the powers of this bill by appointing special boards in special instances?

Mr. GARRISON. Yes, sir; that would be quite possible. But under this bill it seems to me you can work out all you might ask if necessary without any special authority from this legislation. Designate three people, we will say, to constitute a board of the X industry. Then if the National Labor Relations Board wishes to do so it can designate that board as its agency to administer the act in that agency. Then it has full control over the board. It reviews all of its decisions. The whole thing is centralized and coordinated, and at the same time a certain amount of the burden of the work might be lifted from the shoulders of the national Board.

The CHAIRMAN. Senator Murray suggests this Board could appoint those special boards.

Mr. GARRISON. Yes; it could. Of course, it could. I simply brought in the President because of the prestige which might go with an appointment by him where prestige might be important. Either way would work perfectly well.

I have two suggestions as to form which I would like to submit. On page 8, lines 21 to 23, there is a proviso that "subject to rules and regulations made and published by the Board an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay." I suggest striking out in lines 21 and 23 the words "subject to rules and regulations made and published by the Board pursuant to section 6 (a)." I do not see any reason why an employer should not be free to concur with an employee during working hours on company time without rules and regulations by the Board. It seems to me that it is a perfectly innocuous thing, and rather petty, and rather irritating to ask the Board to make rules and regulations about it. I talked that over this morning with the Board, and they agreed that that might well come out.

Incidentally, in the Railway Labor Act of last spring there is a similar provision to this permitting conferences on company time during working hours without any provision for rules and regulation to govern it.

Now a suggestion of more importance perhaps is on page 9, in that clause which permits closed-shop agreements to be made between an employer and a labor organization "not established, maintained, or assisted by any action defined in this Act as an unfair labor practice." That means that a closed-shop agreement cannot

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be made with that type of company union which is dominated, controlled, or financed by the employer. It does mean, however, that a closed-shop agreement can be made with that type of company union which is not dominated, controlled, or financed by the employer. There are some of these company unions not so dominated and controlled in the sense in which this act deals with them. There are some of these company unions in which in their constitutions and by-laws it absolutely prevents their doing any collective bargaining in the full sense of the term.

You can look at dozens of these company union set-ups and you will find all they provide for is the adjustment of some individual dispute between some individual workman and the company, and you take it up with the foreman, and you go on up to the next fellow and the next fellow to the top and there may be arbitration; not a word in the plan which suggests or permits the company union to go to the employer and say, "Here! We want to work out a collective agreement covering wages and hours in the plant." They are limited by the constitution simply to the adjustment of individual grievances. Now, I should think it would be a highly unwise thing to permit a closed-shop agreement to be entered into between an employer and that kind of company union which even by its very constitution is precluded from doing anything except settling individual grievances. I would suggest, therefore, rephrasing lines 9 and 10 by precluding the employer from making an agreement with a labor organization "which does not preclude the employers from making an agreement with the labor organizations, which exists for the principal purpose of negotiating collective agreement, and which is not established, maintained, or assisted", and so on. In other words, I would eliminate that type of company union which by its constitution is limited merely to the adjustment of individual grievances, and I would not permit that kind of a perfectly fake union to enter into a closed-shop agreement with the employer, even if a majority of the employees at some election happened to vote that they wanted the company union to represent them, because in fact it could not represent them by its constitution.

The CHAIRMAN. Is it your claim that under the bill as drafted a company union as the kind described by you could enter an agreement with the employees that nobody but company-union employees should be hired?

Mr. GARRISON. Yes; I think it could; I think it could. Of course, I would prefer to eliminate closed-shop agreements with any kind of a company union, however constituted or set up. But there again it seems to me that about as far as Congress can go is to outlaw, so far as closed-shop agreements are concerned, those company unions which are either dominated or financed by the employer, or which do not exist for the purpose of collective bargaining, which exist merely for adjusting the case of John, Jack, and Bill.

Then on page 9 add a clause 5, or I wish to endorse rather the addition of the clause 5 proposed by Mr. Biddle.

The CHAIRMAN. That is another unfair practice?

Mr. GARRISON. Another unfair practice to refuse to bargain collectively with the representatives of his employees subject to the provisions of section 9 (a), which is the majority rule in the election.

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I personally regard that as absolutely essential to this bill. What is the purpose of going through all this detail forbidding discrimination and providing for elections and the selection of the majority shall speak for all if when all of that has been gone through with the employer can simply say, "Run along; I am not going to talk to you; I do not want to see you; I do not want to have anything to do with you." The whole end of this process is collective bargaining, and the bill which sets the stage for collective bargaining and then says nothing about it at all, to my mind, omits the very guts of the whole thing.

It is true that the Board might interpret under section 7 in the bill that employees shall have the right to bargain collectively as implying a correlative duty on the part of the employer. The National Labor Relations Board reached that result under 7 (a), and the old National Labor Board reached that result under 7 (a), and this new Board might reach that result under section 7. But why leave it to possible interpretation by the Board when it is really to my mind the crux of the whole thing?

Senator LA FOLLETTE. I have been told—I do not know whether it is true or not—that there were employers who thought they had complied with the provisions of 7 (a) when they met the representatives of the union in their office and said "nothing doing" when they suggested that they wanted to enter into a collective bargaining agreement. In other words, they contended that having met with the representatives that they had complied with mandate of 7 (a) to provide collective bargaining.

Mr. GARRISON. Yes; there have been numerous cases where the employers met with the union, but have talked about the weather and everything else except collective bargaining, with no effort at all to try to reach some agreement. Of course, the statutes cannot compel an agreement. Nobody suggests that. But it does seem to me that Congress can say it is an unfair labor practice likely to lead to strikes and burdening interstate commerce for an employer to have nothing to do with the employees or with the representatives of the majority of his employees, and I think that Mr. Biddle's amendment is very well phrased, and I hope it will be adopted. I want to say I think not only from the point of view of the logic of the bill but from a very practical point of view it is an essential provision.

I had an experience last fall in the case of the threatened strike of the seamen on the Atlantic coast, which I think is an admirable illustration of the practical good sense of a provision of this sort. The International Seamen's Union had caused a strike of all the seamen on the Atlantic coast for October 8, and the strike was going to come off and there was going to be a complete tie-up of shipping from Maine to Texas. It was going to be a repetition of the Pacific-coast situation. What was the cause of this strike? There were a lot of grievances, but the chief cause of it was the fact that with only one or two exceptions none of the shipowners would even sit down and talk with the representatives of the International Seamen's Union, would not even open the door to them.. And so they were up against an absolute blind wall. What are you going to do? There are grievances trying to be settled, discussed, and talked about, and

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nobody will talk about them. What are you going to do? So they called a strike. We entered the situation and succeeded in bringing about a series of meetings in New York between the representatives of the leading shipping lines and the representatives of the International Seamen's Union. For the first time in years and years and years those ship owners laid eyes on the representatives of the union of which their seamen were members. And then a striking thing took place. They found that they could get somewhere by sitting down and talking. And after several months of negotiation—I might say that the strike was called off as soon as the employers agreed to sit down and in good faith discuss matters with the union; that was all that was necessary—an agreement was finally reached covering all the matters in dispute—wages, hours, and working conditions—an enormous gain that could not have been reached in any other way.

So that I think while in many cases where you jam together an employer and a union and you say, "You have got to sit down and you have got to talk" in many cases nothing will happen. You cannot make anything happen. They won't agree, cannot agree; you are going to have a strike and so on. But in many cases they will. And the mere process of saything to that employer, "You have got to sit down and talk" is a salutary thing because in a great many cases it will result to his surprise as well as everybody else in an agreement being arrived at. So I would strongly urge the inclusion of that clause.

I think I have said about all that I had to say unless you would like to ask me some questions.

The CHAIRMAN. Any questions?

Senator LA FOLLETTE. Dean Garrison, I would like to get your reaction to the proposition of the standing terms of the members of the Board, whether you believe that would or would not tend to increase its independence. It is now provided that the term shall be for 5 years.

Mr. GARRISON. I rather think that is long enough, Senator. I think that even with a 5-year term you may have some difficulty in getting highly competent people to take it on for that length of time. I think you can do it, but I am not sure that you would gain by making it longer. Perhaps you would. It is a problem of government that I do not feel particularly qualified to answer.

Senator LA FOLLETTE. What I had in mind, for instance, was that if the terms were 10 years, let us say, for example, as they are in the Interstate Commerce Commission, it would not necessarily mean a complete turnover of the personnel of this Board doing two terms of one president, let us say, and that as a matter of fact any person who accepts an appointment for 10 years is not signed up for the duration of the term; I mean as changes in his personal situation occur he is at liberty to resign. But it has occurred to me that lengthening these terms might have to increase the independence of the Board. And I am not at all certain that one perhaps could not argue if the terms were longer and there was a certainty of an opportunity for a real achievement in initiating this important agency that it might not appeal to men of high calibre for that very reason. But if you have not——

Mr. GARRISON (interposing). I had not thought about it.

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Senator LA FOLLETTE. It is an important thing to consider.

Mr. GARRISON. I would be glad to do so.

Senator LA FOLLETTE. I would be glad to have you think about it and write me about it if you have any definite feeling about it one way or the other.

Mr. GARRISON. Yes; I would be glad to do that.

The CHAIRMAN. I would like to have your views on the naming of this Board. It is proposed that it be called the National Labor Board. Last year we passed, as you know, the law creating the Railroad Labor Board.

Mr. GARRISON. Yes.

The CHAIRMAN. While the two bills were pending there were some of us who thought a distinction should be made. It was thought perhaps the National Railroad Labor Board might be construed to include the National Labor Board, and perhaps this should be named the Industrial Labor Board. Have you any views as to that? I do not think it makes much difference.

Mr. GARRISON. I had not thought of that, Senator. I do not think it makes much difference. The National Industrial Labor Relations Board would be all right. I should think that would be all right.

I should like, if I might, with the permission of the committee, to read into the record, or have the reporter transcribe the decision in the *Houde case*. It is the most thorough discussion of the majority rule that I think is in existence.

The CHAIRMAN. Will you furnish that to the reporter?

Mr. GARRISON. Yes; I have it here, and I will be glad to give it to him at the end of the record later.

The CHAIRMAN. That permission is granted. It will be included. Thank you, Mr. Garrison.

(The decision referred to is as follows:)

In the Matter of Houde Engineering Corporation and United Automobile Workers Federal Labor Union No. 18839. Case No. 12. Hearing, July 24, 1934. Decision, August 30, 1934.

This case came before the Board upon complaint of the union that, although it had been chosen as the collective bargaining agency by a majority of the company's employees at an election conducted by the National Labor Board, the company declined to recognize the union as the collective bargaining agency for all the employees eligible to vote in the election. The company insisted that under section 7 (a) of the Recovery Act it was obligated to bargain collectively not merely with the union but also with the organization voted for by the minority of employees.

The question at issue is one of statutory interpretation; but it cannot be answered by a mere reading of the language of section 7 (a), much less by abstract arguments about the rights of majorities and minorities. It is necessary to consider first of all the objects of the statute, and then the effect of the company's interpretation upon the achievement of those objects.

The fundamental purpose of section 7 (a) was to encourage collective bargaining, with all that that implies. Employees were to "have the right to organize and bargain collectively", and to be free from interference in self-organization "for the purpose of collective bargaining."

These phrases are full of meaning. The right to employees to bargain collectively implies a duty on the part of the employer to bargain with their representatives. Without this duty to bargain the right to bargain would be sterile; and Congress did not intend the right to be sterile. The National

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Labor Board in a series of decisions,[1] and the Petroleum Board in one of its most important cases,[2] have established the incontestably sound principle that the employer is obligated by the statute to negotiate in good faith with his employees' representatives; to match their proposals, if unacceptable, with counter-proposals; and to make every reasonable effort to reach an agreement.

Collective bargaining, then, is simply a means to an end. The end is an agreement. And, customarily, such an agreement will have to do with wages, hours, and basic working conditions, and will have a fixed duration. The purpose of every such agreement has been to stabilize, for a certain period, the terms of employment; for the protection alike of employer and employee. By contrast, where all that transpires is a demand by employees for better terms and an assent by the employer, but without any understanding as to duration, there has been no collective agreement, because neither side has been bound to anything.

Section 7 (a) must be construed in the light of the traditional practices with which it deals, and the traditional meanings of the words which it uses. When it speaks of "collective bargaining" it can only be taken to mean that long-observed process whereby negotiations are conducted for the purpose of arriving at collective agreements governing terms of employment for some specified period. And in prohibiting any interference with this process, it must have intended that the process should be encouraged, and that there was a definite good to be obtained by promoting the stabilization of employment relations through collective agreements.

That this was the intention of section 7 (a) is apparent not only from its language but also from other provisions of the Recovery Act. Thus section 1 states that it is the policy of Congress, among other things, "to induce and maintain united action of labor and management under adequate governmental sanctions and supervision." And section 7 (b) provides that the President "shall, so far as practicable, afford every opportunity to employers and employees in any trade or industry * * * with respect to which the conditions referred to in clauses (1) and (2) of subsection (a) prevail" (that is, in any business where the right of collective bargaining has not been interfered with) "to establish by mutual agreement the standards as to the maximum hours of labor, minimum rates of pay, and such other conditions of employment as may be necessary * * * to effectuate the policy of this title." It is obvious that these desired standards, and the "united action of labor and management" which Congress contemplated, could scarcely be effected by collective agreements between employers and representatives of employees, resulting from collective bargaining.

Apart from these specific provisions of the act, it is evident that, taking the act as a whole, its objects could not be fully achieved without collective undertakings between employers and the representatives of employees. The fundamental aim of the act was to restore prosperity by increasing purchasing power. Industry was to be stabilized by permitting employers to combine together, immune, to a large extent, from the restrictions of the antitrust laws, for the purpose of eliminating cutthroat competition, waste, and the grosser evils of unplanned production. At the same time, hours were to be reduced, wages increased, and reemployment effected on the largest possible scale. These vital readjustments could not be brought about by the law alone. Close and continuing cooperation between management and labor was essential in working out the readjustments and in seeing to it that the gains which industry might derive from its new powers to control production and prices would be equitably shared with the wage-earners, and thus serve to increase purchasing power. Collective bargaining and the collective agreements resulting therefrom would be an essential part of this process. And in the projected stabilization of industry, based upon the principle of fair competition, it was intended that wages, hours, and working conditions should also be stabilized as far as possible, and should be reasonably uniform within each particular industry. In achieving these objects, collective agreements would play an im-

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[1] In the matter of Eagle Rubber Co. and United Rubber Workers' Federal Labor Union No. 18683 (decided May 16, 1934); in the matter of National Aniline & Chemical Co. and Allied Chemical Workers' Local No. 18705 (decided May 25, 1934); in the matter of Connecticut Coke Co. and United Coke & Gas Workers' Union, No. 18829 (decided June 30, 1934).

[2] In the matter of Magnolia Petroleum Co. and International Association of Oil Field, Gas Well, and Refinery Workers (decided Feb. 6, 1934).

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portant, if not indispensable, part, since the uniform requirements fixed in the codes were never intended to do more than set a minimum.[3]

In approaching the issue involved in this case, it is clear that any interpretation of section 7 (a) which in practice would hamper self-organization and the making of collective agreements cannot be sound. The Houde Co. insists not merely on its right but on its duty under the statute to bargain separately, and whenever requested, with two groups of its employees, one representing the majority and the other the minority. And the question presented, therefore, is whether or not this interpretation has resulted in practice in defeating the objects of the statute.

The facts may be briefly recounted. The Houde Co. is engaged chiefly in the manufacture of certain automobile parts which are shipped in interstate commerce from the company's plant in Buffalo. Its employees are skilled workers, homogeneous in occupation, and the company concedes that there are no groups of employees which because of their peculiar occupations should be considered as separate units for the purposes of collective bargaining.

For several years prior to the advent of the union last fall, athletic events among the men had been promoted by a loose-knit association, if it can be called such, which consisted simply of a treasurer and a chairman in charge of athletics. The association seems to have had no formal name, no meetings of any sort and no listed members. Small admission fees to the various events were the only source of revenue. In the autumn of 1933 employees began to join the United Automobile Workers Federal Union No. 18839, affiliated with the American Federation of Labor, and within a very short time after this became known a sudden and significant change took place in the so-called "athletic association." Forms were circulated in the plant for the nomination of representatives to prepare bylaws for the association. These forms stated in substance that the association, in addition to continuing its athletic activities would also take up with the management questions of working conditions. A clause to that effect was written into the bylaws, which were prepared by the representatives nominated by the workers. The name of the association became the Houde Welfare and Athletic Association, and it was given a definite structure and form, with members, officers, and a grievance committee for the purpose of negotiating with the company.

There is no evidence that these developments, following immediately upon the beginning of unionization, were sponsored by the company, but it is clear from what followed that the company gave to the association its moral blessing, and looked with favor upon its new activities. For shortly after the association had been reshaped, a request of the union representatives for recognition was denied, while at about the same time a wage increase sponsored by the association was granted to all employees. The company thereafter refused to treat with the union representatives, unless they would disclose the union membership list.

Ultimately, after hearings on the complaint of the union before the Buffalo Regional Labor Board and the National Labor Board, which the company in each case declined to attend, an election was ordered to be held in the plant on March 23, 1934. Several days beforehand, another general wage increase was granted to the employees as a result of requests by the association. The election resulted in 1,105 ballots for the union and 647 for the association, with about 400 not voting. Thus the union was established beyond question as the representative of the majority, not merely of those voting, but of all the employees.

There is evidence that two of the principal officers of the association agreed with the Buffalo Regional Board before the election that if the association did not receive a majority of the votes it would recognize the union as the exclusive bargaining agency. In the light of this alleged agreement, the case might be decided on the ground that the association had lost by the election whatever standing it might have had as a collective bargaining agency; but

[3] For expression of the fundamental aims of the act in the hearings and debates of Congress, see Hearings before Committee on Finance (U. S. Senate, 73d Cong., 1st sess.) on S. 1712 and H. R. 5755, pp. 1–3; Hearings before Committee on Ways and Means (House of Representatives, 73d Cong., 1st sess.) on H. R. 5664, pp. 80–84, 91–96; Report of Committee on Ways and Means (House of Representatives, 73d Cong., 1st sess.) on H. R. 5775, p. 11, quoted in Report of Committee on Finance (U. S. Senate, 73d Cong., 1st sess.) on H. R. 5755, p. 15, Cong. Rec., 73d Cong., 1st sess., pp. 4309–4310, 4891; Cong. Rec., 73d Cong., 2d sess., pp. 12197, 12208, 12230.

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since the existence of the agreement has been questioned, we are not disposed to decide the case upon such a narrow issue.

Since the election, the company's practice has been to meet every week or two on Saturday mornings, first with the association's committee and then with the union committee, or vice versa. At these meetings, with one exception to be later noted, matters of secondary importance only have been discussed—toilet facilities, safety measures, lighting and ventilation, coat racks, slippery stairs, and so on. Each committee brought up one or another of these topics, and sometimes, but not always, the company would inform one committee of what it had been discussing with the other. Whenever, as a result of any meeting, the company concluded to take some action, a statement would be posted on the bulletin board of what it had arranged to do.

It is apparent that the matters thus discussed were the ordinary every-day details which any employer would normally be glad to discuss with any employee, or group of employees, and which in no sense constitute the recognized subjects of collective bargaining, namely, wages, hours, and basic working conditions. The union presented no proposals of this sort to the company, because the company from the beginning made clear to the union that no agreement would be entered into with it.

One thing of general importance, however, resulted from the various meetings with the two committees, and it is significant that the matter was not discussed with the union committee. In the autumn there had been some talk of group insurance, but the proposal was dropped because representatives of the association said that they thought the time was not ripe. Some 2 months ago the proposal was renewed and was taken up by the company with the association's committee. The proposal required a consideration of what the terms of the policy should be, including the amount and division of the premium and the coverage—factors which would affect all of the employees. The association's committee and the company decided the matter without consulting the union, and a circular was then distributed to all employees, in which the vice president and general manager of the company approved the plan, and stated that it was being sponsored by the association. Nearly all of the employees agreed to take the insurance, and the association received credit for its part in making the insurance available.

It seems clear that the company's policy of dealing first with one group and then with the other resulted, whether intentionally or not, in defeating the objects of the statute. In the first place, the company's policy inevitably produced a certain amount of rivalry, suspicion, and friction between the leaders of the committees. The leader of the association's committee, who testified at the hearing, evidently enjoyed the prestige of his position and the close contact which it brought him with his superiors. He said that his association wished to be able to present grievances directly to the company, instead of through the union, because "maybe" the employees thought that better terms could thus be obtained.

Secondly, the company's policy, by enabling it to favor one organization at the expense of the other, and thus to check at will the growth of either organization, was calculated to confuse the employees, to make them uncertain which organization they should from time to time adhere to, and to maintain a permanent and artificial division in the ranks.

But even if the company's policy had not thus resulted in impairing the effectiveness of collective bargaining—and it could hardly have resulted in anything else—it clearly prevented any arrival at collective agreements in the sense intended by the statute. The company's conception of its duty was merely this: That the company should periodically receive each committee, listen to its suggestions, discuss them politely and then act upon them or not, as it might see fit. If that be all that the statute requires, the company was within its rights, but, as has been pointed out, the statute calls for more than that. It was not enacted to promote discussions. Such an anaemic purpose was foreign to the Recovery Act. The statute was enacted to promote the making of collective agreements covering terms of employment for definite periods, as an integral part of the process of stabilizing industry upon a new and juster basis. The company was frank in admitting that it intended to make no such agreement. Its policies were the logical result of that attitude. They were admirably designed to nullify the purposes of the statute.

The company conceded at the hearing before this Board that if a collective agreement covering terms of employment were to be made, it would necessarily have to apply to all of the workers in the plant. The company's duty was to

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endeavor in good faith to negotiate and arrive at such an agreement. Obviously in the case of a plant-wide agreement it would be impractical to negotiate it and enter into it with the minority group. The practical course, and the one which we think the statute plainly calls for, would be to negotiate and enter into an agreement (if one could be arrived at) with the majority group, who would best be able to express the desires of the workers.

At the hearing the company suggested the only other possible course, namely, that the company might bargain collectively and enter into a collective agreement with a composite committee made up of representatives of the union and the association, in proportions corresponding to the votes cast in the election. This suggestion would have the merit of including both the majority and the minority representatives in the negotiations, and would on its face be just and democratic. And where, as in the automobile settlement, the parties had agreed to such a plan, there could be no possible conflict with the statute, which clearly permits the majority to set up any fair plan of representation which they desire.

But there was no such agreement in this case; and the plan suggested by the company, being opposed by the majority, would have hindered true collective bargaining even more effectively than the policies heretofore pursued by the company. Counsel for the company, who was also its secretary and one of its directors, recognized at the hearing that differences within the ranks of the proposed composite committee might develop, and the possibility was evidently not displeasing to him. The company would have, he said, "the benefit of their conflicting ideas * * * the benefit of hearing the divergent points of view in arriving at our decision"; and if such divergency developed "we might possibly bring in men who were not on the committee, with the committee present, and find out * * *"

This vision of an employer dealing with a divided committee and calling in individual employees to assist the company in arriving at a decision is certainly far from what section 7 (a) must have contemplated in guaranteeing the right of collective bargaining. But whether or not the workers' representation by a composite committee would weaken their voice and confuse their counsels in negotiating with the employer, in the end whatever collective agreement might be reached would have to be satisfactory to the majority within the committee. Hence the majority representatives would still control, and the only difference between this and the traditional method of bargaining with the majority alone would be that the suggestions of the minority would be advanced in the presence of the majority. The employer would ordinarily gain nothing from this arrangement if the two groups were united, and if they were not united he would gain only what he has no right to ask for, namely, dissension and rivalry within the ranks of the collective bargaining agency. He could by lawful means ascertain the views of particular employees regarding proposals which were under consideration, but he would have no right to insist that the representatives of the majority should, in the absence of any agreement, advance their proposals only in conjunction with some other group.

We have concluded, therefore, that the only interpretation of section 9 (a) which can give effect to its purposes is that the representatives of the majority should constitute the exclusive agency for collective bargaining with the employer. This interpretation is neither strained nor novel. Similar interpretations of similar provisions have been made whenever the question has presented itself.

Thus the National War Labor Board, created by President Wilson in the spring of 1918, with Frank P. Walsh and the late William Howard Taft as joint chairman, promulgated as one of its principles a clause almost identical with section 7 (a), reading as follows:

"The right of workers to organize in trade unions and to bargain collectively through chosen representatives is recognized and affirmed. This right shall not be denied, abridged, or interfered with by employers in any manner whatsoever."[4] In application of this principle the Board in numerous instances recognized the majority rule.[5] In what was perhaps its most famous case, that involving the employees of certain munitions plants in Bridgeport, the Board worked out a detailed plan of organization for collective bargaining which was expressly based upon the majority rule.[6] And in

[4] Principles and Rules of Procedure, National War Labor Board, p. 4.
[5] See, e. g., docket nos. 111, 122, 129, 130, 274, 297, 393, 641.
[6] Docket no. 132, Organization and bylaws for collective bargaining committees, instituted by the National War Labor Board for Bridgeport, Conn.

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a general plan for the election of shop committees in war industries the Board again promulgated the majority rule.[7]

Two years later, by the Transportation Act of 1920, the Railroad Labor Board was created, and the statute provided that all disputes were to be considered in conferences between the carriers and "representatives designated and authorized so to confer * * * by the employees * * * directly interested in the dispute."[8] This language is even more general than that of section 7 (a), but the Railroad Labor Board, charged with construing and enforcing the statute, in one of its first important cases laid down the majority rule in the following words:

"The majority of any craft or class of employees shall have the right to determine what organization shall represent members of such craft or class. Such organization shall have the right to make an agreement which shall apply to all employees in such craft or class. No such agreement shall infringe, however, upon the right of employees not members of the organization representing the majority to present grievances whether in person or by representatives of their own choice."[9] The Railroad Labor Board consistently applies these principles in its decisions.[10] In two of these cases the majority rule came before the Supreme Court of the United States, which, while it did not pass on the legal rights of the parties under the Board's ruling, stated that the principles laid down by the Board were "just and reasonable."[11]

Custom was in accord with these precedents. Even employers who set up employee representation plans consistently provided in these plans, according to a recent study by the National Industrial Conference Board, that representatives for collective bargaining should be elected by majority vote.[12]

Thereupon a struggle ensued which has not yet run its course. Certain employers who were affected by these new developments refused at first to deal in any way with the unions unless they would reveal their lists of members. The Houde Co. among others adopted these tactics. The unions, fearing discriminatory discharges, declined as the union did in this case to reveal the names of their members. At this juncture the National Labor Board, which had been created some months before, revived the device of conducting elections by secret ballots which had been used under somewhat different circumstances by the National War Labor Board and which afforded a fair method of determining by whom the employees wished to be represented. The elections, however, were frequently blocked by employers, who declined to submit their pay rolls or other records by which the identity of the employees and their right to vote could be established. The Houde Co., by such methods, prevented an election which had been ordered by the Buffalo Regional Labor Board in December 1933. In cases where an election was held, and a labor union designated by the majority, some employers still declined to deal with the union, or to do more than negotiate separately with it and with the representatives of the minority (generally a company union)—a procedure which, as in the Houde case, resulted in effectively preventing collective bargaining.

In order to dispose of these questions the President issued an Executive order on February 1, 1934,[13] which expressly authorized the National Labor Board to order and conduct elections and provided in substance that those who were selected by "at least a majority of the employees voting" should "represent all the employees eligible to participate in such an election for the purpose of collective bargaining." Thus the President in his interpretation of the intent of section 7 (a) followed the precedents already referred to in which the majority rule had been laid down. On March 1, 1934, the National

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[7] See Report of Secretary of National War Labor Board to the Secretary of Labor for the 12 months ending May 31, 1919, p. 61. See also plan of election used in *Machinists et al.* v. *Bethlehem Steel Co.*, docket no. 22.

[8] 41 Stat. 456, 469, sec. 301.

[9] *International Association of Machinists* v. *Atchison, Topeka & Santa Fe Ry.*, Dec no. 119, 2 U. S. R. R. Labor Bd., 87, 96.

[10] Dec. no. 173, 2 U. S. R. R. Labor Bd., 171; Dec. no. 174, 2 U. S. R. R. Labor Bd., 173; Dec. no. 218, 2 U. S. R. R. Labor Bd., 207; Dec. no. 220, 2 U. S. R. R. Labor Bd., 216; Dec. no. 3117, 6 U. S. R. R. Labor Bd., 444.

[11] *Pennsylvania R. R.* v. *U. S. Railroad Labor Board*, 261 U. S. 72, 84; *Pennsylvania Federation No. 90* v. *Pennsylvania R. R.*, 267 U. S. 203.

[12] Collective Bargaining through Employee Representation Plans, National Industrial Conference Board (1933), pp. 31–34.

[13] Executive Order No. 6580.

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Labor Board followed suit in the Denver Tramway Case [14] in a short opinion from which one member of the Board publicly dissented. It was under the authority of this Executive order and pursuant to the holding in the Denver case, which was reiterated in the Houde decision of March 8,[15] that the election in the Houde plant finally took place.

Public Resolution No. 44, approved June 19, 1934, for the first time provided a statutory method for conducting elections, in order to determine "by what person or persons or organization" the employees desired to be represented.[16] If the rule were that the employer must deal with each group regardless of its numerical strength, an election would be futile. Congress in expressly providing for elections necessarily rejected plural bargaining, and almost as certainly endorsed majority rule. Senator Walsh, Chairman of the Committee on Education and Labor, which had held extensive hearings on the Wagner labor disputes bill,[17] for which the resolution was eventually substituted, pointed out to the Senate that under the resolution "the board may call both groups together and say, 'Stop. We will have an election. We will conduct the election and determine who represents a majority of the employees.'" [18]

And again later: "The provision in the joint resolution providing for elections is most helpful. * * * It will enable somebody with governmental authority, when two groups come claiming to be representatives of the workers, to find out which does represent them and to issue an order and compel the employer to recognize them for the purpose of collective bargaining." [19]

While Senator Walsh was not in charge of the Resolution, his statement is quoted because it sets forth so clearly what, from the language of the Resolution, the intention of Congress must have been, namely, that the "person or persons or organization" selected by the majority should represent all in collective bargaining.[20]

The President, in creating the National Steel Labor Relations Board by Executive order on June 28, 1934, so interpreted the resolution. His order, issued under the authority of the resolution, directed that where elections were held: "the person, persons, or organization certified as the choice of the majority of those voting shall be accepted as the representatives of said employees for the purpose of collective bargaining * * *." [21]

This Board, therefore, stands upon the majority rule. And it does so the more willingly because the rule is in accord with American traditions of political democracy, which empower representatives elected by the majority of the voters to speak for all the people.

In concluding this opinion the Board wishes to indicate the limits beyond which it does not go. The rule here announced is to be applied, in the language of the Executive order of June 28 just referred to, "without denying to any employee or groups of employees the right to present grievances, to confer

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[14] In the matter of the Denver Tramway Corp. and Amalgamated Association of Street and Electric Railway Employees. Decision of the National Labor Board (August 1933–March 1934), p. 64.

[15] In the matter of Houde Engineering Co. and United Automobile Workers Federal Union, No. 18839. ibid., p. 87.

[16] SEC. 2. Any board so established is hereby empowered, when it shall appear in the public interest, to order and conduct an election by a secret ballot of any of the employees of any employer, to determine by what person or persons or organization they desire to be represented in order to insure the right of employees to organize and to select their representatives for the purpose of collective bargaining as defined in sec. 7 (a) of said act and now incorporated herein.

[17] Hearings before the Committee on Education and Labor (U. S. Senate, 73d Cong., 2d sess.) on S. 2926.

[18] Cong. Rec., 73d Cong., 2d sess., p. 12199.

[19] Cong. Rec., 73d Cong., 2d sess., p. 12200.

[20] Pending before the Senate when the resolution was being debated, and made law only a few days later, was the revised Railway Labor Act (Public No. 442, 73d Cong., approved June 21, 1934). Herein Congress, dealing for the first time expressly with the question of employee representation, gave to the majority rule in railway labor relations the sanction of statute law:

"Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be representative of the class or craft for the purposes of this Act * * * *Provided*. That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time."

A modification of this provision that attempted to give minority groups a part in making collective agreements was presented to the Senate Committee on Interstate Commerce by the railroads. It was rejected by the committee. See Hearings before Committee on Interstate Commerce, 9 U. S. Senate, 73d Cong., 2d sess.), on S. 3266.

[21] Executive Order No. 6751.

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with their employers, or to associate themselves and act for mutual aid or protection."

The rule does not compel employees to join the organization representing the majority. It does not establish a closed shop, nor necessarily lead to a closed shop, that being a matter for negotiation.

This opinion lays down no rule as to what should constitute the proper unit as the basis of representation. The unit may be, as in this case, the plant. In other cases, where there may be two or more separate crafts, or other distinct groupings of employees, each such grouping might properly constitute a unit for collective bargaining; and in such event the representatives of the majority of each unit would be the exclusive agency for the negotiation of a collective agreement relating to that unit. The question of the proper unit or units must be left for determination according to the circumstances of particular cases as they arise.

Nor does this opinion lay down any rule as to what the employer's duty is where the majority group imposes rules of participation in its membership and government which exclude certain employees whom it purports to represent in collective bargaining, or where, in an election, representatives have been chosen by a mere plurality of the votes cast, or by a majority of the votes cast but by less than a majority of all employees entitled to vote; or where the majority group has taken no steps toward collective bargaining or has so abused its privileges that some minority group might justly ask this Board for appropriate relief.

Subject to these qualifications, the Board confines itself to holding that when a person, committee, or regulation has been designated by the majority of employees in a plant or other appropriate unit for collective bargaining, it is the right ofthe representative so designated to be treated by the employer as the exclusive collective bargaining agency of all employees in the unit, and the right of the representative so designated to be treated by the employer arrive with this representative at a collective agreement covering terms of employment of all such employees.

Findings.—The Houde Engineering Corporation has violated section 7 (a) by interfering with the self-organization of its employees, impairing their right of collective bargaining and refusing to bargain collectively within the meaning of that section, in that, first, it negotiated without intending to reach a collective agreement, and, second, it negotiated with the association after the employees had, by majority vote, designated the union as their exclusive agency.

Enforcement.—Unless within 10 days from the date of this decision the Houde Engineering Corporation notifies the Board in writing that it recognizes the United Automobile Workers Federal Union, No. 18839, as its employees' exclusive agency for collective bargaining, and that, when requested by the union, it will enter into negotiations with the union and endeavor in good faith to arrive at a collective agreement covering terms of employment of all employees within the class which was permitted to vote at the election of March 23, 1934, the case will be referred to the National Recovery Administration and to the enforcement agencies of the Federal Government for appropriate action.

The CHAIRMAN. Mr. Ogburn.

STATEMENT OF CHARLTON OGBURN, REPRESENTING THE AMERICAN FEDERATION OF LABOR AND A LARGE NUMBER OF AFFILIATED UNIONS

The CHAIRMAN. What is your name, please?

Mr. OGBURN. Charlton Ogburn.

The CHAIRMAN. And where do you reside?

Mr. OGBURN. New York.

The CHAIRMAN. Your profession?

Mr. OGBURN. A lawyer.

The CHAIRMAN. Have you as such been connected with the National Labor Board?

Mr. OGBURN. I have not.

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The CHAIRMAN. Are you connected with the American Federation of Labor?

Mr. OGBURN. I am counsel for the American Federation of Labor.

The CHAIRMAN. And as such you study all pending legislation affecting labor?

Mr. OGBURN. A great deal of it.

The CHAIRMAN. And do you appear before committees of the House and Senate?

Mr. OGBURN. From time to time.

The CHAIRMAN. And have you appeared as counsel for the American Federation of Labor before these labor boards that are now in existence?

Mr. OGBURN. I have devoted my exclusive time for the past 12 months to that practice. And I am also counsel for a number of affiliated unions, including the electric railway unions, the bus unions, the steel unions, the automobile unions, and a number of others. And in that capacity I have tried what are called 7 (a) cases before these boards, including the National Labor Board, the National Labor Relations Board, the Steel Board, the Automobile Labor Board, the Petroleum Labor Policy Board, and a number of regional labor boards. I have, therefore, devoted an intimate study to this subject, and I feel that I have some qualifications to appear in support of this bill.

The CHAIRMAN. We would be pleased to hear your views.

Mr. OGBURN. This bill represents a logical advance in the necessarily expanding role of government in labor matters. The long neglect of this field of government must be remedied. The State's sanction to combinations of capital into large corporations, and mergers of those corporations into huge holding companies, some with assets in excess of 2 billions of dollars, the alliance of those employing concerns into trade associations and chambers of commerce, have placed employees, who rely on individual bargaining, completely at the mercy of their employers. This wrong must be redressed. Employees must have an equality of bargaining power. This can come only through self-organization and collective bargaining.

My duties carry me to different parts of the country, where I am constantly in touch with workers. I am deeply impressed by the fact that what the worker wants above all else is the right to organize. He wants a say-so in the terms of his employment. He knows that as an individual employee he can never have this say-so; he knows it can come only through their joint spokesmen selected to deal with the employer.

What the worker asks through that great friend of labor, Senator Wagner, in this bill you have for consideration, is that the Government forbid the employer to interfere in the self-organization of the employees. That seems a simple request, but it is all that the worker asks. The day when the worker owned his own tools and had a shop of his own is long past. The passing is due to the laws enacted by the State, permitting combinations of capital and of employers. Great as these combinations have become during this century, in such huge corporations as the U. S. Steel, Bethlehem Steel, General Motors, and the utility holding companies, their

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cooperation as employers was immeasurably advanced by the provisions of the N. R. A., under which competing manufacturers could, with the sanction of law, for the first time in 300 years, sit around the table and fix the price of their own product and limit the output of their own mills. These vast privileges are not without burdens, and these burdens fall on labor. This Congress, therefore, wisely concluded that some offsetting advantage should be granted to labor—that is, the last Congress—and so into the Recovery Act were written the famous words—

> Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from interference, restraint, or coercion of employers—

known through the land as "section 7 (a)."

When the concluding terms of the Versailles Treaty were being written, Lloyd George unexpectedly moved that the United States be given the right to Yap. The surprised Woodrow Wilson asked if it had not been spelled backward. Clemenceau asked why America should be given he right to Yap, and Lloyd George replied that "the United States ought to get some little something out of the war." So labor, likewise given the right to yap spelled backward, ought to get some little something out of the N. R. A. The meat in the N. R. A. cocoanut for labor was section 7 (a).

The right of labor to organize has been recognized by the courts of this country since 1842. When Congress enacted the N. I. R. A., with its section 7 (a) guaranteeing to workers generally for the first time by Federal statute the right to organize and bargain collectively, free from interference of employers, millions of workers throughout America, oppressed and underpaid for many years, lifted up their hearts on reading these marvelous words, and for the first time in their lives stood erect and breathed the air of freedom. As the famous words of the President on signing this act were flashed over the land, the workers everywhere came together to form self-organizations, with full confidence in this guaranty of their government. Employers, too, considered that the Government meant what it said in requiring 7 (a) in all codes.

The heads of the big industries conferred together to find means of evading this law without seeming actually to violate it. In a petition I have filed with the Steel Board I have called these conferences "conspiracy." There resulted from them a device well calculated to nullify section 7 (a) and to prevent the self-organization of employees under it. That device is known as the "employee representation plan." It was proffered by those big industries to their employees in plant after plant soon after the Recovery Act was signed. The plan was virtually the same in every plant. It was not collective bargaining—it was something to fool the workers into believing they would have collective bargaining. I defy anyone to prove that an employee representation plan or a company union have ever affected, by their own efforts, a collective-bargaining agreement. Hundreds of thousands of these workers—in fact, over two million—were not to be fooled by this plan or else were never offered it . These two million formed organizations of their own and joined American Federation of Labor unions. Many of them for the first time in their lives felt

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free men. Their response to the Roosevelt administration was something akin to reverence.

By the fall of 1933, employers who before that had been fearful of incurring the wrath of their Government or of having their conscience trouble them if they violated 7 (a) began to get bold enough to discharge workers who had joined the union and refuse to receive and deal with union committees. Employers grew bolder and these discharges continued. Meanwhile, employee representation plans were fostered and promoted by the big industries, elections were held under them, and employees were forced to vote in those elections.

The steel industry and the automobile industry flooded their employees with pamphlets containing false and libelous attacks on the American Federation of Labor.

During my brief career of 18 months as attorney for labor unions—my first representation of a labor client came after the enactment of N. I. R. A., and my first labor case was the *Denver Tramway case*, decided March 1, 1934—I have seen the sudden rise and the slow fall of their hopes. How many employees were discharged for union membership or activities will never be known. A conciliator for the Department of Labor has estimated as high as 250,000. Employers may tell you that these are unproved assertions and, perhaps, untrue ones. I tell you that I can prove any statement of fact I make to you. To my knowledge, dozens of workers who have held the same jobs for many years have, since the enactment of N. I. R. A., joined a union and suddenly found themselves walking the streets. How many unions had been formed and could not function because the employer refused to deal with them, although he was obligated to do so, I have no figures to present. Numerous such cases were brought to the National Labor Board and later to its successor, the National Labor Relations Board.

In the writing of one code I had to do with, labor consented to a provision of maximum hours, considerably longer with the usual N. R. A. maximum because the industry promised the observance of 7 (a), with resulting collective-bargaining agreements, which would fix hours according to local conditions. Within a few months certain members of this industry had completely repudiated this promise and this law. Lumber companies benefiting from the price-fixing arrangements in the Lumber Code, under which lumber manufacturers could raise the cost of housing to every laborer in the United States, come before the National Labor Relations Board and flout this law, denying its constitutionality and refusing the jurisdiction of the Board. In all the history of industry, is there any example of moral obloquy more shocking than this one?

The great steel strike, which would have come on the 16th of last June, was averted in the nick of time on the 15th of June by a promise to the steel workers of a Government board to enforce their rights. The following day the Seventy-third Congress passed its Joint Resolution No. 44, which was signed by the President 3 days later, and 10 days later he appointed the Steel Board. This Board and the Executive order appointing it were accepted by the steel industry, and the Board was notified by the largest of the steel corporations that they would cooperate with the Board. As counsel for the steel unions, I have brought dozens of cases before the Steel Board,

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most of them petitions for elections. With the exception of the West Virginia Rail Co., where an election was held by the Board, every steel company has come forward and denied the jurisdiction of the Board, has denied the constitutionality of the Recovery Act and of the joint resolution, despite all the price-fixing benefits that they have received under the Steel Code; and in some cases they have paid attorneys to represent employee representatives in taking the decisions of the Steel Board to the circuit court of appeals for review. Elections are solely for the purpose of selecting representatives of employees for collective bargaining. Employers have no legal interest whatsoever in these elections, and the Steel Board has so ruled. Employers have no more say-so in the selection of representatives for collective bargaining by employees than employees have in the selection of the companies' representatives.

Suppose the United States and Mexico were seeking to adjust a boundary matter by negotiation through commissioners. How would it be regarded if the United States sought to influence the selection of certain commissioners to represent Mexico? And how would it be regarded if the United States paid the salaries of the Mexican commissioners? And yet the steel companies, the automobile companies, and the rubber companies pay the representatives for collective bargaining of their employees and actually have a hand in their selection. In a hearing in Pittsburgh before the Steel Board I asked the president of the Jones & Laughlin Steel Corporation if it were true that his company had spent $1,000,000 in maintaining its spy system. The company's counsel objected to any information on the amount of moneys expended by his client for espionage, and the exact figure was never brought out.

Why section 7 (a) was never enforced by the Government is still a mystery to the workingman, just as a child to whom candy is offered cannot understand why it is suddenly withdrawn. But to many workingmen the failure of this Government to enforce 7 (a) is more than a mystery—it is a repudiation, reluctant as they are to believe their Government would repudiate this guaranty. Under the terms of the Recovery Act, only the Department of Justice can bring actions to enforce 7 (a). To date, the Department of Justice has brought only two actions. These violations are first submitted to the Labor Board; there they are carefully investigated and hearings held, findings of fact issued, and fully prepared cases, even with petitions drawn, are turned over to the Department of Justice for action, and there they lie.

You heard Chairman Riddle of the National Labor Relations Board tell you that his Board had turned over 52 violations of section 7 (a) to the Department of Justice for action, and the Department of Justice to date has brought only 1 of those actions. In one serious case of discriminaion found to exist by the National Labor Relations Board and referred last October to the Department of Justice for action, that Department has never yet brought suit and gives as a reason that the district attorney in Wisconsin had last year been in an automobile accident and injured his leg.

I do not want you to believe that section 7 (a) has been entirely barren of results; hundreds of new unions owe their existence to it, and hundreds of thousands of workers in this country today stand

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erect and walk like free men because of 7 (a). More important still, 7 (a) has made the worker politically conscious. It has made him for the first time realize he has a Government and that he is a part of that Government. It has brought him for the first time in contact with his Government and he has come to feel that it is, in fact, his own Government. Section 7 (a) has made the worker a changed man; he will never again be the completely docile and supine being that he was before these words of hope were held out to him in the summer of 1933. Because of 7 (a) the labor movement in America will become a political movement. The worker will, in the future, send men to this Senate and to the House of Representatives who will represent his interests and not the interests of the people who oppress him. The results of the last November elections, which sent many new faces to this Senate and the House, are a demonstration of my assertion that 7 (a) has made labor politically conscious and that they will, in the future, send their own representatives to look after their interest on Capitol Hill.

The first measure that there newly awakened voters demand of this Congress is that it pass a law which will prohibit their employers from coercing them in their right to organize and in denying to them the priivlege of bargaining collectively.

I would like to talk to you a few minutes about what constitutes collective bargaining. The representatives of two sides sit across the table and deal with each other with something approaching an equality of power. How can workers hope to get this equality of bargaining power against combinations of employers more powerful than many States, able to close an entire plant for months, if necessary, to break up a union? To have this equality of bargaining power the workers in each plant must present a united front in dealing with their employer. They must send spokesmen representing the whole body of employees. If the employees are, therefore, united into one single body—an organization with dues from which come strike benefits—they can bring to their employer, not with hat in hand but demanding fair wages and hours of work. Employers know full well that so long as they can keep the employees divided into rival groups there can be no collective bargaining. Employers know full well that the so-called "principle of proportional representation" which is being forced on the workers in the automobile industry can never be collective bargaining but will always be a frustration of collective bargaining. Rival groups of workers stimulated into jealousies and bitterness can never present a united front. That is why employers are so solicitous of the rights of the minority to be represented. Employers know that if representatives selected by a majority of employees represent all, there will be a united front and an equality of bargaining power. That is why they oppose majority rule.

To understand better the full implications of collective bargaining, let us leave for a moment the field of industry and go to the field of commerce and agriculture. The giant chain grocery stores purchase, let us say, their tomatoes from individual farmers, far and wide. The price paid the farmer is entirely at the will of these giant chain stores. This price may be 2 cents to the farmer and 29 cents retail sales. How can this individual farmer ever have equality of bar-

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gaining power with the chain stores? By organizing into a single group and bargaining collectively. If such an organization were attempted by the tomato growers we might find, if similar tactics to employee organization were attempted, for instance, that the chain stores were sending their agents, if every other method to prevent this organization failed, to tell these farmers how to organize, to help select their bargaining agents, to keep them divided into rival groups, to have one group pitted against the other, and thus it would be simple to keep the farmers ever from organizing into a single bargaining agency. Suppose this Congress passed a law that these farmers had a right to organize, then this Government would be expected to keep the chain stores from sending agents among the farmers to interfere with their self-organization and to interfere with the selection of their agents for these bargaining conferences, and forbid these chain stores from putting the bargaining agents of the farmers on their own pay rolls and bribing them to keep them from representing the farmers to the best of their ability. And it is no less than these prohibitions that we now ask this Congress to establish against employers of labor so that they may not go among their employers, interfering with their self-organization, seeking to form and finance the organizations of employees, seeking to dominate and control them. We want it made unlawful for any employer to contribute financially or otherwise to any employee organization or employee plan. We want it made unlawful for any employer to have anything to do with the formation or administration of any employee organization for the purpose of collective bargaining.

And, finally, I would like to say a word about the social effects of the collective bargaining which will be instituted throughout this country if this bill is enacted. There can never be recovery until there is a restoration of the purchasing power of the people. A curtailed and extremely limited foreign trade throws us back on domestic purchasing power. This purchasing power can result only if the wage earners have more money to spend, and that money can come only from higher wages. Higher wages are not going to be voluntarily bestowed by the employer. Production, according to the financial editor of the New York Times, rose 2 percent during the first 9 months of 1934, and profits increased over 80 percent. Wage payments, according to the N. R. A. planning and research, are now 60 percent of what they were in 1926, and interest and dividends are 150 percent over 1926. Higher wages can be obtained in one way and one way only, and that is collective bargaining and conferences between the employer and employee, with the latter possessing an equality of bargaining power with the former. Unless we have therefore, collective bargaining, higher wages, and increased purchasing power, we have got to take the other road of limited production; and production cannot be limited, except by voluntary concerted action of the producers or by the enforcement of the Government. In either event, it is what is called a "planned economy." It is really collectivism, and unless we have collective bargaining in a real sense we are bound to have collectivism.

The CHAIRMAN. Do you want to continue your discussion before the committee, or do you want to have that inserted into the record?

Mr. OGBURN. That will be all right.

(The remainder of the statement of Mr. Ogburn is as follows:)

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Collective bargaining is really the heart of the "new deal." Every measure of the "new deal" is dependent on it. We cannot have recovery without it; we really cannot have social security or unemployment insurance, except it be made oppressive to the workers with the cost taken from their wages, unless there is collective bargaining. Collective bargaining and higher wages are the sure and just means of distributing wealth and income. The only remedy for the exceptional exploitation of labor and the degradation of human beings in the automobile industry, as found by the N. R. A., lies in collective bargaining agreements, as recommended in the N. R. A. report. And collective bargaining is being frustrated by the Automobile Labor Board. The whole success of the "new deal" and of the Roosevelt administration depends upon the installation of collective bargaining in American industry. If collective bargaining fails, the "new deal" fails. This Congress should, therefore, do for labor generally what the Seventy-third Congress did for railway labor.

Therefore, we want this National Labor Relations Act made a law. But before this committee considers it in detail, there are a number of changes which it is my desire to make. It is an excellent bill, the best bill in the interests of labor ever introduced in an American Congress, but it is far from perfect. There are defects in it which ought to be corrected by this committee. We do not want the farsical enforcement of 7 (a) reenacted. If a law is passed which prohibits an employer from interfering with employees in their self-organization, we want that law to be enforced. Enforcement provisions of this bill are not satisfactory. If an order of the National Labor Relations Board is not obeyed, this bill then makes only one provision for their enforcement: and that is, in section 11 it gives jurisdiction to the district courts and makes it the duty of the district attorneys, solely at the request of the National Labor Relations Board, to institute proceedings. Why should such action be instituted solely at the request of the National Labor Relations Board? Or in section 10 (f) the Board may petition the circuit court of appeals for enforcement. If the rights of a union of employees have been violated and that violation was found by the National Labor Relations Board, that union of employees should have the right to apply to the court for an enforcement decree. The unfair labor practices enumerated in this bill, if enacted into law, will have to be adjudicated by the courts. It is hardly probable that these employers, who fight to the last ditch against the rights of their employees, will accept these principles until the courts have passed on them; but under this bill, as under the N. R. A., labor itself is not permitted even to become a party to the proceedings brought by the Board. They have no opportunity to argue their views upon the court.

The cases which will be brought for the adjudication of these principles will all be tried by lawyers representing not labor, who is most vitally interested in them, but representing the public with impartial views and positions. This was true in the Weirton trial. The rights of labor were being adjudicated before Judge Nields in Wilmington, but labor was not permitted to be represented in the court. The Department of Justice attorneys took the view that they were representing the public. Labor itself, in the adjudication of these principles, should be permitted—through its own spokesmen, sympathetic with its attitude and well versed in all labor's contentions, and partisans, in every sense, of labor—to have representation in the court. This is the most important amendment which we ask this committee to make.

One section of this bill would have the effect of repealing the Norris-La Guardia Act, insofar as injunctions upholding or setting aside orders of the Board are concerned We think this should not be. We think the prohibition against employers making contributions to employee representatives in collective bargaining should be absolute and should not have the exception provided in the bill. I have made a number of other minor improvements in the bill, and I earnestly ask that this committee make all of these changes in reporting out the bill. Under the definition of "labor organization" I have stricken out "employee representation plan" because, first of all, it is in no sense an organization—the most distinguished author of the plan, Mr. Arthur Young, vice president of the U. S. Steel Corporation, admitted before this committee last year that it is not a labor organization; but I have added "employee representation plan" under section 8, which forbids employers from interfering with labor organizations or employee plans.

Accordingly, I submit to you a copy of the bill, with the amendments indicated thereon which I suggest, and I offer this as the American Federation

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of Labor proposals for an amended bill. I understand that amendments are to be offered by others which may not prove acceptable to labor. I earnestly hope this committee will not consider such other suggested amendments.

Mr. OGBURN. Mr. Chairman, there are some amendments which Mr. Green has authorized me to discuss briefly with you. There are two or three. Could I have 10 minutes Monday morning?

The CHAIRMAN. Certainly. We will now adjourn until Monday morning at 10:30.

(Thereupon, at 12 o'clock noon, the hearing in the above-entitled matter was adjourned until Monday, Mar. 18, 1935, at 10:30 a. m.)

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NATIONAL LABOR RELATIONS BOARD

MONDAY, MARCH 18, 1935

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D. C.

The committee met, at 10:30 a. m., in room 318 Senate Office Building, Washington, D. C.

Present: Senators Walsh (chairman), Murray, and La Follette.

Present also: Senator Robert F. Wagner.

Senator LA FOLLETTE. Mr. Ogburn, will you come forward. When the committee recessed March 15, you had not quite completed your statement; you may now proceed.

STATEMENT OF CHARLTON OGBURN—Resumed

Mr. OGBURN. I asked the privilege of submitting this morning one or two amendments to this bill, the amendments being offered by the American Federation of Labor. The bill is an excellent bill, and we have not generally any criticisms of it. We have, however, suggested in the definition of labor organization by the eliminating of the words "or any agency or employee representation committee or plan", and putting them in the other part of the bill, especially section 8, where unlawful practices are prohibited.

We consider that an employee representation plan is not a labor organization, and one of the most distinguished authors of the plan, Mr. Arthur Young, so testified before this committee 1 year ago.

The other important suggestion we offer is one in regard to enforcement. We feel if this act is to be made as strongly enforceable as possible, that labor should have the right of going into court and making its argument with regard to the meaning of these provisions.

Undoubtedly, if this bill is enacted the court will adjudicate the labor provision. The question of majority rule will eventually be decided upon by the courts. Under the provisions of the bill, enforcement in the court will be in the hands either of the Department of Justice, or of the National Labor Relations Board, both representing the public.

We had the same situation in the Weirton trial in Wilmington where the Department of Justice naturally and logically took the view, as they expressed to me, of representing the company, so that in that trial labor was not represented and it had not an opportunity to present its argument.

We feel in the adjudication of these questions under this bill labor, represented by its partisan spokesmen, should have an opportunity

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of expressing its view. We therefore suggest an amendment giving them this opportunity.

The third suggestion we make is with regard to a clarification somewhat of the relations of the National Labor Relations Board to the other boards which now exist, either under the code, or under Presidential appointment. We are not quite ready to make our own suggestions with regard to the relationship, and we think, if we might have the privilege, we would like to discuss that matter with the author of the bill.

The power of the National Labor Relations Board is important and exclusive, yet it is nullified to the extent it may decline jurisdiction. We feel, for instance, there is always danger of review in the automobile industry, as long as the present Automobile Labor Board has jurisdiction of that industry, and we feel that the National Labor Relations Board should have jurisdiction of that industry, and we would like to have that provided definitely if we could, in this bill.

All of those suggestions I would like to leave with you, Mr. Chairman. I have indicated them on this checked copy.

The CHAIRMAN. That may be inserted in the record.

Mr. OGBURN. I will ask that the committee will carefully consider them.

I would like to say in conclusion, we think the bill will go very far toward establishing the principle of collective bargaining, in that it will prohibit employers from interfering with the organization of their employees. We feel if that prohibition is enforced, employees will organize voluntarily.

We feel almost every measure of the "new deal" legislation is dependent on collective bargaining. We feel that collective bargaining is really the heart of the "new deal." Every measure of the "new deal" is dependent upon it. We cannot have recovery without it; we really cannot have social security or unemployment insurance, except it be made oppressive to the workers with the cost taken from their wages, unless there is collective bargaining. Collective bargaining and the higher wages are the sure and just means of distributing wealth and income. The only remedy for the exceptional exploitation of labor and the degredation of human beings in the automobile industry, as found by the N. R. A., lies in collective bargaining agreements as recommended in the N. R. A. report. Collective bargaining is being frustrated by the Automobile Labor Board in that industry. The whole success of the "new deal", and of the Roosevelt Administration, depends upon the installation of collective bargaining in American industry. If collective bargaining fails, the "new deal" fails, and I think, in an effort to see that labor does not fail and the "new deal" does not fail, we are completely justified in asking of this Congress the enactment of this bill.

Certainly, the Democratic Party owes in part its present power in the doubtful States to the labor vote in the doubtful States.

Most of the "new deal" legislation has had to do with property rights and in salvaging and in protecting those rights. The R. F. C., the Home Owners Loan Corporation, the Stock Exchange Securities Act, and most of these measures are either house-cleaning measures or have to do with the protection of property rights, and

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we feel that Congress should enact at least one piece of labor legislation, and this bill is the bill which labor most desires.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Smith, you may come forward.

STATEMENT OF EDWIN S. SMITH, MEMBER OF THE NATIONAL LABOR RELATIONS BOARD, WASHINGTON, D. C.

The CHAIRMAN. What is your present position, Mr. Smith?

Mr. SMITH. Member of the National Labor Relations Board.

The CHAIRMAN. And what was your position prior to that?

Mr. SMITH. Prior to that, I was commissioner of labor and industry in the State of Massachusetts.

The CHAIRMAN. How long were you labor commissioner in Massachusetts?

Mr. SMITH. Almost 3 years.

The CHAIRMAN. What was your occupation previous to that?

Mr. SMITH. I was associated for a long time with the Filene stores in Boston, part of the time as secretary to Mr. Lincoln Filene, and prior to that time as employment manager of the store.

The CHAIRMAN. Have you a statement you would like to make to the committee?

Mr. SMITH. Yes; I have.

The CHAIRMAN. You may proceed.

Mr. SMITH. I doubt if a more crucial question confronts the present Congress than the adoption or rejection of the bill which lies before your honorable committee. There are profound economic and social reasons why the bill should pass. Not because organized industry is selfish in opposing the bill but because it shortsightedly fails to recognize the ultimate good to all sections of society which depend upon the bill's passage; I advocate that you query industry's objections with both persistence and thoroughness.

The Wagner bill aims to write into the permanent law of the land essentially the same objectives which are inherent in section 7 (a) of the Recovery Act. Any examination of the bill should properly be based upon consideration of 7 (a). Was 7 (a) wisely conceived? Should its objectives be perpetuated?

Let us turn to the situation in which Congress found itself when the Recovery Act and 7 (a) along with it were put into law:

First: Unemployment and low wages during the depression had reduced purchasing power to extremely low levels. It was felt that collective bargaining would offset this, raise the wages of industrial workers, and start the wheels of industry turning again.

Second. The economic depths to which industrial workers had sunk during the depression were a shock to all Americans. We were ready for any reasonable measure of protection to labor that would prevent the continuance or recurrence of such evils.

Third. It was necessary to balance the power given to business to organize under the codes by grant of a similar power to labor. Otherwise there was danger that price fixing, the elimination of unfair practices, or other methods of raising and maintaining prices under the codes would produce a situation where the return to capital would increase at a faster rate than payment of wages, thus

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continuing the lack of balance between these two classes of income, which was an important factor in producing the depression.

In this connection I call attention to the fact that Frederick G. Mills, the well-known statistical economist, shows in his book, Recent Economic Tendencies in the United States, that during the years 1922–29 the number of wage earners declined on the average by 1.3 percent a year while the output of the individual worker increased 3.3 percent. In the same period wages increased at the average rate of 1.4 percent a year but returns to the stockholders advanced at the rate of 16 4 percent. This concentration of income in the hands of the investing class, not compensated by equivalent gains to industrial wage earners and farmers, helped to bring about a condition where the products of industry could no longer be successfully marketed at current prices, and thus accelerated the general collapse.

Fourth. Since labor and the public generally were hostile to the suspension of the antitrust laws, it was thought politically expedient to give labor the right to organize.

Fifth. It was chiefly unskilled labor that would benefit by the minimum wage sections of the codes. It was necessary, therefore, to provide through collective bargaining for the maintenance of the differentials in the wages to be paid skilled workers.

Already there have appeared disturbing signs that the tendency for a relatively greater diversion of income to dividends and interest than to industrial wages has not ceased under the new economic legislation undertaken by the Government. This is said without prejudice to the degree of soundness, economically and socially which this legislation possesses and with acknowledgment of the real accomplishment, economically and socially, in many fields which must be placed to its credit.

Under the circumstances of our present industrial situation and the history of our industrial system, there can be no doubt of the soundness of 7 (a). The best thought and support which Congress can give to encouragement of labor organizations, and to enlisting employer support, is warranted as a measure of present economic recovery and future economic sanity. Organization of the workers is a bulwark against further dislocation of our economic system. It will help to put money into the hands of consumers, who in turn will spend it for the things which business needs to sell.

Without an increasing organization by labor to secure for itself a proper share of the income from industrial production the following situation is to be feared. The employer will be faced for years to come with large numbers of unemployed workers anxious for the jobs of those already at work. This will tend to depress wage levels. As long as N. R. A. continues to operate, competititon will presumably have a lessened effect in bringing down prices. All the more necessity is it that the industrial wage earner should be in a position to organize to protect his pay envelop against a higher price level. Finally, it is necessary, if we are ever to have a civilization worthy of the name, to raise the economic lot of the wage earners not only relatively but absolutely. The figures for family incomes in the boom year of 1929—as revealed in the recent study made by the Brookings Institute—show that more than 42 percent of our families had incomes less than $1,500. Surely this

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is both shockingly and ridiculously low when compared to our vast resources of capital and technical skill, and the demands of our consumers, educated as they are to economic desires which are beyond their financial capacity to attain.

There are real reasons, therefore, why the Federal Government, for the good and safety of the Nation, should continue to give protection to workers who wish to organize for collective bargaining. Even at best the process of labor organization will be a slow one. Let us not forget that labor is merely protected in its right to organize under 7 (a) where employers were deliberately encouraged and even required to build up their economic strength by banding together collectively under the codes.

As to the administration of 7 (a), Mr. Biddle in his testimony before this committee has given you a comprehensive picture of the procedures followed by the National Labor Relations Board. He has pointed out the weaknesses in the present statute under which our Board operates, weaknesses which the Wagner bill aims to correct in reasonable and practical ways. It is unnecessary for me to retravel the same grounds.

Rather I would like to point out to our honorable committee some of the unforeseen consequences of 7 (a), consequences which point to the need of a stronger basic statute and of adequate administrative procedures under it.

First and foremost there has been no wholesale flocking of workers into labor unions. The increase in membership in the American Federation of Labor since the codes and 7 (a) were adopted is surprisingly small, as revealed in the official figures of paid-up members. These figures underestimate in many instances the real strength of union adherence, but with allowances for their conservatism it is noteworthy that the gains in union membership have been great only in few industries such as coal mining, the garment trades, and textiles. Organization has apparently been only moderately successful in such industries as steel and automobiles, both traditionally antiunion but assumed to be capable of cultivation for union membership under the fertilizing process of 7 (a).

It has thus become apparent that labor, even with an encouraging pat on the back from the Government, does not just naturally flock into trade unions. Organization campaigns have to be undertaken on a systematic scale to cause hitherto unorganized workers to give up regularly a portion of their scanty income for union dues. The advantages which the worker foresees in joining a union must be solid, principally more money in the pay envelop, to be achieved without too long delay and too much offsetting expense.

Company unions, on the other hand, have sprung up like weeds—the simile need not be taken as too disparaging—since the Recovery Act was passed. Figures for their growth require a large allowance for exaggeration because of the fact that so many workers are simply put under company union plans by management without any real consultation of their wishes. It is apparent that growth of collective bargaining, which 7 (a) was expected to foster, has taken place to a greater extent in the arid field of company-controlled unions than in unions possessing independent economic

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strength. Company unions, by opening up a channel for the presentation of grievances, ease the minor friction between management and workers and so make a definite contribution to the smoother running of industry. But Congress in passing 7 (a) believed it was enacting an instrument which would enable labor not only to hold its own but also to extend its economic strength in the face of the rise in prices which it was anticipated would come about through the codes. For any such fundamental economic purpose the company union is indeed a broken reed.

The fact that collective bargaining by bona fide labor unions has not as yet had a striking success in reducing the relative share of income to capital and increasing that to labor is very evident when one examines figures of what has happened to industrial profits and to wages in industry under the recovery program.

The more timid and shortsighted employees alarm themselves by visions of labor rushing pell-mell into unions, thence into strikes, the whole procedure winding up finally in a tableau entitled "Closed shop: Labor triumphant, employer ruined." These visions result from overwrought emotion and bad thinking, often the result of indoctrinations by employers associations. If labor chose to exert its full economic strength, it could long since have done with industry what it wanted. But the ranks of industrial labor are composed of average human beings who are not suffering from overweening and destructive ambitions, nor who seek some far-flung goal to be achieved by collective action of all labor. Members of unions, like other workers, are concerned principally with getting their families somehow housed and fed.

The opposition of employers to 7 (a) resulted in a large number of strikes for union recognition. More adequate enforcement machinery in the hands of the boards entrusted with the administration of 7 (a) would have prevented this particular unforeseen consequence. Those who have been disturbed by these strikes are invited to experience whatever solace may lie in an historical parallel. If they will turn the pages of history back more than a century and a quarter they will find in England of that time the following situation. The industrial revolution was actively imposing on its unfortunate victims, the factory workers, most onerous conditions in the way of low wages and long hours. Naturally the workers, who were less satisfied with the laissez faire school of economics than their employers, banded together in trade unions to protect themselves from further oppression and to improve their economic status. The English employers of the day saw this movement as a menace and a menace indeed it was to the evils it had set out to remedy.

At that time the big landowners and the big industrialists could pretty well control Parliament between them. British public opinion was reacting against the excesses of the French Revolution. Politically the voice of the workers was as one crying in the wilderness. The days of organized political agitation on the part of the workers and the days of labor political parties were still far ahead. So, without much fuss, Parliament in 1799 passed a law which made combinations of workers to raise wages and for various other purposes illegal. This distinctly depressed the trade union movement for a while, and the impetus toward stamping out of unionism was enhanced by recourse to common law precedents and to other statutes.

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But a reaction came, as reactions always do. The workers resented bitterly having their normal urge toward collective action choked by legislation and judicial action. Certain influential liberals, "new dealers" on their day, no doubt, began to see clearly in the organization of labor a necessary prop of civilization against the gross inhumanities of the factory system as it then existed. Before the business men realized what was being done there was hurried through Parliament in 1824 a bill making combinations of workers legal. There followed closely, as upon the passage of 7 (a), a series of strikes by which the workers sought practically to put themselves in the position where the law had placed them theoretically. In other words, they wished to make a reality of collective bargaining, to be a voice which would never cease insisting that labor should promptly and continuously share in the increasing prosperity of industry as a whole and should continue also to dispute with those who furnished the capital the relative share of income to be allotted to each.

When England began to get over the shock of the new law and realized that the unions were there to stay, employers gradually accepted the situation. For one thing the industrialists found that the unions' growth in power was a slow, orderly process and that adjustment to the demands of organized labor was not of necessity either a heart-breaking or purse-emptying matter. So over the course of years the British trade unions became the accepted spokesman for industrial workers, and the industrialist on the whole fared well under the system, at least he continued to entrust his capital to it. As a result today we see England the most thoroughly unionized of industrial countries, and yet withal the object of present envy is not a few American business men.

The point of this historical sketch is to indicate that a country, which is temperamentally not remotely removed from our own, had its own 7 (a) over which industry was ready to do a considerable amount of fighting, bleeding and dying more than a hundred years ago. Having long since accustomed himself to dealing with trade unions, I suspect that the modern British employer may regard with some amazement the melancholy predictions which certain sections of American business are prone to utter on the menace of organized labor.

The employers' resistance to 7 (a), as evidenced not only in the cases coming before our own and other boards but by the opposition to last year's Wagner bill, is not alone poor economics, in my opinion, but dubious sportsmanship. In a sense, when the Recovery Act was passed, all industry made a collective bargain with labor, one of the terms of which was that they should get 7 (a) in return for industry's rights to combine for its own advantage. Powerful sections of industry have from the first resisted the implications of this bargain. For one thing, many employers have deliberately sought to substitute for self-organization of the workers through labor unions a company-dominated form of organization. I do not intend to argue here the merits of works councils versus labor unions. Indeed, there is really no room for argument on such a theme because one is talking about two phenomena which, though superficially resembling each other in some of their aspects, have fundamentally little economic kinship. The works council, company union, or whatever name you choose to apply to an organiza-

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tion of workers in a single plant which has as its principal object the adjustment of individual grievances and the promotion of certain forms of collective activity, may have, and frequently does, have certain virtues of its own. But whatever its virtues, they are from the point of view of the workers' economic interests, of quite a different sort than those of the labor union which is independent of the particular company, and whose members form a part of an organization national in scope.

As an instrument of collective bargaining on wages, the labor union possessed of financial resources, a determined purpose, and national prestige presents quite a different front to the employer than an amiable and tractable works council. Let us not be misunderstood. The fact that the labor union is in a position to further its demands by resort to strike does not mean that dealings with it must necessarily be conducted on a plane of militancy. Thousands of instances of long-preserved peaceful relations between employers and union labor attest otherwise. There is no denying, however, that the labor union is the sort of organization whose economic strength the employer is bound to respect. It can by welding the united strength of his workers around certain terms drive a more advantageous bargain than the less aggressive and inherently weaker company organizations.

Congress did not in 7 (a) outlaw the company union as such, although it insisted that membership in a company union should not be made a condition of employment. It did, however, forbid the employers to interfere with the self-organization of the employees. The great number of company unions which apparently spontaneously sprang to life just after a labor union had begun to organize arouse, naturally, a certain suspicion in regard to their independent vitality. Too often the employer in one way or another has filled them with the breath of whatever life they possess. This has been factually demonstrated in a considerable number of cases coming before our Board.

If certain employers have sought to capitalize on 7 (a) by encouraging associations of their employees, which they could handle, as against other types of organization whose economic strength they fear, still other employers have sought to establish as legal certain conditions surrounding the bargaining process which again would work to their own advantage and against the interests of labor. Much of the idealistic talk about the rights of minorities in collective bargaining has, I fear, a much more practical basis in the employer's subconscious mind. No one would deny that a minority of workers, or an individual worker, has certain natural rights, or at least natural relationships to his employer, but in the process of collective bargaining on wages and hours and basic working conditions the rights of the minority must be very definitely circumscribed. When an organized minority and an organized majority coexist in the same plant, one may not, reasonably, bargain with the minority for the whole. One may reasonably do so with the majority. Insistence upon minority rights in collective bargaining by the employer enables him to encourage differences and disharmony of purpose among his employees, thus dividing their economic strength to his own advantage. But Congress intended by 7 (a)

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to confer on the employee through collective bargaining strength to match the employer's strength, not to promote employee weakness which would enhance the strength of capital.

The fact that Congress definitely intended by 7 (a) to strengthen the hands of labor does not by any means signify that the employer was thereby invited to throw up the sponge. On the contrary, the invitation was merely to participate in a contest in which the resources for carrying on the struggle would be somewhat more equitably distributed between the contestants. As was said by Mr. Justice Holmes in justification of his opinion that Congress had the constitutional power to outlaw the "yellow-dog" contract, the aim of collective labor action is "to establish the equality of position between the parties in which liberty of contract begins." Collective bargaining with organized labor undoubtedly forces the employer to be more on his mettle in order that he may protect his own economic interests. This fact should not arouse any undue sympathy for the employer unless we are prepared to say that there was no need to bolster the position of labor in our total economic situation. That Congress was convinced that this need existed and was indeed paramount both to recovery and reconstruction, I have tried to show.

Mr. CHAIRMAN. Mr. Biddle in testifying before this committee, was asked a question, I believe, by Senator La Follette in regard to company unions, and he said, when I took the stand, he would be glad to have me comment on that subject. There are also, first, a few things I would like to say in addition to what I have said in this prepared statement.

The question of company unions figured prominently in the testimony before the committee last year, and undoubtedly will do so again this year.

They have been fairly prominent in the deliberations of our Board in the 6 months from July 9 to January 9, the former date, July 9, being the date of the foundation of our Board.

During that period 31 percent of the cases coming before us involved company unions. There is no need, in my opinion, for Congress, by legislation, to express any animosity to company unions, and I do not think this bill does so in any sense.

The bill, however, does recognize, although it is not stated explicitly, that the employer is under a very definite temptation many times to create company unions through which to bargain. The intent of a subsection in section 8 of this bill is very definitely to prevent the employer from succumbing to that natural temptation and from dominating or interfering with, by financial support or otherwise, a company union.

I am going, in a few minutes, to first give you some illustrations taken from our cases, of how employers have interfered with the organization of company unions, and something as to what its effect has been on self-organization. I have spoken earlier of the great increase in the number of workers in company unions since the N. R. A. was enacted. Given an absolute freedom voice between company unions and trade unions, it is hard to say how many workers would prefer one form of organization to the other. All that I am able to say in that connection is to point to the statistics of elections

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held under the old National Labor Board and by the National Labor Relations Board in which workers were squarely confronted with the choice of whether they wanted union or the trade union.

In the elections held by the National Labor Board, 83 elections covering 563 units, 69 percent voted for trade unions and 28 percent voted for company unions, a proportion of about 3 to 1.

In the 103 elections covered by our Board in the first 6 months of its existence, covering 36,000 workers, 56 percent voted for labor unions and 33 percent voted for company unions. The proportion this time was about 5 to 3, as against the earlier proportion of 3 to 1.

The subject of company unions is one that interests me peculiarly, because I have been in two concerns in which company unions existed, and very good company unions. One was the Dennison Manufacturing Co. and the other Filene Stores. Both of those plans of employee representation were instituted by very liberal employers, and have a long and honorable history.

I would say, however, in respect to every company union or workers' council organization with which I am familiar, that it has certain inherent defects as a collective bargaining agency. The ordinary structure of a workers' council plan provides that the employee may present grievances to the foreman, and failing adjustment there he may carry it higher. He usually may have his grievance handled by his representative. The representatives frequently meet with representatives of the management in a sort of hierarchy of steps. That is, if there is a particular subject complained of in the plant, the representatives will meet with the head of the particular department and if the trouble cannot be settled at that stage, a meeting will take place between members of the management representing the entire plant and representatives from several departments. This procedure of appeal while orderly, promotes delay. It has very much the best of the positiveness and directness of approach to the management which the trade labor union can achieve.

Usually amendments of the workers' council or company-union plans can be made only with the assent of the management.

Most important of all, it seems to me, is the employees do not meet in a group to formulate their collective desires. That, of course, has to be contrasted with the trade union, where the members meet in the local and decide what they feel they ought to demand and can fairly demand of the employer. As I say, very rarely does any company-union plan provide for such meetings of employees.

However gradually it may be arrived at, collective bargaining is possible under some of these plans, and our Board has so held in certain instances.

We have objected very strongly, and the Wagner bill enforces that objection, to the payment of salaries to representatives of the employees under these company plans. As a collective-bargaining medium the plans are sufficiently weak anyway, without introducing the corrupting factor of payment of salaries by the employers to representatives. How corrupting that is, we can imagine by figuring what would be the reaction by the rank and file of employees if they found employers were paying salaries to the representatives of trade unions.

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The CHAIRMAN. Do they actually pay salaries in distinction from the amount of money one would have earned in employment?

Mr. SMITH. In a number of plants they do but it is by no means a universal practice. The Goodrich Rubber Co. pays a salary of $15 a month to the representative of its employees.

The CHAIRMAN. That is other than their regular salary?

Mr. SMITH. Yes; that is outside of the regular salary. It pays $30 per month to chairmen of committees operating in the employee-representation plan. In these days $30 per month is a considerable additional sum to put into the pocket of a workingman.

Senator WAGNER. Let me interrupt just a moment, Mr. Smith. I know when I was chairman of the National Labor Board we had several cases of that kind. They were also permitted to pay for time at night, for instance at home, in writing up minutes, or having discussions on matters that were company-union matters. They were permitted to put in a slip, and be paid for the time devoted to these evening conferences.

Mr. SMITH. Yes; I know you have had such cases, but we have not happened to have that particular manifestation of the company system. But, payment is made for leaflets advocating the plan and urging the employees to join it, which are distributed and very widely circulated in the factories, and such a thing would be impossible for the trade union to distribute. We had 3 plans of company organizations, 1 before the World War, which came in before the company-union plan became very active, and involving the Colorado Fuel & Iron Co., at a time when the trade unions were active. Another form of the company union came during the war when participation in labor organizations was also growing extensively. The third, of course, followed the enactment of section 7 (a).

It is very interesting to note the large number of company unions installed in as much as 4 or 5 days before the actual enactment of the N. R. A., or even installed very shortly after.

The N. R. A. was adopted June 16, 1933, and subsidiaries of the United States Steel Co. began influencing the installation of company-union plans on June 10, and the Republic Steel Co. was holding elections for representation on June 16. The Weirton election was on the 22d of June. On June 27, Iron Age, the organ of the steel industry, declared plans were in effect in the above companies mentioned, including Jone & Laughlin Co., et cetera; and it declared parenthetically that the N. R. A. automobile code was approved August 27, 1933.

On August 17 the Chevrolet, Fisher Bodies, and other subsidiaries of General Motors announced that union plans were being announced in their plants.

In October, at the time union labor had organized over 100 locals, the Chrysler Co. announced the formation of its company-union plan.

It is interesting to know that most of the workers who have come under company-union plans since N. R. A. was adopted, have been in the larger companies. The study made by the National Industrial Conference Board, along in November 1933, covered something over 3,000 companies and 1,164,000 workers found that 687,000 of these 1,164,000 workers were under company plans in 23 companies employing over 10,000 each.

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In May 1934 the same organization made another study and there they found that 3 percent of the largest companies had 66 percent of the company unions' membership; and in a half a year's time, a gain of 240,000 members in company unions, 80 percent went to 22 companies.

It is obvious that the big concerns can afford to spend the money to have the people to develop the technique for putting over successfully these company-union organizations, and the smaller concerns would be in no position to do this.

In the cases coming before our Board all but two of the company unions were inaugurated after the introduction of the N. R. A.; all but one was inaugurated after the beginning of a labor union organization. Two were set up during strikes, and one was set up as the result of free balloting between the company union and the outside union. In a few cases balloting was permitted for or against company unions.

As revealed by our cases two methods of interference in self-organization are used by employers in the sponsoring of company unions; first, devices to forestall the labor union organization, including turning off the power and herding the workers in to vote at a particular election for company representatives, and the sudden distribution of leaflets and posting of notices that the company union or workers council plan is now in effect in this plant; the discharge of labor union workers and other forms of intimidation against the union workers; speeches by employers denouncing labor unions and praising the company union or workers council, although they are usually a little too clever to be quite as direct in their talks; the utilization of company lawyers to draw up a constitution for use in the plans. This is a pretty good indication of how spontaneous they are in respect to the workers' wishes.

I do not want to take up too much of the time of the committee, but I think you would be interested if I could read one or two brief extracts from company union situations with which our Board has been confronted.

Senator LA FOLLETTE. From what are you reading, Mr. Smith?

Mr. SMITH. I am reading now from a report on company unions prepared by Mr. Blankenhorn of the staff of the National Labor Relations Board.

Senator LA FOLLETTE. Does that analyze the company union problems that have been presented to the Board?

Mr. SMITH. It does; I think, very clearly. It gives a history not only of the Board's company-union cases, but a history of the company-union movement.

Senator LA FOLLETTE. I think it might be well, Mr. Chairman, to insert that report or study at the end of Mr. Smith's testimony, in the record.

The CHAIRMAN. I think it would be helpful.

Mr. SMITH. I will be very glad to furnish it.

The CHAIRMAN. You want to call our attention to some extracts from it, however.

Mr. SMITH. Yes; and it will not be long, but I think they are more informative than a lot of theoretical argument on this matter.

First, I would like to call attention to the decision of this Board in the Kohler case. This plant is known to all of you to be in the

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State of Senator La Follette. They had a very severe strike there, and the institution of its company union was a factor in causing the strike. This is what our decision finds in regard to the Kohler Workers Association:

> There was suddenly formed * * * an organization known as "The Kohler Workers Association", in two days in September 1933, a very short time after Kohler employees had obtained a labor-union charter from the A. F. of L. Following the union's Labor Day parade, the chief chemist, together with the working foreman and one other "at about dusk * * * waited upon Mr. Walter Kohler, the company's president, at his office and asked his permission to form, within the plant, an organization of workers." They were referred to the president's assistant, who "frankly states that he had theretofore made a study of various company-union plants, and further states that he assisted the men in drafting the constitution for their proposed organization."
>
> From the time when this conference ended, well on in the evening of September 6, events began to move with curious rapidity toward the formation of what became the Kohler Workers Association. Thus, at 8.30 in the morning of the very next day, the three men who, according to their story, had the night before first expressed a thought about such an organization, were meeting with an organization committee of 82 workers, and at this meeting produced application blanks for membership in the proposed organization and an elaborate constitution in mimeograph form. They had furthermore arranged that this 8.30 meeting should be addressed by the president of the company, and in accordance with their plans, Mr. Kohler appeared. Not only was this organization meeting held, but on the same day meetings were scheduled for each of the four shifts of workers in the plant. Each of the meetings was addressed by Mr. Kohler, who, except for the temporary chairman, was the only speaker, No prior notice was given to any of the workers as to the purpose for which these meetings were to be held, the men being told only that they were to be addressed by a prominent speaker. On arrival at the meeting place, the men found not only their company president prepared to address them, but also found their foremen and other executives throughout the room. The printed application cards for membership in the Kohler Workers Association were on hand, and pencils ready to facilitate their signing. Mr. Kohler in his speeches to the shifts reviewed something of the business conditions which had been met by the company, pointed out that in his opinion these conditions required cooperation between employers and employees and commented favorably on the proposed organization of the Kohler Workers Association.

He went on to state that the company would pay all of the expenses of the association, the meetings to be held on company time. Application cards for membership stated that failure to join the association would not militate against any worker, but the cards required that the applicant sign his name and number. It was thus impossible for any worker to secretly register his approval or disapproval of the proposed association.

I think that sufficiently gives the picture in that case, and here is the *Chicago Motor Coach Co. case.* This was a company union known as the "Chicago Motor Coach Fraternity," initiated by the company in 1924. Incidentally, until the Recovery Act was passed, which laid emphasis on the employer-worker associations, no employer ever made any bones about organization of a company union. It was considered a natural step for the employers to take in the line of promoting relations between the company and the workers, and many associations formed under that plan have had very excellent results.

It was only when the Recovery Act was passed, recognizing, as it did, that employees were to be self-organizers if they were to be successful in the bargaining relationship, that the employers, anxious to demonstrate in their particular plan, that it is better than any

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other plan which is formed free of interference and by the spontaneous action of the workers.

In speaking of the Chicago Motor Coach Co. here the finding reads:

The record discloses a concerted drive by the fraternity to induce the employees, either personally or through their immediate families, by persuasion, force, threats of force and of discharge to refrain from joining the complainant union or to disassociate themselves therefrom. While the company disclaims responsibility for the acts of the fraternity, the latter either purported to speak for the company or quoted freely statements made to them by the president of the company. * * * It is clear that the company has cooperated in, if not instigated, all of these activities. In its house-to-house campaign the fraternity obtained from the company telephone numbers, otherwise unavailable, of active union men.

In the *National Lock Co. case* Senator Wagner's Board found the following:

The formation of the employees' representation plan was described in considerable detail by the witnesses for the company at the hearing before this Board. An election was held within the plant for the choice of employee representatives on October 3. This plan was promulgated by the company and was explained to the employees less than an hour before the election. A meeting of the employees in each department was called by the management. The works manager admitted that he had not only selected those who were to explain the plan to the employees, but that he had also explained it himself in several of the departments of the plant. All of the employees were instructed to vote. Section 7 (a) was not read to them, and they were not afforded an opportunity to pass upon any other form of organization of representation. Nominations were oral. The judges of the election were selected by the employees. Various officials of the company called off the names of the employees as they proceeded to the ballot box. The ballot itself was secret, but the company officials were in a position to know whether or not an employee participated in the election. Immediately after the election the length of the terms of the individual representatives were fixed by pulling numbers out of a hat. The company not only proposed that the terms should vary from 1 to 3 years, but suggested and supervised the device which was employed to determine the length of each representative's term. No constitution or bylaws were prepared for the plan either before the election or since, and no collective agreement with the management has ever been reached by the elected representatives. At least two of the elected representatives. At least two of the elected representatives are assistant foremen.

There are just two more of these instances I want to call your attention to, both of them flagrant. In the case of Tamaqua Underwear Co. of Tamaqua, Pa., the record disclosed the following interesting facts:

During April and May 1934, the Amalgamated Clothing Workers of America succeeded in enrolling in its ranks a number of employees of the Tamaqua Underwear Co., of Tamaqua, Pa. On the afternoon of May 25, D. J. E. Auchmuty, the general manager of the company and its guiding spirit, addressed the employees at a meeting in the plant which had been called and organized by several employees in supervisory positions. At this meeting, Dr. Auchmuty announced the formation of what he and all other concerns called a "company union."

* * * * * * *

As a result of the efforts of the Philadelphia Regional Labor Board, and under its supervision, an election was held on June 20, in which a majority of the employees expressed a desire to be represented for th purpose of collective bargaining on the Tamaqua Employees' Union, the "company union." On June 22, Dr. Auchmuty, for the company, and Allison L. Hallman, president, for the "company union," signed the following:

"It is hereby agreed that the Tamaqua Underwear Co. agree to recognize the demand of the Tamaqua Employees' Union for a closed shop, beginning June 22, 1934."

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The opinion of the Board then further states:

The facts of this case do not require us to determine, in the light of section 7 (a) of the National Industrial Recovery Act, the validity of a closed-shop agreement with a bona fide labor union, resulting in the discharge of employees not joining the union. We need to decide only whether the Tamaqua Employees' Union is a company union within the intent of that part of section 7 (a) which provides that "no employee and no one seeking employment shall be required as a condition of employment to join any company union." The hands which guided its organization were those of employees who were in an executive or supervisory capacity; and its present destinies were controlled not by the female stitchers and cutters of which almost the entire membership is composed, but by an assistant forelady, Mrs. Evans, a comparatively well-paid machinist, Hallman, and a male employee of the shipping department. If Dr. Auchmuty did not initiate the union, he has at least fostered its growth with considerable enthusiasm by advising his employees to affiliate therewith and by permitting it to use the plant for meetings and his office equipment for certain typing.

The character of the union is further indicated by the agreement it negotiated. A collective bargaining agreement such as this, which provides merely for the closed shop, is an oddity in the annals of labor relations. The organizers of the union, Mrs. Evans and Mr. Hallman, negotiated the closed-shop agreement without, it seems, consulting the membership, and obtained the consent of Dr. Auchmuty without debate or deliberation.

Incidentally it may appear before your committee, and it has suddenly been the situation in many places, that wage increases have been brought about through company unions, this seeming to invalidate the contention that they are not primarily organizations for collective bargaining.

I have not made an exhaustive study of the subject, but in connection with it I would like to point out I do know definitely one or two such cases have come before our Board where immediately after the company union was organized wage advances were given. Sometimes this was given to the company organization when it had been definitely refused to the labor union in preceding negotiations.

The motive is perfectly apparent, and I think therefore that statistics of wage increases obtained through company unions should be acquired with the thought of the employers' motive in granting those wage increases, in mind.

This is my last illustration, from the Ames Baldwin Wyoming Co. in West Virginia. In this case, in September 1933, various employees of the company began the formation of a local labor union, and thereafter in the same month secured a charter from the American Federation of Labor, chapter no. 18658.

In June 1934 the local union presented to the company a request asking that its existence be recognized, that its members be granted seniority rights as of September 1, 1933, and that it might be permitted to have a bulletin board in the factory.

On June 25, 1934, and without any prior notice to the workers, the power in the Ames Baldwin Wyoming Co. plant was shut off and every workman was required by his foreman and superintendent to attend a meeting of his department. No option was given to the workers as to whether or not they should attend this meeting and piece workers were required to be present at their own expense.

Upon the arrival of the various departments at the meeting room. the men found Mr. Richard Harte, president of the company, who took charge of the meeting and addressed the men for close to an hour.

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To each of the groups of workers Mr. Harte, as president of the company, discussed the union requests, stating that he did not care about the bulletin board, but that under the law he could not recognize the union unless it represented 100 percent of the employees in the plant, that he would be jailed if he did so, and that he would not recognize the uion even if he could. As to seniority rights, he said that under the law the company was given the right to determine which of its workers it would hire and discharge. The president continued to state that organized labor unions were of very little value to workers and that not more than 10 percent of labor was so organized. He extolled the advantages to be obtained from company unions and concluded his remarks by stating that he could, if he wished, do one of three things—either shut the plant down, tear it down, or move it away. None of this content of his various speeches was denied by Mr. Harte although he submitted an affidavit bearing upon another point in controversy.

After this speech by Mr. Harte, the men were lined up in readiness to vote.

Each man was handed a ballot which contained, among other things, the following:

> Do you wish to be represented for the purpose of collective bargaining under the N. R. A. by: Employes' representation plan (A, B, W. Co. union)?

The men then went to a booth made of hinged screen. At least some of the men, while voting, were accompanied in the booth by others who were also voting.

The marked ballots were then deposited in a ballot box and the men checked off by a company official against a pay-roll list as they left the ballot.

No tabulation of the number of votes cast for or against the plan was ever given, except that a notice was posted stating that 80 percent of the men had approved the plan. The company testified that the tabulation of ballots was made by an outside accountant employed for the purpose.

On June 26, the day after this balloting, each employee of the company found in his time-card slot a printed constitution of the company union. None of the men had ever seen this constitution before. The constitution provides, among other things, that a representative of the workers must have been in the company employ for at least 1 year. It further provides that "as soon as the ballots are counted the result shall be posted." It finally provides "this plan shall immediately become operative upon a two-thirds affirmative vote of the employees."

No subsequent vote was ever taken to afford an opportunity to the workers to pass on the plan as set up in this constitution, the vote taken before the plan was revealed being relied upon to put the plan in operation.

During this same day, namely June 26, 1934, the power was again shut off in the various departments and the men, without prior notice, were again forced by their foremen to attend a meeting where they were instructed to vote for the purpose of nominating candidates to represent them under the company-union plan. In one department (sawmill) the men, after arrival at the meeting place and being told the purpose of their presence, refused to vote and returned to their

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work. Ten minutes later the power in their department was again shut off and the men were forced to return to the meeting room where they found the president of the company. The president himself directed the men to vote, but the men, after expressing their unwillingness to do so, again refused to vote and left. For a third time the power was shut off in their department and they were forced back to the meeting place and, on that occasion, all but one of the men in the department finally voted. On the next day, June 27, 1934, the power was again shut off throughout the plant and all the men were again forced to vote, this time to select from those nominated on the preceding day the ones whom they desired as their representatives.

The CHAIRMAN. What do they produce at that plant?

Mr. SMITH. They produce shovels.

The CHAIRMAN. Is that a part of the Ames Co. in Massachusetts?

Mr. SMITH. I think it is connected in some way. I cite those cases so that this committee will realize when there is talk of interference by employers in the organizations of the workers, it relates to very specific acts. There are employers who are anxious to interfere with self-organization of their workers for their own selfish reasons, and it is certainly in conformity with the spirit of our American traditions, and certainly with the objective of this bill, which aims to enhance the economic strength of the workers by self-organization, to require that the employer interfering with the process by financing it or otherwise, should be eliminated.

I want to endorse the amendment offered by Mr. Biddle providing that the employers should be required to bargain collectively.

The CHAIRMAN. That is the fifth unfair practice.

Mr. SMITH. Yes; that is correct. I also endorse heartily the proposal for keeping this board independent of the Labor Department or any other Department, as set forth in the terms of this bill.

I have nothing to add on that point except to state this, we have serving as voluntary members of our regional boards more than 600 individuals at the present time. Two hundred and forty-eight of these persons are employers of labor, including incidentally the president of the National Manufacturers' Association, Mr. Bardo. I have a very definite feeling that we would be unable to get people of the caliber whom we have now, to serve on these boards if its general status was merely that of one of a number of divisions in the Labor Department. A great deal of the success of the regional boards' work has been due to the type of men representing both the public, the employers and labor, that we have been able to attract to it, and I should hate to see that presige endangered by removing the independence of the board.

Senator WAGNER. Mr. Smith, in line with the activity in organizing these unions for the purpose of collective bargaining power of the workers, in a letter I received this morning from a worker in a plant in Indiana, where the workers are asked to come in and sign a petition opposing the bill and the workers have been told if they do not sign the petition it meant the loss of their jobs, therefore, the writer of the letter says for me not to take too seriously the petition when it arrives in Washington because they are under com-

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pulsion to sign it, and this letter I propose to submit to the committee.

The CHAIRMAN. Is that all, Mr. Smith?

Mr. SMITH. Yes. I desire to present the statement of Mr. Millis, also a member of the National Labor Relations Board, who cannot be here this morning.

The CHAIRMAN. The statement of Mr. Millis shall be inserted in the record at this point.

STATEMENT OF H. A. MILLIS

Mr. MILLIS. My statements concerning S. 1958 should be given such weight as you think my background and experience call for.

By profession I am a university teacher of economics. Beginning in 1902, I have taught at the University of Arkansas, Leland Stanford Junior University, The University of Kansas, and the University of Chicago where, since 1928, I have been chairman of the department of economics. For some years I have been a representative of the American Economic Association on the Social Science Research Council, also a member of the board of directors of the Bureau of Economic Research.

My special field of teaching and research has been that of industrial relations. Because of my interest in such matters I was selected as impartial chairman in the men's clothing industry of Chicago and served in that capacity from September 1919 to March 1923. During the next 10 years I was a member of the International Arbitration Board maintained by the American Newspaper Publishers' Association and the International Printing Pressmen and Assistants' Union. At the same time I served on numerous local arbitration boards in Chicago, chiefly in the printing and shoe industries. In July last I became a member of the National Labor Relations Board and am still serving in that capacity while on leave from my university teaching and administrative work.

I regard Senate bill 1958 as the next and a needed step in Federal legislation relating to industrial relations. It may well be that further legislation will be desirable later on. Perhaps due notice of changes in wages and working conditions and opportunity for conference and mediation before severance of relationship by strike or lockout will be called for. Possibly a rather full Federal code would be needed relating to employers' associations, labor organizations, and the relations between these were all of these matters within the authority of the Federal as over against the State governments. As a next step, I approve of the Wagner bill with no special reservations. I am of the opinion that it should be enacted into law at this session so as to carry on the work now being done by Federal agencies and so that the work may be done more effectively.

As an economist and one somewhat experienced in the field of industrial relations the "declaration of policy" receives my general approval. It assumes as sound the principle of collective bargaining with the organization of labor necessary therefor. I agree.

I wish to state my position on collective bargaining very briefly. If my statement provokes questions, I shall be glad to answer them insofar as I can.

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Under the conditions obtaining in most modern industry, the principle of collective bargaining is sound. Of course its application may in concrete instances be unfortunate and create problems just as the operation of any other device or human institution may create problems. I hold no brief for the occasional monopolistic practices that occur, or for the occasional racketeering, or for any misguided policies of organized labor, any more than I hold a brief for trusts, or real estate or business rackets, or for antisocial business methods. The legislative and administrative task is to incorporate sound principles into our social life and to defend against abuse of rights accorded.

As an economist and practical student of industrial relations I maintain:

First. That the great majority of wage-earners are employed under such conditions that they must act in concert with reference to wage scales, hours, and working conditions if they are to have a reasonably effective voice as to the terms on which they shall work. Without organization there is in most modern industry unequal bargaining power, for the individual worker, as compared to the employer, is ignorant of the market situation and of employment opportunities; he has little or no reserve power in funds in hand; he fears to push a claim vigorously lest he be discriminated against or lose his job; he is likely to reason that it is better to accept or to retain employment on adverse terms than to lose working time while waiting for another job; he finds himself, unless peculiarly fortunate, pitted against other seekers of work and the cheaper man is likely to be the successful bidder; if he has employment, the terms of his contract, like the railway time-table, is "subject to change without notice."

Second. That in pre-code days and only to a lesser extent since the codes were adopted, the average employer, however appreciative he may have been of the value of good employment conditions and the needs of his workers, has been under the necessity of reducing costs because of the money saving, chiseling practices of his less socially minded competitors. If some firms have paid low wages or operated long hours, other firms have probably had to do so; if one firm has taken orders on just any terms, say to cut, make, and deliver a suit of clothes in 3 days, or even in 24 hours, its competitors have had to do likewise or lose business. Informed labor leaders and observers recognize that most employers really wish to do what is fair but that competition frequently prevents them from doing what they would like to do in labor matters. Nowadays we hear relatively less of equalizing bargaining power between an employer and his employees—my first point, and more of the need for standardization and control, of placing all firms in a market on pretty much the same plane of labor costs, and of having competitive success depend largely upon managerial ability, sound organization and the like.

Of course if there were perfect mobility of labor, keen competition for labor, and no concerted control of wages and hours by employers, the situation would be substantially different from what it has been and the case for collective bargaining would be less conclusive in modern industry.

I am aware that many of my academic brethren assume that these conditions just mentioned are generally true, and reason that in the absence of such friction in the market, wages, hours, and all the

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rest of it rather steadily adjust themselves to what industry, and consumers, should and can bear. The truth, as I see it, is, however, that the competitive demand for labor, while important, does not go far in protecting the workers against long hours, excessive overtime, fines, discharge without sufficient cause, and objectionable working conditions. This is explained in part by the fact that employers are as a rule not actively interested in the long-run effects of hours and working conditions because of a lack of accurate knowledge of these effects, individual and social, and because the labor contract is ordinarily terminable at will. Insofar as hours are concerned, there is fear that a reduction will mean reduced output and increased cost, or that one reduction will develop interest in another. That it is exceedingly difficulty to return to a longer day or week when a short one had been in effect is well known.

The explanation is found in part also in the fact that workers accept employment chiefly in view of the rate of pay and possible earnings and accessibility of the place of employment. Long hours, much overtime, discrimination, inconsiderate discipline, and bad working conditions may give rise to a large turnover of labor due to many quittings; but such a turnover has not generally led management to ascertain causes and to remedy them. Do we not find 20 firms with neat turnover figures which do nothing with them for one that seriously uses them in an attempt to improve management?

Finally, the explanation is found in part in the fact that there is usually keen competition in the market for the product as well as competition for help. In order to extend business, to hold business, to meet the needs and whims of customers with reference to style and delivery, to make favorable prices, and to maintain profits and dividends, these things are likely to be taken out of labor. And, if there is monopoly, the situation may be even worse.

One is thus driven to the conclusion that hours of work and conditions of work—things which intimately concern workmen, are best decided collectively—through legislation or through collective bargaining, and some of them are not easily subject to legislative control. This is particularly true of a reasonable degree of security of tenure.

The case for collective bargaining is only less strong with respect to wages.

In a boom period, when prices are rising and profits are good, it is true that business is very active and bidding for labor generally becomes keen. It may even develop to the point of stealing help. At such times rates of pay advance rapidly. But in more normal times, though progress is being made and most workers are finding employment, wage advances are hesitantly offered, and there is more or less room for under payment, even for a considerable degree of exploitation. For there are groups with very limited mobility, and new accessions to the labor supply and displaced workers are more or less eagerly seeking employment on such terms as their limited individual bargaining ability will secure for them. It may then to wages paid elsewhere.

Within the given industry or locality there are the lower obstructive wages paid by hard-boiled managers. Piece rates are nibbled here and there, more work or better quantity is exacted, and the worker is stretched out. All the while in most plants there is a bad

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rate structure, slowly corrected, when corrected at all. The fact is that wages depend to a considerable extent upon the policies of the employers, as so many investigations have disclosed. To secure evidence, study, among others, the needle trades, the bituminous-coal industry, the cleaning-and-dyeing industry, the laundry trade, the manufacture of candy, and the cotton-textile industry.

Moreover, one must not assume that there is no element of monopoly or concerted control in the demand for labor or in fixing wages. For that is by no means true. An employer, or a group of employers acting in concert or just individually fearing to create problems, may dominate the employment situation in a community. So it was in the mining of anthracite coal between the middle of the seventies and the turn of the century when collective bargaining was renewed. Wages were pegged, payment for timbering and "dead work" was reduced or eliminated altogether; coerced purchases at company stores charging high prices, and powder sold at a profit of 200 percent, took the larger part of the earnings of the miners. Even in a city like Chicago, an industry may dominate a large community and the firms engaged in it may control the situation within rather wide limits. Going beyond this, I could cite a number of instances where associations of manufacturers or merchants or publishers have fixed scales, or, indeed, maximum wages to be paid and have enforced them more successfully than any American State has enforced its minimum wage standards. How many such instances there have been or are no one can know, but there is good reason to believe they have not been so exceptional as the uninitiated think. They have real significance in the real world of employment.

Third. That a measure of control of wages is necessary if the needed relationship between consuming power and production is to be maintained and general instability checked.

I have spoken of the need for organization of labor and collective bargaining if workers and the typical employer are to have substantially equal bargaining power and if conditions are to be standardized and a plane of fair competition is to be established in industry. More recently a new doctrine has been invoked, not only in support of collective bargaining in defending labor's wage interest but also in furthering and obtaining a higher stadard of living for the wage earners. I refer of course to the doctrine of high wages and mass purchasing power which has played an important role in this country in recent years and which underlies so much of the "new deal.''

The doctrine is that wages must be made high and kept high to provide the mass purchasing power required to maintain a market outlet for goods produced. As often stated, the doctrine is open to criticism because it makes too much of the idea of a limited market. Very frequently there is failure to realize that the whole value of what is produced is distributed to labor, management, and the owners of property employed—that each dollar, whether obtained as wages, interest, or profit, has potential buying power. Moreover, it frequently is not fully realized in practical dealings that there must be prospect of adequate profit and adequate return on investments if the wheels of industry are to turn and afford employment. The doctrine does, however, contain a large kernel of significant fact.

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The rate of saving and investment, the amount of speculation and room for error in forecasting the market, vary with the distribution of the industrial product.

Other things equal, the smaller the share going as wages, the more rapid is saving and investment in productive capacity or the alternative, speculation in stocks and the like, and the greater the risk of industrial miscarriage. As Dr. Moulton has so splendidly shown in his recent book on the Formation of Capital, investment in increased and improved facilities for production—that is, capital in the social sense—is limited by the possibilities of consumption. The fact is that there is a close relation between consumption and such investment. While not keeping even step, the two go hand in hand.

Additions to and replacements of productive capital must be supported by capacity to buy and consume. When saving is greater than required for the capital equipment needed to satisfy consumption, the excess savings find a foreign outlet or find a place in the speculative market. Such was the case during the post-war years down to 1929 when speculation ran rife. An uneconomic distribution of the national income was one of the causes of the depression which then ensued.

Everyone is interested in recovery. Everyone should be interested also in a lasting or durable recovery. Profit must be in prospect if there is to be recovery, but if recovery is to last, there must be a better distribution of the national income than we had during the twenties. Everyone should be interested in reform to that extent if he has the longer run, stability, and the social good at heart.

Fourth. That if and when collective bargaining is definitely freed from undue militancy, as it can be when wise management and good labor leadership are brought into cooperation, special problems connected with collective bargaining clear up and there are opportunities for gain to all parties. Reference may be made to union-management cooperation in railway shops. Such cooperation did not begin in fact nor has it been limited to those concrete instances. There has been much of it in organized industry and it can be greatly and profitably extended with the exercise of patience and brains. Many employers have found that they can conduct their business more satisfactorily on a union than on a nonunion basis.

Such is the positive case for organization of labor and collective bargaining. But is not an alternative to be found in standardization and control through law? More specifically, do or cannot the codes adequately safeguard the legitimate interests of labor and give a sound distribution of the industrial project? It is frequently said that this is or might be true.

Much is to be said for the codes and many of them should be continued indefinitely in revised form. They have given the widest application of the principle of the mandatory minimum wage which has redounded to the immediate benefit of common labor particularly, and they have brought the work day and the work week under effective control for the purpose in mind. But the codes have all too frequently been accompanied by short-sighted price fixing and price maintenance, which curtail consumption and the volume of production and employment. More important, they evidence the

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effectiveness of pressure groups. What a code contains depends very much upon whether labor is effectively organized and articulate. Code administration depends almost as much upon the same thing. Pressure group must be balanced by pressure group under democratic government.

I, therefore, maintain that organization and intelligent and honest collective bargaining has a sound basis in economics.

In this rather long statement I have explained my general approval of the declaration of policy of the Wagner bill. Permit me now to make some observations on the several sections of the measure.

This proposed measure, it should be noted, would replace existing legislation expiring June 16, next, and would be effective indefinitely. In other words, it is what may be called permanent legislation when adopted.

Next, the proposed measure applies, independently of codes, to all industries involving interstate commerce, except the governmental, railway, transportation, and domestic service (sec. 2, (2) and (3)). As interpreted, the existing legislation has applied to coded industries only and to firms signing the President's reemployment agreement. The extension to industries not under codes is very desirable. Rights and obligations should be the same under the law without regard to codes.

The bill seeks, very properly I think, to provide for a National Labor Relations Board and incidental agencies independent of executive branches of the Government. Such has been the fact under Concurrent Resolution No. 44 and the Executive order establishing the present National Labor Relations Board.

The proposed National Labor Relations Board would have functions similar to those of the Federal Trade Commission and certain other independent agencies of the Government. As a quasi-judicial agency, it should be, and should be known to be, independent of influence by any executive officer or department. Only so can it in the long run function without suspicion of non-Board influence. Only so can the ablest, impartial men be secured for and retained in service as members of the Board. Needless to say, the personnel of the Board and the direct, unquestioned responsibility of the Board are of the greatest significance in connection with the question as to how the law will be interpreted and administered. An able, neutral well-balanced, independent, politically detached board, with undivided responsibility, is essential. I should go so far as to say better have no law and administrative agency at all, unless the agency is of the type envisaged by the drafters of the bill.

While strongly of the opinions just expressed, it might be well through the act to establish a special relation between the Board and the Director of the Budget. Budgetary control provided for in that way might be desirable.

While I am firmly convinced that the Board should be independent of all executive officers and departments, it is highly important that there should be the closest cooperative relationship between it and the Secretary of Labor and the Division of Conciliation. Efficiency in operation requires this; without it related functions might lead to misunderstanding and conflict. The relationship I have

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specifically in mind is that developed by the Secretary, the Division and the present Board soon after its organization in July 1935.

The Board proposed would have no conciliation function in ordinary industrial disputes; that function is increasingly well performed by the Division of Conciliation; the Board, in addition to investigating and informing itself of the activities of industrial boards, would limit itself to so-called "7 (a) cases." Through its agencies or by its own immediate efforts, it would obtain for the employees their statutory rights so far as possible without formal hearings and decisions, and render decisions in those cases in which its good offices did not effect this result.

In my opinion an independent but cooperating board, such as described, would render the Government the best and a valuable service.

I wish to comment next on sections 7 and 8. These are designed to define more accurately and to clarify section 7 (a) of the National Industrial Recovery Act.

The common-law and statutory rights of self-organization and of bargaining collectively through representatives of the workers' own choosing have been partly nullified by certain practices and devices. One of these has been the black list which has long since been outlawed, but with little effect because of its nature. Another has been the individual or yellow-dog contract which was declared contrary to public policy and unenforceable in the Norris-La Guardia Act and in the statutes recently adopted by a number of States. The employer, however, except under the emergency legislation, remained free to discriminate against union men and to thwart self-organization by workers in different ways. One of these devices was the employee representation plan, more frequently than not imposed upon the workers, and designed as insurance against union organization.

Section 7 (a) of the National Industrial Recovery Act and sections 7 and 8 of the Wagner bill have a common object, namely, to give the workers the same freedom to organize as they choose, as employers have to organized employers' associations and trade associations. Nothing more is involved than equalization of the law as between workers on the one hand and employers on the other.

Paragraph 2 of section 8 is necessary if the right to organize as the workers wish is to be reasonably well safeguarded. No one should or can question the fact that a considerable number of sound employee representation plans have been properly introduced and have operated in a manner satisfactory to the workers as well as to the employers. For one, I should not wish to see any interference in such cases. It is a matter of common knowledge, however, that employee-representation plans have frequently been virtually forced upon employees; the employees had no real voice in the matter. Only less frequently have these plans been wholly, and perhaps designedly, inadequate for the purpose of collective bargaining. Furthermore, many of the plans have been dominated by the employers and their agents. A large percentage of the cases coming before the National Labor Board and the National Labor Relations Board afford excellent illustrations. This sort of thing must be placed under effective ban of the law if the right to organize and to

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bargain collectively, possessed by employers, is to be possessed by labor. This, and this alone, is the object of and expected to be the result of paragraph 2. The paragraph only prohibits interference with self-organization, employer domination of labor organizations established and subsidies to a preferred type of organization by payment of salaries or/and expenses. The thought is to permit workers to organize representation plans or unions, as they may wish, without coercion or undue influence by the employer.

Much has been said and more will be said to the effect that employee representation plans establish a desirable, cooperative relationship and that unions are based upon the theory of the class struggle. Both parts of any such statement are justly open to criticism. It is true that representation plans tend to and usually do further a cooperative relationship. But do, or can, such plant or firm organizations generally function effectively in introducing and maintaining standards in competitive industry? How can a limited agency function effectively in a wide market situation? What is needed is a cooperative relationship in industry where employer and workers are both dependent upon the value of what they jointly produce, and also fair conditions and terms of employment.

Sometimes labor unions are organized and operate upon the theory of the class struggle. Usually they do not. It is my conviction that, with very rare exceptions in the United States, our militant unions are quite as much the product of employer opposition to labor's right to organize and to bargain collectively as the product of revolutionary theory or erroneous labor views and practices. My observations and experience extending over a period of more than 30 years convince me that the chances are greater than 9 in 10 that when extreme things are undertaken by labor organizations extreme things have been or are being done on the other side. The fact is that these is little difference in the general social philosophy of American workers and American employers. The fact is that, with rare exceptions, when collective bargaining is engaged in for a time, adjustments are easily made and a cooperative relationship, with rough ideas of fairness, is developed. It is the function of government, through the supplying of facts with reference to business trends, cost of living, and the like and by conciliation and provision for voluntary arbitration and also by investigation and report, to smooth the way of collective bargaining and to develop correct ideas of fairness.

Last year, I believe, it was urged that the bill then under consideration should be amended to prohibit coercion and interference with workers by labor as well as by employers. That view has been frequently expressed in recent months. In my opinion, poor analysis lies behind the suggestion; I do not see the logic of wisdom of incorporating in the bill any such suggestion.

As a matter of logic, the bill should prohibit labor organizations from coercing employers in the self-organization of employer associations, as they have sometimes done in cooperation with these associations. That is unnecessary, however, for it is unlawful. Coercion of labor by labor alone needs discussion.

Employers and their agents, and organized workers coerce and interfere in rather different ways. Enthusiastic union members and

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union agents may coerce workers in four ways: First, by physical violence; second, by threats of violence; third, by use of opprobrious names; fourth, by unionization through pressure of the closed union shop. There is abundant State and municipal law against actual and threatened violence and against the use of epithets and opprobrious names. Frequently the closed union shop, especially if it would involve discharge of employees for nonmembership in a union, is under the ban of State law. It is evidence that it is the thought of the drafters of this bill not to interfere with State law upon the subject. This, I think, is desirable. The closed union shop is likely to cease to be an issue and practically to disappear when active employer opposition to organization and collective bargaining and discrimination against union men cease. That is the conclusion to be properly drawn from British and other foreign experience.

I approve of the proviso contained in (3). In spite of the contentions of many persons that section 7(a) of the National Industrial Recovery Act outlawed the union closed shop, I am convinced that this was not the intent of Congress. The object of the proviso is merely to permit, so far as Federal law is concerned, employers and unions by mutual agreement to provide for the employment of union men only where a majority of the employees in the collective bargaining unit are already union members.

Perhaps the most contentious provision of the bill is found in section 9. I refer to majority rule. The section would give legislative confirmation to the rulings of the National Labor Board in the Denver Tramway and to the rulings of the National Labor Relations Board in the Houde and other cases. This point, I am sure, has been well discussed by those who have preceded me so that only the briefest discussion will suffice.

Majority rule is not exclusive of any individual bargaining that does not violate the terms of a collective agreement or of the presentation of grievances by individuals or by groups of workers. All it means is that the representatives of an established majority in an appropriate unit shall be the exclusive representatives of all employees in that unit for the purpose of collective bargaining in respect of rates of pay, wages, hours of employment, and the like—where there must be standards or the common rule, which should be settled for a period of time. Of course, there must be rules or practices with reference to hours, overtime, lay-offs, and there must be standards for fixing individual or specific rates of pay and those rules and standards sound management must apply to all. If they are to be established through collective bargaining, the bargaining must be done by the representatives of the majority, by the representatives of a minority, or by representatives of all groups selected under the rule of proportional representation as in the automobile industry.

Nothing can be said for dealing with first one group and then with another, except that it makes is possible for the employer to play off one group against another and thus defeat real collective bargaining. Furthermore, any such practice means instability, jealousy, and nuisance in administration. These things all too many employers have been willing to endure for the sake of undermining organization and collective bargaining in what was hoped to be a short-run under

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7 (a) incorporated in an emergency measure. No employer could sensibly endure the consequences for more than a short time, for production cannot be carried on in chaos.

This discussion of majority rule should not be dismissed without reference being made to the position of the National Association of Manufacturers and the United States Chamber of Commerce. The position taken is one of opposition to majority rule for labor but for majority rule in trade association matters. The opposition rests largely on the supposed freedom of workmen to do as they please, to organize and deal through two or more organizations and to hold off and bargain individually as and when they choose. It would appear that the same argument would apply equally well and quite as logically to trade association matters. The fact is that there is the same ground and, if there is to be efficient standardization and control, the same necessity for majority rule in both cases.

Proportional representation of all groups is plausible and democratic and finds an analogy in the Government arrangements of some of the more liberal countries. Just how it will function in collective bargaining in industry remains practically untested by experience. Yet certain things can be said concerning it with a degree of assurance.

Such an arrangement in a plant or industry tends to keep the organizational situation open and plastic, while majority rule tends to maintain and to increase the strength of the representation plan or union which has succeeded in obtaining a recognized majority. But on the other hand, and because it does keep the organizational situation open and plastic, it inevitably tends to place a premium on continued division of the workers and to make for jealously, friction, and struggle. This will be true except where the matter of which organization to belong to is of indifference to the workers, and in that case there is no reason why they should not belong to and work through one organization. So long as there are two or more rival organizations functioning through a composite committee or council, differences will be exhibited in conference. There is likely to be scheming to gain prestige with labor by advocating heavy demands or to curry favor with management by advocating light ones; there is almost certain to be protest voiced against any decision on policy. In other words, friction and jealousy between organizations will almost certainly be exhibited by their representatives on the committee or council. The employer or employers will almost certainly know precisely what labor will take while labor will not have corresponding knowledge of how much will be given. Moreover, under such an arrangement the workers will certainly not cooperate in making a show of strength by withdrawing their labor power. In bargaining, such a plain is little stronger than an employee representation plan which gets most of its power from prospect of arbitration or from the threat of unionism. Perhaps a proportional representation plan must be a plant or firm scheme of representation; there will be no organization to bargain with and to secure standards for the entire industry or such of it as is important in a given market; there will be in the picture nothing corresponding to the international usually behind and over the local unions, advising them, strengthening them, supervising them, disciplining them, and usually seeing to it that they

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stand by collective agreements entered into. Not only is labor likely to be weak in bargaining under a scheme based upon proportional representation; there will not be the same centralized responsibility for finding solutions for production or cost problems as has been experienced in the cases of such union organizations as the Amalgamated Clothing Workers and which has proved to be of much value to the manufacturers.

Beyond this, when a committee or council divides in conference, which may be expected to occur as the usual thing, a majority vote must decide. In other words, the representatives of a majority organization, if they stand together, will control. Proportional representation does not get away from the principle of majority rule.

The really weak and not infrequently unfair part of the present emergency legislation is found in the provisions for the enforcement of the law. In an effort to remove this weakness and to do more even justice, this bill would change radically the enforcement proceedings.

In an increasing percentage of cases, the decisions of the National Labor Relations Board have not been complied with, and only partly because certain issues have not been finally determined by the courts. It is hardly too much to say that noncompliance has become so general that there is not the desired leverage for the purpose of settlement at hearings held by the regional boards or by the National Labor Relations Board itself.

When compliance with its decision is not obtained, the Board may send a case to the N. R. A. for removal of the blue eagle, and of the Department of Justice for prosecution. These are the usual procedures available. But the removal of the blue eagle is not always a fair penalty, for in some cases the blue eagle is of no consequence while in others it may mean a very great deal. How much it means depends upon the requirement or nonrequirement of a label on the product, consumer habits, and whether or not a firm in question is doing business with the Government.

Sending noncompliance cases to the Department of Justice has been of limited value, for one reason because of the long delay involved. Perhaps the Department has not been adequately staffed to handle a considerable number of cases, and these unrelated to its customary and normal work. Moreover, under existing law, prosecution is almost endlessly drawn out because the Department must start from the very beginning and develop and prepare its own evidence. In doing so it is of course handicapped by the passing of time, disappearance of witnesses, faulty memory, and so forth. The records made by the National Labor Relations Board and its agencies have no evidential value.

While I do not have legal training and any mature judgment on the matter, the new enforcement procedure provided for by the bill appeals to me as most promising. Its merits have been ably presented by Chairman Biddle and ex-Chairman Garrison and perhaps by others also.

There is one other phase of the matter on which I wish to say just a word. There is the relationship between the National Labor Relations Board and such industrial boards as may be established under codes or otherwise.

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In order that the greatest effectiveness may be obtained and that confusion may be avoided in the interpretation of the same law, care should be exercised in the establishment of industrial boards and there should be uniformity in rulings made and principles laid down as cases are decided. It is suggested that the detailed plans developed by an administrative branch of the Government for establishing an industrial board should be approved by the National Labor Relations Board. This should be helpful in avoiding some weaknesses that have been experienced.

Short of the courts, the final say in the interpretation of the law which other boards as well as the National Labor Relations Board administer should be in the hands of this Board. Whether this should be accomplished by a right of appeal from an industrial board, to the National Labor Relations Board in 7 (a) cases; or whether what may be called "7 (a) cases" should be within the exclusive jurisdiction of the National Labor Relations Board is debatable. If practicable, the latter arrangement appeals to me as the better of the two. Where appeal is relied on and taken in a number of cases considerable time is required and time is very important in connection with the type of cases in point here. Again, bipartisan boards, with impartial chairmen, are not the best fitted for handling 7 (a) cases, for they are too prone to divide on the issues involved and to throw full responsibility upon the chairmen. This is likely to impair the usefulness of the chairman. Moreover, if there is frequent division on cases of a highly contentious and of a more or less nonarbitrable type, this is likely to militate against the effectiveness of an industrial board in handling other types of cases.

The CHAIRMAN. I have just received a telegram from the New Haven Labor College I desire to put in the record. It reads:

[Telegram]

NEW HAVEN, CONN., *March 17, 1935.*

Senator DAVID I. WALSH,
Chairman Senate Committee on Education and Labor,
United States Senate.

The New Haven Labor College at annual institute representing 25 labor organizations and associations reviewing the long record of flagrant violations of section 7 (a) of Recovery Act on the part of employers in Connecticut and elsewhere and viewing with apprehension the impending wave of labor strife of which Hartford Colt strike is vivid example that will sweep over our State except the labor boards are given power to enforce their fair decisions urge upon you and your honorable committee early favorable consideration of Wagner labor-disputes bill in its present form. Above resolution unanimously adopted.

WALTER DAVIS, *Chairman.*

The CHAIRMAN. I have also received a communication from the Telephone Operators Committee Organization under date of March 13, 1935, which I desire to have put in the record.

(The communication referred to is as follows:)

TELEPHONE OPERATORS-COMMITTEE ORGANIZATION,
March 13, 1935.

Hon. DAVID I. WALSH,
United States Senator,
Washington, D. C.

DEAR SENATOR WALSH: A year ago certain officers of our organization went to Washington to make arrangement to speak at the hearings on the proposed telephone code. While there you met us very kindly and afforded us

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the opportunity to attend several of the hearings being conducted by your committee on Senator Wagner's labor disputes bill.

We presented our case to you at that time showing that it was the desire and intention of the large majority of telephone operators (85 percent) in New England to maintain the type of organization we have had for over 11 years. Nobody outside our organization is authorized to speak for us.

Senator Wagner's new bill meets our needs except on one point, and our executive committee has addressed a letter to him, a copy of which is enclosed, asking for a modification on that point.

We have just presented similar arguments to a joint committee of the Massachusetts Legislature with a petition signed by 4,000 of our members in every city and town in Massachusetts, in connection with a bill in the Massachusetts Senate which would take away the same rights and privileges.

We pay our own organization expenses out of our own funds raised by assessment, but have good reasons for wishing to maintain our present agreements as to paid time off and travel expense in connection with conferences with our employer.

We speak for 4,600 of your telephone-operator constituents in Massachusetts, and ask that you use your good offices to urge upon Senator Wagner favorable consideration of this amendment.

Yours respectfully,

ANNA RYAN,
Metropolitan Division Chairman.
ANNA R. HAYES,
Western Division Chairman.
MARGARET O. WHITMARSH,
Central Division Chairman.
IRENE SHERIDAN,
Southern Division Chairman.

TELEPHONE OPERATORS-COMMITTEE ORGANIZATION,
March 13, 1935.

Hon. ROBERT F. WAGNER,
United States Senator, Washington, D. C.

DEAR SENATOR WAGNER: Our organization has a membership of 6,400, and cast a full vote in our twelfth annual election last January. We constitute 85 percent of all the operators employed by the New England Telephone & Telegraph Co. and the purpose of our organization is the negotiation of wages and working conditions, and the adjustment of grievances.

Our officers twice went to Washington last year to appear on the proposed telephone code, and attend several of the hearings on your labor bill and explained our position to our own Senators and Representatives. The draft of your new bill appeared in the New York Times of February 22, and our discussion of it brings out one point our executive committee would very much like to have clarified, if you can see the matter our way.

The purpose of the bill as we see it is to safeguard collective bargaining and make sure of the true independence of the employee organization. We have no doubts of showing that in our case while we pay our running expenses we are disturbed because the bill may take away rights and privileges obtained through negotiation and of many years' standing.

The bill seems to us now to care for an organization whose members all work in one city or town. Also, the case where the officers who negotiate all live in the city where the employer's headquarters are located. In our case the unit of bargaining is the company as a whole covering five New England States. The negotiating is done by officers who live in the several States and have to travel to confer with the management. Under a former organization we delegated this power to officers located at the company's headquarters, and our experience was such that we do not want to follow that plan.

We think the payment of regular wages for time spent in conference with the employer cannot properly be separated from reasonable traveling expenses to attend such conferences, especially with the other safeguards the bill provides. We long ago established this plan, for good reasons, and think it should be provided for in a law such as you have proposed.

Our executive committee wishes to ask you if you will consider modifying the bill by adding at the end of Section 8, Paragraph 2, these words:

"Nor from the payment of reasonable traveling expense to and from the place of such conference."

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I am enclosing a brief statement on our organization, with a copy of my last annual report and our bylaws. It is our hope that you will give this request real consideration. We hope to that you will appreciate the spirit in which it is made, and ask that you be kind enough to favor us with a reply.

Yours respectfully,

———— ————,
General Chairman.

PETITION TO MASSACHUSETTS SENATE AND HOUSE OF REPRESENTATIVES PRESENTED BY MISS ANNA RYAN OF BOSTON

I represent the Telephone Operators' Committee Organization and am here with other principal officers in Massachusetts to oppose Senate bill no. 264 and to present a petition signed by 3,934 members of our organization protesting against the passage of the bill.

The idea behind this bill seems to be that the telephone operator does not know she is a free agent today to join any organization she pleases. We do know this. We believe in collective bargaining, and we know the kind of organization we want. It is the free choice of the great majority of us.

Our organization includes 80 percent of the telephone operators in Massachusetts and represents all, or a very large majority, of the operators in every city and town in the State in which there are telephone exchanges. The same is true for the States of Maine, New Hampshire, Vermont, and Rhode Island.

Because we telephone operators object to this bill, the conference boards of our organization decided a week ago to show our protest through the means of a petition. This petition was ordered, paid for, and circulated by us, only among our own members.

We object to being singled out from other employed people in this bill in a way that makes it seem we are different from or opposed to other organized labor, and which takes away rights we secured years ago through negotiations.

OBJECTIONS

We object to section 1 of the bill because the words "common carriers other than railroads" seems to single out the telephone business. The bill includes electric light and gas business, also, but they usually operate locally and their employees cannot have the same difficulties to meet that we do. It seems to us that the bill is cleverly worded so that our organization is the only important one covering the entire State whose agreements would be seriously upset by it.

We have no objection to section 2 of the bill. We do not need this added protection, because we have always had these rights and they are also guaranteed to us by section 7 (a) of the National Industrial Recovery Act and by the National Labor Board.

We object to section 3 because it seems to restrict the freedom of action set forth in section 2. The clause referring to the use of company funds would take away rights and privileges we negotiated for and obtained and which are of nearly 12 years' standing.

One of these rights is that of full pay for our time attending meetings with management for collective-bargaining purposes. We require many of these meetings at district, division, and general headquarters every year, in all five New England States. It would be unfair to have this prohibited in Massachusetts and open to us in the other States.

Another negotiated right that goes along with the time is the payment of reasonable traveling expense. When a girl has to go to her headquarters or to general headquarters to negotiate wages, hours, and general working conditions with management, someone has to pay the expense. The fact that we, years ago, determined in negotiation with the management that the company should pay this expense aids and does not interfere with our complete freedom of action.

There are also many minor privileges we have established by negotiation which section 3 would take away.

We have already established the principle of paying our regular running expenses, such as expense of elections, printing, postage, stationery, telegrams, etc. There is a substantial sum with which we pay these expenses in the hands of each of our financial secretaries, collected from our own membership and separate from our welfare and charitable funds. This bill would impose an unnecessary financial burden on us which we do not want.

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Because we have a large majority, the company recognizes us as the only agency for collective bargaining for telephone operators in New England, although it meets with and hears all organized groups or individuals.

We believe this bill represents the desires of a small group who have unsuccessfully tried in the telephone-code hearing at Washington, and in a complaint to the regional labor board, and in many other ways to interfere with our position. The Massachusetts girls are much aroused, and have felt their legislature might, without complete knowledge of the facts, give their support to this bill. It seems to us that our organization is the only important one covering the entire State that would be seriously affected. We believe it is directed against us and ask that it not be passed.

TELEPHONE OPERATORS COMMITTEE ORGANIZATION SUPPLEMENTARY STATEMENT ON PROPOSAL TO SENATOR WAGNER

In 1923, the New England Telephone operators were split into various affiliated and nonaffiliated groups. Following the strike of that year, telephone operators in every city and town throughout the States of Maine, New Hampshire, Vermont, Massachusetts, and Rhode Island organized a committee form of organization with elections wholly in our own control for purposes of negotiations with the management. From time to time we have adopted changes in order to conform to the provisions of N. I. R. A. and the views of the National Labor Relations Board. A large number of improved working conditions have been secured through our efforts, and our organization in January 1928 secured a general wage increase for all telephone operators in the New England Co.; and again in June 1930 a further increase for operators in Boston. These wage rates were maintained throughout the years 1931 to 1933 and have since that time been improved on two occasions. Our organization for 11 years past and today is free and clear choice of the very large majority of telephone operators in New England.

We settle many local matters through negotiations carried on by 125 local boards in telephone exchanges throughout the 5 States, and through 18 district and 5 divisional conference boards corresponding to the working organization of the company. Our executive committee, composed of our district chairmen and our general officers, is responsible for collective bargaining on questions of wages, hours, and general working conditions. An example of our activity and accomplishments over a period of a year is shown in the attached copy of our most recent annual report covering our work during the year 1934.

We pay out of funds collected from our membership and handled by our financial secretaries the regular running expenses of our organization such as printing this report, recruiting members, primary and election expense, printing our own minutes, postage, stationery, telegrams, etc. Our employer does not make any money contribution to our running expenses. Last spring, for example, our organization twice paid for the expenses of five of our officers to go to Washington in order that we might present our views to the Department of Labor, the National Labor Board, and to the Labor Section of the National Recovery Administration. We testified at certain of the hearings on the proposed telephone code, and attended several hearings on the Wagner labor bills.

About one-half of our members, and many of our officers were formerly affiliated with the telephone operators' department, International Brotherhood of Electrical Workers. The handling of our finances before the 1923 strike was continually subject to internal suspicion and dissatisfaction. Since then we have come to the conclusion that the leadership in that organization was interested only in the welfare of the electrical craftsman rather than that of the telephone operator. We felt then and know now from experience that we can do a better job handling our own affairs instead of having them directed by outsiders.

Our organization was set up originally with the definite understanding that conferences with the management would be held without loss of time or pay; and with the understanding that the company would pay the reasonable traveling expenses of representatives attending such conferences when held at times agreed on at centrally located points. Our employer has accorded these as rights and many minor conveniences which save us expense over a period of

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years. Several times when these provisions were in some way threatened we have taken steps to maintain them. We are convinced that by these agreements we have avoided many disputes over the handling of funds and over the assessment of those who have no travel expense to help meet the expense of those who require it.

We are not a company-dominated organization. We have our own rules of procedure which we modify or amend as we see fit without consent of the management. We finance and conduct our elections free from management's influence or interest. We determine by ourselves what our collective-bargaining program will be and what we shall consider satisfactory disposition of the subects to be raised. No adjustments takes place without being referred back to our constituents for approval or rejection. At all times, we express our views openly and vigorously to all management representatives who participate in negotiations with us. Our negotiated rights aid and do not harm this process.

Our organization was recently faced with a bill in the Massachusetts legislature which would upset these same negotiated rights and privileges. Believing that such a bill was directed solely at our organization and feeling that it was discriminatory and unfair, our membership throughout the State of Massachusetts became so aroused that a petition in opposition to the bill was circulated by us, signed by 4,000 operators, and presented by our officers to the legislative committee at a public hearing. A copy of our statement at that hearing is attached.

We believe in organization and in collective bargaining. Our families contain many members of organized labor unions. As telephone operators, however, we are convinced that we are the ones who can best handle our own affairs, and that our membership should continue to be spared the internal strife and threat of strikes which it was our misfortune to endure in the past when our affairs were in the hands of outsiders. We now have what we want, and intend to maintain it. We wish also to maintain the reasonable privileges we have negotiated over a period of years and hope they will not be interfered with through the passage of a law which is intended on the contrary to protect our rights.

The CHAIRMAN. At this time I desire to have made a part of the record an editorial from America.

(The editorial referred to is as follows:)

[From America, Mar. 9, 1935]

THE WEIRTON CASE

It was said more than a year ago that section 7a of the Recovery Act which, on its face, guarantees the right of workers to organize freely and to bargain collectively, was the heart of the reform program. That statement was not far from the exact truth, and it supplies one reason why in the third year of its existence, the reform and recovery program is lagging. Its heart has never functioned normally.

In an article published in a recent issue of the Saturday Evening Post, General Johnson sums up the history of this section in a sentence: "The most potent cause of seething unrest is hopeless confusion in the welter of contradictory interpretations of section 7a." At the outset, General Johnson, working with Donald Richberg, issued a ruling which, in the opinion of organized labor, nullified the purpose of the section by imposing proportional representation in industrial disputes. This ruling was later adopted by the President, when the workers threatened to tie up the whole automobile industry.

Later, Chairman Garrison, of the National Labor Advisory Board, issued an interpretation which flatly contradicted the President's ruling and called for majority representation. The next move was made when Mr. Richberg endeavored, unsuccessfully, to harmonize these conflicting opinions. Meanwhile, the *Houde case*, in which the old Labor Board had tried to establish majority representation, was thrown into the courts, after months of delay by the Government. The net result was bewilderment, both for employers and workers, and a great accession of strength for the dishonest company union. Finally, on February 27, section 7a was dealt a staggering blow when

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in the Federal District Court at Wilmington, Del., the Government lost its plea for an injunction to restrain the Wierton Steel Co. from dealing collectively with its employees through an alleged "company union."

The rulings of the court on the constitutionality of the section are of first importance. Appeal has been taken by the Government, but should the Supreme Court sustain the findings, it would appear that some new method of effecting the purposes of section 7a, a guarantee of labor's right to organize freely and to bargain collectively, must be devised.

What the court held in the matter of the Weirton representative-employee plan is not vital, since it appears that this plan is not the company-dominated union. The court found that the organization of employees was freely chosen by the workers, and that it is in no sense controlled or dominated by the employers. This was a decision on a showing of facts, but the company also won its point in law, namely, that relationship between employees and employers does not constitute interstate commerce, and hence cannot be regulated by Congress. In the event that the Supreme Court upholds this decision, section 7a, and with it perhaps the greater part of the N. R. A. legislation, is null and void.

While it would not be proper to offer any criticism on a decision from which appeal has been taken, an examination of the court's ruling is in place. The Weirton Steel Co., a subsidiary of the National Steel Co., has plants in Clarksburg and Weirton, W. Va., and another in Steubenville, Ohio. Further, it owns mines and furnaces in several other States, and operates a transportation line on the Great Lakes for its products. In view of these facts, it is somewhat difficult to understand the court's ruling that "defendant is not engaged in interstate commerce, save to a negligible extent." The court refused to find a parallel in the packing-house cases, but decided that when various materials are brought to the Weirton plants, and after remaining there a considerable time, are transformed into a new substance, namely steel, and thereafter shipped out of the State, the defendant is engaged in manufacturing but not in interstate commerce. Hence, section 7a cannot be applied to the Weirton Steel Co.

The inference from the ruling is that section section 7a is unconstitutional, except when applied to transactions in interstate commerce. If we are not in error, the Government did not claim in this case that the section applied to commerce that was wholly intrastate, but, rather, that any business which interrupted or interfered with the "stream" or "flow" of interstate traffic could be subjected to its regulation. It still appears to us that the Government has the weight of reason and authority on its side.

A further effect of the decision is to stop action on the President's request to Congress for an extension of the recovery legislation for 2 more years. We believe that authorization can be found in the Constitution for the general policies of this legislation, but we need more light on the borderline cases. The whole program has suffered from too much ballyhoo and too little quiet careful thinking out of the tremendous industrial and economic problems which clamor for solution.

The CHAIRMAN. Mr. Lewis, we will be glad to have you come forward.

STATEMENT OF JOHN L. LEWIS, PRESIDENT OF UNITED MINE WORKERS OF AMERICA

The CHAIRMAN. Mr. Lewis, for the record you might state your position.

Mr. LEWIS. I am president of the United Mine Workers.

The CHAIRMAN. What is the membership of the United Mine Workers?

Mr. LEWIS. Close to 600,000. I am also one of the vice presidents of the American Federation of Labor, a member of the Labor Advisory Board of the N. R. A., and a former member of the National Labor Board of which Senator Wagner, the author of this bill, was the chairman.

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I appear in support of the bill, S. 1958, as introduced by Senator Wagner, with one or two suggestions of amendment to which I will refer to later.

The National Labor Board, of which Senator Wagner was chairman, was conceived at a meeting of the Industrial Advisory Board and the Labor Advisory Board in 1933, which jointly felt the need of such an agency for its stabilizing effect in our labor relations, and recommended its creation to General Johnson and to the President.

Senator Wagner at that time was abroad, but our joint board readily agreed he was perhaps the one man to assume the chairmanship of the agency we hoped would be created, and discharge the obligations of such a position with the necessary impartiality, and with the degree of confidence on the part of the public both as to industry and labor, which would be required.

Senator Wagner consented to return from abroad to assume those duties, and continued in that capacity with the other members of the Board until it was superseded in 1934 by the creation of the existing Industrial Relations Board by Executive order of the President following the joint resolution of Congress.

The soundness of the judgment exemplified in the selection of Senator Wagner both time and Senator Wagner have confirmed. That Board broke a great deal of new ground in its consideration of the relationship between labor and industry, and in consideration of the principles which should apply in setting up any permanent form of stabilizing instrumentality.

Out of the experience that Board, and out of the experience of the existing Industrial Relations Board have come, I assume, very largely, the ideas which have been stated by Senator Wagner, the author of this bill, in this proposed measure. The bill, aside from creating definite machinery, undertakes to deal in a precise manner with the question of company-formed and company-administered unions.

Doubtless the testimony before this committee, and the experiences of many have demonstrated that legitimate collective bargaining and trade unionism has been greatly handicapped in their activities by the activities of a great many corporations in forming company unions, and oft times coerced their employees to become members of that so-called "organization."

I have written down here just a thought on that point which I desire to read. I have no prepared statement, but I am quite delighted to answer any questions which may be asked, after I read this suggestion and make certain amendments on the bill itself.

The right of labor to collectively bargain for wages and hours of labor has double justification. It is fundamentally just in that it gives to labor an approach to equality with industrial management, and it should result in a fair distribution of the national income. This fundamental right of labor is a matter of national public policy declared in the Norris-La Guardia Act, and in the National Industrial Recovery Act. The Wagner bill is simply an effort to protect labor in this right against the device of the company union.

The unfair labor practices denounced in section 8 of the bill are the resort of industrial management to attempt in some instances, and to control in others, the right of labor to organize and to bar-

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gain on an equality with the employer. The creation of company-promoted and company-controlled unions cannot be ascribed to any unrestrained volition of workers or to the adaptation of this type of organization to the settlement of just wage standards.

These company unions are the product of coercion, coercion exercised in various forms by the management, and coercion that results from the very pressure of the multitude of the unemployed. They are the result of the fear on the part of workmen that they may lose their jobs unless they accept this form of organization.

The policy in the Wagner bill is to relieve them of this fear. What form of organization they may eventually adopt is a matter for their own determination.

Most of these company unions exercise no pure bargaining power, and even when they do, they serve to disorganize the wage structure of an industry. They would be bargaining units for each plant or company, and not for the entire industry. In this respect they become units which one employer may use against another. In other words, they become the occasion of wide competition, and are the source of not only unfair labor practices, but of unfair trade practices.

Nobody ever heard of, or ever will hear of, a national union of company unions in any industry. Why is that true? Simply because employers of this country who conceived the idea of company unions, who have organized company unions, and who are controlling the company unions would fear to promote those company unions to be welded into the form by cohesive national organizations, because that would mean a lessening of the influence of the company, a wider expression for the employees, and a waning of the prestige of the organization, and in a weakening of the consciousness of the power of those workers banded together in a collective enterprise.

Consequently, we do not find the United States Steel Corporation, or the Standard Oil Co., or the North American Co., or the automobile industry, or any of the great industries that have established company unions, promoting those company unions to act or function in any manner beyond the works council, and the works council is one of the vicious forms of further control of workers which have grown out of this tendency to organize company unions, with the annihilation of majority rule which was the first consideration of the old National Labor Board in the *Denver Tramway case*, amplified in some later decisions of that and its successor Board, the National Labor Relations Board, and finally approved in the Executive order of the President.

It would have been more encouraging to labor, productive of greater confidence, had the Executive order of the President, recognizing the right of workers to express themselves as to their collective bargaining instrumentality, in a majority set, if that Executive order had been permitted to stand, but the spirit of that Executive order, and the principle of majority expression of workers has been emasculated and destroyed by interpretations of section 7 (a) by Mr. Donald Richberg, and a pronounced interference with the absolute function and independence of the existing Industrial Relations Board by the same gentleman.

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There is a question of confidence involved. With the elimination of confidence it is obvious to anyone that any arrangement involving human relations, will not function. Confidence is necessary from every standpoint, and when the confidence of the workers is destroyed by what seems to be a studied attempt to take away from them rights which even the President of the United States agreed they should have, it is no longer necessary for anybody to wonder why the workers of this country lose confidence in some of the effort of the Government and of the Congress to enlarge their opportunities and create for them equality in bargaining power and opportunity.

I was utterly astounded last Thursday afternoon in a meeting of the Labor Advisory Board of the National Recovery Administration, by the confession of Mr. Donald Richberg, who asked leave to attend that Board, and who did appear before the Board in a session which lasted from 2:30 in the afternoon until 7 o'clock that evening.

During this period, while the discussion was on the subject I am now discussing with the Senators, the right of the workers to act in a majority sense in respect to their collective bargaining tendencies, Mr. Richberg stated he had prepared and written the Executive order of the President which stated that right as a principle in labor relations.

My astonishment came, and I think it was shared by the other members of the Labor Advisory Board, when in response to interrogatories addressed to him, Mr. Richberg confessed that three days after the Executive order of the President had been written by him and promulgated by the White House, he had written another interpretation which was made public, signed by himself and Gen. Hugh S. Johnson, the Administrator of the Recovery Act, which emasculated the President's Executive order, and interpreted section 7 (a) of the Recovery Act to mean that the right of minorities in groups of workers to bargain was to be protected to the point where the individual could also bargain with his employer. The astounding thing that letter came to be known as the idea of proprietary right which subsequently was invoked in the settlement with the automobile industry on the code.

To one who is interested in an equality of opportunity for the workers of this country, one who believes in the right of the workers to choose their representatives through any form of expression known and accepted in our country, that of a majority expression the statement of Mr. Richberg is absolutely astounding, utterly destructive to, and demoralizing of any confidence.

The CHAIRMAN. Do I understand you to allege that this amounts to one policy being promulgated by the National Labor Relations Board, and another policy by the administrators of the N. R. A., diametrically opposed to each other?

Mr. LEWIS. Yes, Senator, and even further than that.

The CHAIRMAN. Of course, the administrators of the N. R. A. would only have the authority to promulgate these views you have expressed, in the making of goods and in the interpretation of codes.

Mr. LEWIS. That is right, Senator.

The CHAIRMAN. And where labor disputes arise in such cases, they are outside of the jurisdiction of the National Labor Relations Board, therefore the code authorities would be able to put

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on a different interpretation from what the National Labor Relations Board would put on. Is that correct?

Mr. LEWIS. The observations are very sound, but the matter runs further than that. The interpretations of N. R. A. as announced by General Johnson and Mr. Richberg, operate to render innocuous and ineffective any attempt of the Industrial Labor Relations Board to enforce the rule of the majority in industry, or to have decisions setting forth the majority rule accepted by industry.

It amounted to an encouragement of industry to refuse to abide by the decisions of the National Labor Relations Board. It encouraged industry to renew its efforts to prevent labor from being able to express itself in a majority sense. It encourages the formation of company unions and encourages the so-called "proportionate" representation plan, and binds and misdirects labor, as witness the situation in the automobile industry.

But, a most astounding thing of all to me is that a Presidential order can be so lightly set aside a few days after it had been promulgated, and it set aside by an official act of the man who says he acted as the agent of the President in preparing the Executive order in the first instance.

The CHAIRMAN. Has protest been made to the President?

Mr. LEWIS. No protest has been made to the President up to this time, because it was just last Thursday afternoon that the Board received this information from Mr. Richberg that he wrote both orders.

The CHAIRMAN. When were those orders written?

Mr. LEWIS. I haven't the date now.

The CHAIRMAN. Approximately how long ago?

Mr. LEWIS. It was in 1934. I do not know whether that particular order was the order which created the Industrial Relations Board, but I can check that matter up.

Senator WAGNER. It was while our Board was still in existence, and you will remember how they ignored that interpretation and thereafter decided the *Tramway case*.

Mr. LEWIS. That is correct; it was while the National Labor Board was still in existence. The entire thing is destructive and Congress, in giving consideration to whether it will enact the Wagner bill, will see it justifies the lack of confidence on the part of organized labor in Mr. Richberg, to which I have prior to this time called attention.

The CHAIRMAN. Can you return tomorrow for further questions, Mr. Lewis?

Mr. LEWIS. I will be delighted to do so.

The CHAIRMAN. We will close the hearings tomorrow for all proponents of the pending bill, and I would like to notify those who wish to appear, to be here tomorrow morning. We will begin the hearings for the opponents on Wednesday.

The hearing is now adjourned until 10:30 o'clock tomorrow.

(Thereupon, at noon, the committee adjourned until Tuesday, Mar. 19, 1935, at 10 a.m.)

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NATIONAL LABOR RELATIONS BOARD

TUESDAY, MARCH 19, 1935

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D. C.

The committee met at 10:30 a. m., in room 318, Senate Office Building, Washington, D. C.

Present: Senators Walsh (chairman), Murphy, Murray, and Metcalf.

Present also: Senator Robert F. Wagner.

The CHAIRMAN. The committee will come to order. Mr. Lewis, you may proceed with your further testimony.

STATEMENT OF JOHN L. LEWIS, PRESIDENT OF UNITED MINE WORKERS OF AMERICA—Resumed

Mr. LEWIS Mr. Chairman, yesterday I referred to the fact that President Roosevelt had issued an Executive order confirming the principle of majority rule on the part of voting units of employees, supporting the principle enunciated by the original National Labor Board under the chairmanship of Senator Wagner in the *Denver Tramway case.*

I called attention to the fact that 3 days after the issuance of the Executive order, an interpretation of that order was issued by Gen. Hugh S. Johnson, Federal Administrator of N. R. A., and Donald Richberg, General Counsel of N. R. A., in which the principle set forth in the Executive order, emasculated and destroyed, and the principle of minority presentation and individual bargaining was re-enunciated by Mr. Richberg.

I further stated to the committee that Mr. Richberg had acknowledged that growth, or prepared the Executive order for President Roosevelt, and that he had recently confessed to the Labor Advisory Board of the N. R. A. that he had likewise written interpretation which emasculated the Executive order.

I desire this morning to introduce in the record for the Senators' perusal a printed copy of the Executive order to which I have previously referred, dated February 1, 1934. This is in bulletin form as issued by the press department of the N. R. A., and carries the notation, "Release 3078." This Executive order establishes the principle of majority representation and gives to the National Labor Board authority to hold elections, to acquire knowledge as to the majority desire of units of employees on the question of their repre-

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sentatives for the purpose of collective bargaining, and one sentence reads as follows:

> Thereafter the Board shall publish promptly the names of those representatives who are selected by the vote of at least a majority of the employees voting, and have been thereby designated to represent all the employees eligible to participate in such an election for the purpose of collective bargaining or other mutual air or protection in their relations with their employer.

That order asserts that the representatives thus selected shall represent all of the employees. This order confirmed the existence, and validated certain actions of the National Labor Board enunciating that principle.

Three days following the issuance of that Executive order and its publication, Messrs. Johnson and Richberg acting for the N. R. A., issued an interpretation of the order which I hold in my hand, for introduction in the record, and do so introduce a printed copy of this interpretation issued by the National Recovery Administration dated February 4, 1934, and carrying the numeral, "Release 3125."

I will not burden the Senators by reading all of the paragraphs of this interpretation, but will quote the following:

> This selection of majority representatives does not restrict or qualify in any way the rights of minority groups of employees or of individual employees to deal with their employer.

That language, supplemented throughout the interpretation, nullifies the majority principle set forth in the President's order. The interpretation of Mr. Richberg and Mr. Johnson follows the President's order by 3 days, and is dated February 4.

The interpretation nullifies the principles being applied by the National Labor Board, and I may recall to the Senators that the membership of the National Labor Board was composed of representatives of the industry and labor, and on that Board were such outstanding industrialists as Mr. Walter Teagle, Mr. Pierre du Pont, Mr. Girard Swope, Mr. Clay Williams, and others of similar standing, as representing industry, who had on the National Labor Board accepted the majority representation principle on the part of labor.

The President accepted it, and Mr. Richberg 3 days after the President accepted it, wrote an interpretation in his own hand with his own pen, that nullified the principle already enunciated by the President.

The CHAIRMAN. I cannot understand why you did not appeal to the President.

Mr. LEWIS. Senator, I do not know just why labor did not go direct to the White House on this proposition, but labor went everywhere else. It went to all of the agencies of the N. R. A.; it appealed to the Administrator about the matter of Mr. Richberg's interpretation, and to the National Advisory Board, and it went to the press about it.

The CHAIRMAN. Up to this time no change in the policy has been made.

Mr. LEWIS. On the part of whom?

The CHAIRMAN. On the part of Mr. Richberg.

Mr. LEWIS. No; Mr. Richberg adheres to that policy as enunciated by him.

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The CHAIRMAN. That has been in vogue since the time of Mr. Wagner's service on the National Labor Board.

Mr. LEWIS. That is right, and it has been supplemented by repeated processes by Mr. Richberg, in which he has reiterated the texts enunciated.

The CHAIRMAN. I should think someone would call the attention of the President to the conflicts between the interpretation of Mr. Richberg and the original Executive order.

Mr. LEWIS. Well, I have not personally discussed it with the President. I have personally discussed it with the Secretary of Labor and every other authority representing the Government, including Mr. Richberg.

I take no advantage of Mr. Richberg in discussing this interpretation, because he is perfectly well aware of my position. It was only last week I learned he wrote both of the orders, which he stated to the Labor Advisory Board on Thursday of last week.

The CHAIRMAN. But you say they are diametrically opposed to each other?

Mr. LEWIS. Yes; as I read the English language, and as I understand the attitude of others who have also read it. The Executive order was interpreted by the press as being an approval of the principle of majority representation, and Mr. Richberg's interpretation was a denial of it. Out of this interpretation by Mr. Richberg was born the proportionate representation plan which now exists in the automobile industry, and which is being undertaken to be instituted elsewhere.

Out of this interpretation is born the idea that section 7 (a) is an open-shop section.

Out of this interpretation is born a tendency to revert to the principle of individual contracts as between employers and employees.

And, insofar as it should be done, and insofar as the resolution of Congress or the public policy of this country can be nullified, this interpretation nullified it.

I say frankly, Mr. Richberg was laboring down the river by the issuance of such an interpretation, and I think it is justification of my previous criticisms of him, that he deceived the President; I think it is justification of my previous criticism that he betrayed labor, because labor believed that Donald Richberg believed in certain principles affecting labor.

I do not criticize Mr. Richberg for any personal reasons, I have no desire to condemn him or engage in any controversy as might be started, as affecting his personality in any way; but I am critical because in his attitude, and in his interpretation he has driven a knife to the very heart of labor in this country, in a denial of its opportunities which we understood and were acceded to by representatives of industry, by the Congress and by the President.

The CHAIRMAN. Do all other labor leaders feel as strongly as you do about this?

Mr. LEWIS. I think it is a fair assumption, although I am not qualified to speak of the personal opinion of any man, that all of the 600,000 members of the United Mine Workers of America I represent, feel that way. In fact, all of the members of Council of

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American Labor feel that way. I think all of the members of the Labor Advisory Board of the N. R. A., of which I am a member, feel that way.

These matters were discussed last week by the Labor Advisory Board with Mr. Richberg, and insofar as I am able to determine, there is no dissent on the Labor Advisory Board in the opinion I expressed as to Mr. Richberg's actions.

Now, I present this, because it has a direct bearing on the matter before this committee, the consideration of the Wagner industrial disputes bill. Labor is asking of the Congress to enact this measure, and to approve the Wagner bill, because the Wagner bill seeks to restore certain of the opportunities, and legalize certain of the rights of labor which have been taken away in the manner I have described.

I cannot too strongly emphasize the necessity of Congress enacting this measure and legalizing the principles which are set up in the bill. I think the great Senator from New York, in preparing this measure, had certain of these things I am discussing in mind when he wrote into this measure certain definite provisions which would protect the principles of majority representation first enunciated by the National Labor Board, of which he was chairman.

Now, Senators, I will be comparatively brief this morning, because I do not want to make any lengthy analysis of this bill and take your time up unnecessarily, because an analysis has been made by Mr. Green, representing labor, and others, and I will try not to duplicate anything with respect thereto. There are just one or two matters which I desire to call to your attention specifically.

The bill provides that this agent, the National Labor Relations Board, be an independent agency. It is my thought that the Board should not be independent, in the respect that it is being passed from the Department of Labor. I have read the testimony of Mr. Biddle before the Board, bearing upon this subject, and the testimony of Mr. Millis, and I heard yesterday the testimony of Mr. Smith, all members of the National Labor Relations Board, on this subject, and appreciate that they are most sincere in advancing the thought that the Board should be independent and free from any relationship with the Department of Labor.

It is my thought that their conclusions are not sound, in that the reasons are not controlling. They assert, among other things, it will make for greater freedom in the selection of the personnel of the members of the Board. I doubt that there will be any greater freedom or greater wisdom displayed in the selection of the Board if it is an independent Board, as against it being a Board attached to the Department of Labor.

I think the President of the United States, whoever he may be in days and years to come, can be relied upon to appoint sufficient members of the Labor Board if it is attached to the Department of Labor as if it is not.

Labor has a particular pride in the Department of Labor. It fought for many years and appealed to Congress throughout repeated sessions to enact a law which would create a Department of Labor, the head of which should be a member of the Cabinet, and it would like this to continue. I express the general thought of men who labor, that we would like to continue the Department of Labor

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as being the recognized branch of the Federal Government upon which labor can depend to represent its viewpoints and to supervise and coordinate the activities of the Federal Government with respect to labor.

Labor feels that it has an easy approach through this member of the Cabinet who is head of the Department of Labor, because it feels that the Department of Labor has a peculiar advantage under the law which created it, with the responsibility of giving a sympathetic hearing and extending a sympathetic attitude towards labor, and that the Secretary of Labor is almost the sole contact of labor with the President of the United States as a member of the President's Cabinet.

We think that the setting up of an independent agency such as suggested in this bill would detract from the prestige of the Department of Labor. It may in the days to come create some friction with the Department of Labor, because there is certainly an overlapping to some degree of the activities and processes and relations of this potential agency and of the Department of Labor.

They may affect the Bureau of Conciliation and Mediation in the Department of Labor.

Then, there is a question of confidence involved. Labor has confidence in the Department of Labor; labor has confidence in the Secretary of Labor; and that confidence goes, regardless of who may be Secretary of Labor, because labor believes inherently the President of the United States wants to appoint or select some one as Secretary of Labor in whom labor can have confidence.

If an independent agency is created, or a floating commission of some sort is created under this act, there will be a natural tendency for the board or the agency to rather withdraw into itself and to lead an existence less easy of contact, less easy to understand, than is the case with the Department of Labor.

By the same token, and bearing on that subject, it is my opinion that labor and industry should be given representation on this National Labor Relations Board. There is a question of confidence involved there. Labor assumes a hazard in accepting always the services of a board on which it has no representation and on which industry has no representation.

Of necessity, a man sufficiently distinguished to be mentioned and selected as a member of the National Labor Relations Board must be a man who stands higher than the average in his community, or in his State, or in the country, and must be a man whose experience in life has been in ways and circles necessarily far removed from the ranks of labor. If he has friends, political associates, affiliations, or predilections of any character, they are not ordinarily in labor circles. He reacts more quickly to suggestions from those whom he knows, from those with whom he has been thrown in contact, than he does to the suggestions of representatives of labor with whom he has no particular association or relationship. No matter how honest or honorable he may be, no matter how sterling his character, no matter how keen his intellect, there is an unconscious inherent disposition to favor conditions and circumstances and principles and the philosophy somewhat different from what labor understands and espouses.

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Consequently, we find many of our educators, many of our professional men, from whose rank members of the Board were drawn, who have no understanding of labor problems. We find many of them sympathetic primarily, but we also find them lacking in understanding of labor themselves. There are certain practical matters of fact and practical conditions which are necessary to understand and discuss before an absolute judicial finding can be made in many controversies affecting labor and industry. We do not think it is altogether a good thing to insist upon a situation where only men who are ignorant of their subject can be appointed to boards of this character. It puts a premium on the lack of information.

Obviously there is not anyone in this country who would expect the position on our Supreme Court to be filled by men who had no understanding of the law. Obviously they must be trained in the law, because otherwise there would be no confidence in their decision, and obviously they would not understand that which they were undertaking to do.

Labor suffers a handicap in accepting the services of a man to pass upon its affairs, and pass upon all of the controversies which have to do with shelter, food, heat, clothing, life, deaths, and social and economic standards; labor suffers a hazard, in accepting a man to find those things for it who knows nothing about it, a man who has no training and understanding of it, and who comes from a realm detached, insofar as may be possible, from labor.

We are perfectly willing to give men of that type the controlling decision and majority influence, but at the same time we do feel that on the inner councils of such a board there should be a voice of labor, sitting for them up to the moment until the decision is reached.

The CHAIRMAN. And the voice of industry.

Mr. LEWIS. Yes; the voice of industry, because the representatives of industry and the representatives of labor have a practical understanding that is sometimes lacking in the men who do not have other experience.

There can be no question, and labor yields easily, of the right of the public to control such a board through its public representatives, control its detached nonpartisan representatives, and controlling influence; but surely there cannot be any reasonable objection to permitting representatives of both of the interests, labor and industry, to have a continuous voice in the councils of that board to the end that there may be the wisest judgments rendered.

To do so will increase the confidence in the board itself, and I cannot stress too much the question of confidence. Without confidence the board cannot continue to render service and function in the way it is hoped.

The trouble now with the existing board is that the public, industry, and labor have come to recognize that it cannot exercise any great influence because its decisions are not respected; there is no confidence that its decisions will be respected. Confidence in the board as an instrumentality has faded and disappeared, hence, the necessity for the enactment of this measure by Congress. However, I think that labor and industry representations should be included on this board, and I think that the board should be continued in

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the Department of Labor, the proper agency under our form of governmental set-up to which labor looks for general supervision of labor affairs.

I make these suggestions very hesitatingly, and I do so in no form of criticism of the bill. I merely do it to add whatever advantage there may be in expressing my own opinion of the practical features of the bill, and I do it from the standpoint of wanting to make a contribution to industrial stability.

The CHAIRMAN. Thank you, Mr. Lewis. The next witness is Mr. J. A. Farquharson.

STATEMENT OF J. A. FARQUHARSON, REPRESENTATIVE OF BROTHERHOOD OF RAILROAD TRAINMEN

The CHAIRMAN. Mr. Farquharson, will you give your name in full.

Mr. FARQUHARSON. J. A. Farquharson.

The CHAIRMAN. You are editor and manager of an official publication?

Mr. FARQUHARSON. Yes, sir.

The CHAIRMAN. What is the name of that publication?

Mr. FARQUHARSON. It is the Railroad Trainman.

The CHAIRMAN. You are also representative of the Brotherhood of Railroad Trainmen?

Mr. FARQUHARSON. That is correct.

The CHAIRMAN. We will be glad to hear from you now, Mr. Farquharson.

Mr. FARQUHARSON. Mr. Chairman and gentlemen of the committee, I appear here in support of Senator Wagner's bill, and especially in support of paragraph 3 of section 8 of the bill, which gives to labor the right to write a closed-shop or percentage agreement, if such agreement can be reached between employer and employee.

Under the Railway Labor Act, as you know, that right was denied, and the organization that I have the honor to represent here held 23 such contracts, and they were set aside.

If labor is not given the right to write closed-shop agreements, here is exactly what my experience has taught me in the 25 years I have been a representative of the organization.

The right to hire is vested always with the employer, and if the organization should build up its strength so as to nearly equal this permanent power, the employer has the right, unless there is a closed-shop agreement or contract, to drag that down, and weaken the strength of labor, and then labor is just at the mercy of the employer.

Where minority groups contract they can destroy the condition that has been set up by the majority, and I will give you one example as to that.

On a certain railroad close to us there were approximately 120 men regularly employed. Thirty of those men decided they wanted to set up a minority group, or at least the men employed within this group. Of these 30 men 18 voted to set up a minority group and 12 voted to remain with the balance of the 120 men.

We had an agreement where, when a man had worked 26 days or its equivalent, reducing overtime to the equivalent of pro rata

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hours, that they would lay off and give an opportunity to the men on the extra board to make a living. This minority group then went in and made a contract that they would work 30 days. Now, 4 times 30 is 120 days, and there is over 4 months' work taken away from the balance of the men that depend on that position for a living, and I hope, gentlemen, that this bill will go through and that paragraph 3 of article VIII goes through with it. That will restore to labor the right to write a closed-shop agreement to balance its bargaining power, because, as I said before, the employing agency is the carrier, and without that closed-shop agreement he can destroy the effectiveness of the employee by just not hiring a man, and there is no way I know that we could destroy the effectiveness of the employee by just not hiring the man, and there is no way that we could prove he discriminated.

I hope this bill will go through with this privilege given to labor.

I have been told this might defeat the bill, but, gentlemen, if it is not given to us, if labor is not given the right to write a closed-shop agreement and have something to say about who is employed and with whom they work, then, it is absolutely helpless, and I know this to be a fact, because in this condition I have spoken of I have seen 18 men change the living conditions of 102 families.

That is all I have to say in support of the bill, and I hope the bill passes as it is.

The CHAIRMAN. Thank you, Mr. Farquharson. Mr. Frey, you are the next witness and you will please come forward. Your full name is John P. Frey?

Mr. FREY. Yes, sir.

STATEMENT OF JOHN P. FREY, PRESIDENT OF THE METAL TRADES DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR

The CHAIRMAN. Mr. Frey, I believe you are president of the Metal Trades Department of the American Federation of Labor.

Mr. FREY. Yes, sir; that is correct.

The CHAIRMAN. Will you state to us what that department is?

Mr. FREY. It is composed, with one exception, of all national and international unions of metal workers.

The CHAIRMAN. You may proceed.

Mr. FREY. My associates desire to have me do two or three things this morning, and I will be as brief as possible.

They wanted me to express their very strong approval of this bill, and to tell you that in their opinion it might well be called a bill to create confidence in law on the part of American workmen. We have always had, or believed we had a right to organize. That right to organize was the common heritage of every American to form organization for any lawful purpose, and our trade unions' movement, while it has been questioned at times as a lawful organization in the past, for a generation or more has not only been looked upon as a lawful organization, but a most essential organization, if a proper balance was to be maintained in our industrial structure.

Our experience has been that there has been a definite right written into the law, and the law provided for the protection of that right,

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but nevertheless up to the present time that right is being denied to a very large number of American workmen, the right to form the type of organization they desire, and to select those they want to represent them in whatever manner is most satisfactory to them.

So that the challenge to the American wage-earners' right to organize seemingly is as strong today as it has ever been in the past, and we therefore have now a bill introduced in this most free country in the world perhaps to give to American workers in reality the rights that the workers have received in monarchial countries in Europe for many, many years.

The three Scandinavian countries that are monarchies have for a generation not questioned the right of employees to organize, and the employers do not raise a question about their right to organize. It has been that way so long in the British Isles that the Britishers cannot understand how in this country of freedom the employers can raise an objection to the right of employees to form themselves into associations and organize in the same way the employers have their associations.

If they are by that respect obeying the law which is so necessary to the welfare of our country, then in addition to the law saying that the workers shall have the right to organize free from intimidation and coercion and influence, that law must be enforced now that we have an agency.

Those with whom I am associated have carried cases before the first Board when that Board was set up with Senator Wagner as its chairman, and there was remarkable success at first, and Wagner Board's decisions were accepted by employers and carried into effect. Then, apparently, there has been a crystalizing of opposition to the American wage earners' right to organize, on the part of such great associations as the National Association of Manufacturers, and the National Metal Trades Association, and others having a kindred purpose.

One of the purposes of these associations is to use the strength which they built up or created through organization, through exercising their right as American citizens to organize, to make it impossible for American wage earners to recognize the right they do not deny is ours, but a right they intend to prevent if possible.

You are familiar with the fact that the National Labor Relations Board has been handing down decisions as to the right of American labor under the law, under section 7 (a). They have handed down those decisions, and there is not a labor man on that board, and in many cases employers have refused to accept the decision of the board. They have said, we will not tolerate a condition in our plant where men will organize as they desire, and select their representatives in the most satisfactory way, we will not stand for that.

Now, that is in this free country, and perhaps there is no one point at which the radical and the demagogue can reach labor more quickly, and create that condition which exists in European countries more rapidly than to point out to them you are an unprivileged class, because you are wage earners, you cannot enjoy the same privileges which the employer can enjoy; true, there is something in the law, but that is meaningless, that is unenforceable, so you will

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have to use some other method than the method free men adopt in such a country as ours, in order to have that situation corrected.

There is nothing in the opinion of my associates and myself in bringing about something in the nature of proper industrial relation, than the enactment of this measure.

I can remember, when I was a young men in Worcester, Mass., going by the polls before the Australian ballot became a law of the State, and seeing workers herded up to the polls with their foremen right outside of the ballot place, and seeing the workmen going up and picking up the yellow slip or the green slip, whichever indicated the party for which they were going to vote. So it was not the wage earners in Massachusetts that were expressing their wish at the polls, but it was the employers.

That situation was vital to free political institutions and to democracy. Fortunately, Massachusetts led the way in establishing a method of voting which really made every citizen free to express himself as he desired. That gives a little more of the application of free political institutions industrially today.

Without the necessary law, without this bill, wage earners of this country are in very much the same position as the voters were, they have no one to protect them when the employers are determined that if they exercise their rights to organize they shall be disciplined, they shall be blacklisted, and they shall be discharged.

Senator WAGNER. Right in that connection, Mr. Frey, I received a letter yesterday from a laborer in Indiana along this same line, in which he wanted me not to pay any attention to a petition that was coming to Washington signed by workers of their plant against a bill which is pending here, the labor disputes bill, and he explained that the petition was posted in the shop and the foreman said to the workers, "you may sign this or you may not"; but they knew at the time if they failed to sign it their job was gone, so they all signed the petition protesting against the law, which he said every worker in that shop was for.

That is along the same line we have been discussing, an economic pressure.

Mr. FREY. Yes; that is correct. There is at this time in the city of Chicago a large group of manufacturers in the metal industries who have found a way of violating section 7 (a) and all it is intended to bring about. They have an employment secretary in the city, and workers who desire to secure work from any of the plants which are members of that local association, must apply for work through the secretary of that association. The secretary will in turn give to the worker applying for employment a card. The card is addressed to the employment office of one corporation only, and the worker then carries that card and presents it to that corporation. If he is employed or if he is not employed, the firm's employment representative writes in the proper place on the back of the card the reason why the man was not employed, or the reason why he was employed. They will not permit a member of any of the Metal Trades Union to be employed in any of their plants.

I did not bring it with me, but I can show the committee one of those cards, if it is desirous that I should do so.

With a condition of that kind, with the utter impossibility of our wage earners to join together for self-protection, is it surprising

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that the extremist, when he appeals to them, can lead them to believe that the law enacted to protect the wage earners is of no value at all; it is simply a pleasant gesture?

So, it seems to us there is nothing more important now to bring about that necessary confidence in law which is required, than the enactment of this bill.

I want to suggest to your committee a slight amendment. Section 9, subsection (*b*), now reads:

> The Board shall decide whether, in order to effectuate the policies of this Act, the unit appropriate for the purpose of collective bargaining shall be the employer unit, craft unit, plant unit, or other units.

I take it for granted that provides that when a specific case comes to the Board, in the individual case the Board will decide which shall be the unit of representation, but it does not say that, and our experience of legislation is that the attorney of those who oppose our existence in this country find means of construing and interpreting, sometimes with the help of the court, until the purpose of the law is not carried into effect.

So I want to recommend, Mr. Chairman, that this paragraph I just read be amended to read, "The Board (then insert) in each instance shall decide whether"—and so on. That covers what seems to me is a necessary amendment to section (*b*).

Now, I want to speak on just one more matter in which we are very deeply interested, and that is whether this Board shall be an independent body or whether in some manner it shall be connected with the Department of Labor. It seems to be a judicial body, and in all of its functions it must be independent in reaching its decisions, free from political or any other influence. But, because of the importance of the whole labor question, and because this Board, if it is set up, will deal with one phase of human-relation industry, and because the Department of Labor deals largely with human relation in industry, and because human relations are such an altogether different factor in our lives than financial relations, business contracts, and buying and selling property, in those cases that continually come in our civil courts; because it must deal at all times with human relation, and because it is impossible to draw a definite line and to say this type of human relation is to be passed upon by one body, and another type of human relation passed on by another body, we feel they must be brought together.

Of course, there will be instances where there will be a clean-cut question of the only issue between employers and employees in a given instance being section (*a*); but it is difficult for us who have spent a lifetime in dealing with human relation to believe there will be that occasion where there will be no question outside of that particular issue.

The Labor Department in some respects has been of outstanding assistance. In fact, I think, so far as industrial relations are concerned, that the two great agencies that have been of service, have been, first, the Labor Board with the distinguished Senator Wagner as its chairman, and the Conciliation Division of the Department of Labor. I think they have done more than any other two agencies to adjust innumerable rather hard industrial problems.

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If we could separate all of the problems that arise in the human relationship of employer and employee into very definite divisions. then perhaps the difficulty which some of us fear is coming could not arise, but where we are convinced from our experience that every problem that arises in human relation, or the human element in industrial relation, should come under one department of the Government, and in this case, the Department of Labor.

I believe there is sufficient understanding of the problem, sufficient wisdom in the committee to amend the bill in such manner.

If this Industrial Relations Board would be brought into the Department of Labor, without that interfering with the truly judicial function that the Board will be created to carry out, then that should be done, without limiting that judicial function, and at the same time keep within the Department of Labor those agencies which the Government establishes for the purpose of assisting labor and protecting labor and bringing about a changed public relationship.

I sincerely trust the committee will find that possible. I thank you for this opportunity to appear before you.

The CHAIRMAN. Thank you, Mr. Frey. Mr. Myles is the next witness. Will you please come forward, Mr. Myles?

STATEMENT OF JAMES M. MYLES, VICE PRESIDENT OF OPERATIVE PLASTERERS' AND CEMENT FINISHERS' INTERNATIONAL ASSOCIATION

The CHAIRMAN. Your full name is James M. Myles?

Mr. MYLES. Yes, sir.

The CHAIRMAN. You are vice president of the Operative Plasterers' and Cement Finishers' International Association?

Mr. MYLES. Yes, sir; that is correct.

The CHAIRMAN. And your association maintains an office here in Washington?

Mr. MYLES. Yes, sir.

The CHAIRMAN. How many members are there in your organization?

Mr. MYLES. Right now we have 45,000.

The CHAIRMAN. You desire to be heard on this bill now before this committee?

Mr. MYLES. Yes, sir, Senator.

The CHAIRMAN. We will be glad to hear you.

Mr. MYLES. I do not want to take up much of the time of the committee, but I would like to get this over with you, Mr. Chairman. The question I am concerned with at the present time in reference to industry, I am going to talk about the departments of the Government and their attitude toward organized labor, and not about automobiles, although our members made the plant that made one of the largest pleasure automobiles in the world which was exhibited at the Century of Progress, and it was 100 percent union.

I herewith submit the following evidence for the purpose of making provisions in the Wagner National Labor Relations Act for the recognition of the rights of collective bargaining and understandings by the different departments of the Government that are engaged in the awarding of Federal and non-Federal construction projects.

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The failure of the recognition of collective bargaining existing on Government projects also includes the made-work system under the Federal Emergency Relief Administration, which has been the cause of numerous interpretations upon the labor preferences as prescribed in the National Industrial Recovery Act, "Labor preferences", as set forth in Bulletin No. 2, "Nonfederal Projects, P. W. A. Requirements", page 5, revised March 5, 1934. These rules and regulations have been the cause of forcing nonunion men upon projects where union contractors having contracts with local unions, resulted in numerous strikes.

I am not going to read that bulletin I have just referred to, but it has to do mostly with the labor preferences, the veterans, citizens of the United States, aliens who have filed their notice of intention, who are residents of the subdivision, and then residents of the county, with which I am sure you are familiar.

While Bulletin No. 2 of P. W. A. requirements makes clear the rights of collective bargaining with representatives of their own choosing, and also provides that contractors having a contract with the local union, the said contractor shall secure his labor from the local union. When additional labor is required the National Reemployment Service and the Federal Emergency Relief Agencies deny the right of that contractor or the local union from going outside the political subdivision or the county to secure additional union labor, unless he first secures the nonunion labor from the Federal Emergency Relief rolls. This forces nonunion labor upon our union contractors and has tended to demoralize and destroy the principles of unity existing for more than half a century. Nonmembers of our association, under the rules, regulations, and interpretations of the P. W. A., the F. E. R. A., and other departments of the Government awarding contracts, are of the opinion that they do not have to join a union because the laws of the Government protect them against membership in the union. To prove that this action has been responsible for many strikes and disputes, I herewith submit as evidence P. W. 27025, Federal Emergency Administration of Public Works, "Reporting Labor Disputes", January 29, 1935.

To qualify this statement I herewith submit evidence to show that the Public Works Administration insists that permits be issued to nonunion men with the understanding that such nonmembers could not be accepted as nonunion members, nor would it give them a basis for demanding membership to our unions in the future because they have been allowed to work under such permits of public P. W. A. projects. I herewith submit the following letters as evidence:

Dated: May 2, 1934; September 21, 1934; October 5, 1934; October 8, 1934; October 11, 1934; October 15, 1934; October 22, 1934; November 12, 1934; November 22, 1934; December 5, 1934; December 14, 1934.

The CHAIRMAN. In other words, you want to leave out of this bill the provisions exempting the United States Government from being exempted as an employer of labor, from the collective bargaining provisions of this legislation.

Mr. MYLES. Not so much that, Mr. Chairman. For the last 9 years probably, since 1926, when we appropriated $415,000,000 for construction, we have been depending upon the Government for

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construction work, all of building trades, and all of these bulletins do not pertain only to my organization, but pertain to all of those engaged in buiding construction, both light and heavy industries.

The CHAIRMAN. Would not this bill apply to contractors who have jobs under the Public Works Administration?

Mr. MYLES. That is where I want it to apply.

The CHAIRMAN. Does it not apply to that?

Mr. MYLES. No; it does not.

The CHAIRMAN. Is the exemption clause broad enough to exclude those who have Government contracts?

Mr. MYLES. It does not include them. It is not so much the contractor, but we want the different departments of the Government to stop interfering with our union contractors. I am going to submit the opinion of Attorney General Cummings and what he has to say in regard to this.

Senator WAGNER. I do not think you contend that this reservation prevents a collective bargaining agreement between the contractor and the individual worker, but you contend some of the heads of departments intrude themselves into the situation.

Mr. MYLES. That is just the point. For instance, we have a contract under the act with that employer for the political subdivision or county, and all available labor is consumed from the local union, then after that is done the different departments of the Government say to our local representative and the contractor, you must take the nonunion men from the rolls and put them on the project with the union men. We say we will take those men with the understanding they will make application to become members of our association, but the departments of the Government say they cannot ever become members of the organization.

Senator WAGNER. Of course, they are exceeding their authority by saying such things.

Mr. MYLES. We have had very little luck running around to the different boards. There are representatives from all of the building-trade unions, perhaps 22 percent of them in Washington, and we have been working all of the different departments of the Government. The Public Works Administration has a board set up to settle labor disputes; the Treasury Department has a board set up to settle the same disputes; and there is the Agricultural Board; and the P. W. A., which went, I think, down into the F. E. R. A.; and there are so many boards around here you think you are in a lumber camp a part of the time.

Originally we set up a Department of Labor in 1913, and through those years, during the Wilson administration, and all of the other administrations down to this time we would take all of our disputes into the Department of Labor, but now we have got a lot of people sitting down and telling us about these things.

We have a case down in Lexington, Ky., where they said we have got to stop striking that job, and must take the men from the relief rolls, and the employment service, and we cannot strike that job. We tried to get an explanation of why we should not strike it, and we are told that the contractor refuses right of collective bargaining there by permitting the men to join our union, and naturally the best man wins, and that is our position.

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If you will permit me, I will read this letter I finally sent to the President of the United States on October 15, 1934. It reads as follows:

Hon. FRANKLIN D. ROOSEVELT,
President of the United States,
The White House, Washington, D. C.

DEAR MR. PRESIDENT: Realizing that you are heavily burdened with other matters of state it is not my desire to further trouble you with the continuous obstacles that we are faced with in your various departments of Government. I, therefore, submit this subject for your consideration in a friendly spirit of cooperation because this subject has become a very serious matter in a sense that union contracts have been disrespected in every department of Government on Federal and non-Federal projects.

For over 70 years our organization has been in agreement with the employers within our industry. At no time have we permitted our members to work on any project together with nonunion men, which is suggested as you will note by your different departments and conveyed to State P. W. A. administrators, who seem to be confused about the rights of collective bargaining and understanding.

There are many cases where union men have been deliberately forced off the job by Government officials and our men replaced by nonunion men who had registered on the relief rolls.

The difficulties we are faced with is conveyed in Mr. Philip D. Fleming's letter dated October 8, and my answer to Mr. Fleming dated October 11, which are enclosed. Mr. Fleming referred me to the P. W. A. Legal Division and I appeared on October 12 to take up the subject of the Magnolia School, Kent County, Del. And the Legal Division is of the opinion that I should grant permission to our union contractor who we have a contract with to permit the said contractor to employ nonunion men.

Realizing that it is useless to argue about the principles of unionism with the Legal Division, I herewith submit this subject for your consideration with the thought in mind that a clear understanding shall be arrived at to prevent interference by the different departments of Government with our union contractors.

The CHAIRMAN. Have you had the experience of a contractor who employs union help being given a Federal contract and later replacing his union employees by nonunion employees?

Mr. MYLES. Yes, Senator; we have thousands of complaints around here, every one of us.

The CHAIRMAN. And do you state that the contractor, had he taken a private job rather than a Government job, would have adhered to retaining union employees?

Mr. MYLES. Naturally; yes.

The CHAIRMAN. So your complaint is that when these contractors who employ union men entirely and exclusively, when they get a Government contract through collusion, agreement, or understanding with officials of the Federal Government, have been permitted to break down the agreement which you could force them to live up to if it was a private contract?

Mr. MYLES. That is true; and I will give you a case very shortly. They call us to the different departments of the Government when a dispute arises in the different parts of the country on jobs, and we go there and sit down and argue the case out. In this case to which I have reference, we decided to get a show-down on it and see their attitude, and what they really were driving at in their action.

This was a case in Dover, which is in Kent County, Del. It was not a Federal project, but a 30-percent grant. They are using the immediate political subdivision, or the county, for the union men.

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The contractor with whom I have a contract goes on that school, and the P. W. A. engineers force a man on that school off of the relief rolls. He seemed to be a contractor one day and a journeyman the next, and we refused him admission to our association, because he would have to be one or the other, either a contractor or a journeyman. The engineers forced him on there, and they wanted him to make application to join the union, and he refused. The contractor, Mr. Mink, permitted the engineer, Mr. Fleming, so that there would not be any disturbance on the job, to force this man back on that job, with the result there was a strike and our men left the job.

They have written about two or three carloads of bulletins of interpretations on the act, and I have only brought about a dozen, and it distinctly states, first, the residents in the political subdivision, and then they have extended it now, since this argument arose, to permit the nonunion contractor to go outside of the county to procure his labor. They say to the union contractor, or to the union, "We want you to use up all of the men in that county; then you come to us and take men from the rolls."

The men on the rolls refused to join the union, because on the evidence I have it clearly shows the Government is protecting them, and they do not have to join the union. After that strike occurred I have proof to show that they went all over that entire State, and I dare them to check up all the agencies in the State of Delaware, and they will find they took them from all of the relief rolls to man that job.

The CHAIRMAN. I have had some of this evidence of that character before me as chairman of the so-called "Kick-Back Committee." Government inspectors are put on every job for the purpose of observing the conditions and reporting whether or not the contractor is living up to the terms of his contract. One of the requirements on the part of the Government inspector is that he should see that there are no kick-backs, and that the prevailing wage is paid by these contractors.

As you and I know, there have been innumerable complaints to the effect that the prevailing wage has not been paid.

Do you now state that the Government inspector, knowing that the particular contractor has a contract with your union organization to employ only union men, is permitted by these Government inspectors to violate that contract and employ nonunion men on the job because it happens to be a Government job? Is that your contention?

Mr. MYLES. Yes; and they use strike breakers. The Government was set up as a strike-breaking agency.

The CHAIRMAN. In other words, you think the Government inspector ought to, in the performance of his duties, respect the requirements of the contract to employer made with your union to employ only union men, as he would be compelled to on a private job?

Mr. MYLES. Yes, Senator; that is true.

Senator WAGNER. As a matter of fact, he has no right to interfere if you have an agreement with the contractor as to the employment of only union help, unless the inspector pays attention to some of

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these rulings that have been made that under the present law a closed-shop agreement cannot be legally made under section 7 (a).

There has been that interpretation, which I think is entirely unjustified; but, of course, if this legislation passes all questions as to the legality of a closed-shop agreement are removed.

I think it is very clear that the inspector had absolutely no right to interfere with that contractual relationship between your organization and the contractor.

The CHAIRMAN. If I understand it, your complaint, which I have heard from other sources, is that there seems to be a disposition on the part of the inspectors, and particularly in the P. W. A., to disregard standards and conditions that labor organizations have established between themselves and their contractors, and even until our investigation the disposition was to pay no attention to the breakdown of the prevailing wage.

Mr. MYLES. That is true, and what we are facing again, in this $4,000,000,000 relief bill if it is passed, is that we are going to have more strikes than you ever saw in your life.

This is what came from the White House, so far as contractors are concerned and union labor, they will be taken care of on construction work, but a man on a security wage shall be taken from the relief rolls, and they will secure the $50 per month and the 30 hours, and work alongside of the man who receives the prevailing wage of the union man, and it will not work.

Now, we will take this Wagner bill and see what right the inspector had. This I hold in my hand, is the bulletin issued February 15, 1934, known as "No. 2", and this is the form for strikes gotten out by the different departments of the Government for men on relief rolls, and it says, "Notice of strike or lockout", and then says we have been referred for employment and have been notified that a strike or lockout involving such-and-such a question is in process at the plant of the named employer. This is used on all construction work.

The mere fact they get men from the relief rolls, I think is acknowledgment they know there is a strike in existence on the project. It does not say they are in the same category as strike breakers, but the department is using that against us. That is what happened in the case in Delaware, and I have here, to which I have referred, the form to make out by which they acknowledged there is a strike on the job, and they are thoroughly familiar with it.

Senator WAGNER. I made some inquiry about this in New York, and was informed that in New York the union supplies the help, and it is only when the union says there is no union help that the others are employed. I got that information from the organization in New York, and they are being treated all right there.

Mr. MYLES. Now, let me read this last paragraph from the letter of October 22, 1934, addressed to myself from the Federal Emergency Administration by Mr. Philip B. Fleming, acting deputy administrator, which says:

> It is for the very reason that we have desired to permit you to retain your customary procedure of closed-shop operations that we have suggested that you give general permits to contractors to employ nonunion labor, where such requirement is made. This suggestion was not made in an attempt to destroy or lower the standards of membership which you have established over a

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period of time. As we understand it, this general working permit would not mean that the nonunion men employed pursuant thereto would be accepted as full union members nor would it give them a basis for demanding membership in your union in the future because they have been allowed to work under such permits on P. W. A. projects.

Now, from every department of the Government that award contracts and from the contractors on the projects those men on the relief rolls clearly understand they do not have to join a union. We have been in business since 1864, 70 consecutive years, and we have got relations with our employers, and we have organized our own employers back in 1918, and we have been sitting down at arbitration boards through all of those years and we have generally a good relationship with our employers, and to prove that, we have the highest minimum rates of wages in any code approved by the President, and that is for the motion-picture industry, too.

The CHAIRMAN. It seems to me, Mr. Myles you ought to have made this argument before we had the vote on the prevailing-wage amendment.

Mr. MYLES. I could not get in there, and I have been here all of the week. I think we will have plenty of fun with the prevailing rate sooner or later.

I might say, in regard to this Bulletin No. 2, we made an agreement with the Public Works Administration for the first 24 States in the North at $1.20 for skilled, and 50 cents for common labor, known as unskilled; for the 14 States in the central part, including the District of Columbia a rate of $1.10 for the skilled and 45 cents for the unskilled; and in 11 of the Southern States, a rate of $1 for the skilled and 40 cents for the unskilled labor. This is an agreement made August 25, 1933, and it was made by President McDonough, of the Building Trades Department in the Federal Department, and others on behalf of the several trade unions, and it distinctly states that all of the contractors having a contract with our local unions shall secure their labor from that local union.

The CHAIRMAN. As I understand, what you want is a provision in this bill, if it does not now embrace the point you are making, providing for this board to have jurisdiction over labor disputes on Government contract work.

Mr. MYLES. Yes, sir.

Senator WAGNER. They have it, where a collective bargaining agreement exists.

Mr. MYLES. Yes; we have collective bargaining scattered all through the act, in the codes, and everywhere else, but that does not stop them from forcing nonunion men on our contract, and we want that direct provision.

I would also ask that you put that in the Department of Labor. With all of our experience with boards, we believe this should be in a board that would do nothing but handle the collective bargaining.

Senator WAGNER. That is the way I think; one board that would definitely fix a labor policy which could be done better than by different boards scattered all over the country at different places.

I think it will be interesting when we watch the vote on the $4,800,000,000 bill today or tomorrow to see how many men are going to vote to have the country go back to the dole rather than in

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public construction. It might be interesting to see who wants the legislation and who does not.

Mr. MYLES. It is our experience around here, and I think many will agree, that the relief is a curse.

Senator WAGNER. Yes; I would rather see the work. I have been battling for a public-works program for many years, when it was a voice in the wilderness.

The CHAIRMAN. Getting back to your point, the definition of employer in the proposed Wagner bill is as follows:

> The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization, or any one acting in the capacity of officer or agent of such labor organization.

Your query is whether or not a contractor receiving a job from the United States Government would be exempt from the provisions of this law, and you want the provisions made to compel such a contractor to come within the purview of this law.

Mr. MYLES. Yes, sir; absolutely.

Senator WAGNER. Mr. Chairman, if this bill should pass, a closed-shop agreement then made, which is unquestionably legal under the present law, the Government or anybody else cannot interfere with the carrying out of that agreement?

The CHAIRMAN. Of course, there is the question whether this is an entirely separate and independent matter apart from this bill.

Senator WAGNER. This will come subsequently, but you are bound by the latest declaration of Congress.

Mr. MYLES. Here is a bulletin order I would like to call attention to, issued July 18, 1934, by Thomas H. McDonough, Chief of Bureau of Highways. This is under the $400,000,000 appropriated for highways, and you will find no right of collective bargaining here, but he has a classification never heard of before for skilled workers, and he has them divided into so many parts they could not identify themselves for the purpose of getting wages. Also there is nothing whatever said about collective bargaining in this order.

I herewith submit the opinion of Attorney General Homer Cummings, November 9, 1933, on "Labor Preferences under the Act"; opinion by B. V. Cohen, Associate General Counsel, March 31, 1934; P. W. Circular 14441, July 11, 1934, "Labor Preferences"; P. W. 26012, January 15, 1935, "Clarification of Labor Policy"; P. W. 28991, February 20, 1935, "An Amendment to P. W. 21258."

I herewith submit as evidence "Instructions of July 18, 1934" by Thomas H. MacDonald, Chief Bureau of Public Roads, United States Department of Agriculture, in accordance with section 204, title 2 of the National Industrial Recovery Act. The language set forth in these instructions shows clearly no language pertaining to the rights of collective bargaining and understanding.

We are of the opinion that the rights of collective bargaining and understandings should be first put into practice by different departments of the Government, thereby setting an example to employers of industry. I would recommend that the Wagner bill be amended in a fashion to make compulsory upon the Departments of Government to recognize the rights of collective bargaining and under-

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standings and to prevent the several agencies of Governmental Departments from forcing upon union contractors nonunion men on construction projects.

The CHAIRMAN. Mr. Helck is the next witness. Will you please come forward?

STATEMENT OF EDWIN J. HELCK, VICE PRESIDENT, THE AXTON-FISHER TOBACCO CO., LOUISVILLE, KY.

The CHAIRMAN. Your full name is E. J. Helck?

Mr. HELCK. Yes, sir.

The CHAIRMAN. You are vice president of the Axton-Fisher Tobacco Co., of Louisville, Ky.?

Mr. HELCK. That is correct.

The CHAIRMAN. What is the business of your company?

Mr. HELCK. The manufacture of cigarettes, smoking and chewing tobacco.

The CHAIRMAN. How many employees have you?

Mr. HELCK. We have about 1,500.

The CHAIRMAN. Are the employees organized?

Mr. HELCK. They are.

The CHAIRMAN. What is the name of their union?

Mr. HELCK. Tobacco Workers' International Union, Local No. 16, in our plant.

The CHAIRMAN. Are they connected with the American Federation of Labor?

Mr. HELCK. The Tobacco Workers' International Union is affiliated with the American Federation of Labor.

The CHAIRMAN. Do you desire to speak in favor of this bill?

Mr. HELCK. I have a brief statement I would like to read.

The CHAIRMAN. You will please let us have it.

Mr. HELCK. Mr. Chairman and gentlemen of the committee, it is with distinct pleasure that I appear before your committee today to give testimony dealing with the relationship existing between the management and the workers of the company which I represent. If a recital of our experience will be helpful to you, then I shall consider my time well spent.

The Axton-Fisher Tobacco Co. was organized nearly 36 years ago. Its founder, while possessed with humanitarian instincts, nevertheless recognized the benefits accruing to business through collective bargaining, and he therefore requested the Tobacco Workers' International Union to organize the workers in our plant. We have dealt with that union for nearly 36 tranquil years. Not once has our factory been closed due to a strike or a lockout. Not once have we had any labor disturbance.

Our policy of industrial management has proven successful. We know of no better plan for the working out of our industrial problems than that of the American Federation of Labor, which organization offers to the employer a system of collective bargaining. Many people have a wrong conception of the importance and purposes of the organized-labor movement. Many of them feel that it creates class hatred; that it fosters strikes; that it refuses to treat fairly with the employer and endeavors only to gain its ends through force and coercion. This I feel is untrue. My experience in deal-

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ing with organized labor proves to me that it is a force for good. I have found that on the whole, trade unions are organizations of peace and functioning in relation with employers are the best agencies for industrial peace and for the well-being of the human race.

In our plant the union with which we have dealt for nearly 36 years has fostered cooperation rather than competition between themselves and the management—a real work-together, worth-while spirit which has resulted in substantial gains to both.

Their demands, and particularly wage demands, have never been unreasonable. Adjustments in wages have been made from time to time, but usually at the suggestion of the management. In fact, during the war period, and immediately following the World War, the wage contracts were set aside and in round-table discussions adjustments in wages were made, which were satisfactory to both the workers and ourselves.

The Tobacco Workers Union has gone far in raising the standard of our workers. The union has done much to foster education among its members—that makes for better workers. The union has raised standards by increasing independence, by developing manhood, by discouraging selfishness, reducing prejudice and establishing a spirit of fraternity and camaraderie.

It has encouraged saving and home ownership, and has created a spirit of ownership in our business. Our contractual relationship forms a basis for intelligent working out of plans dealing with wages and factory problems. It has made for increased production, elimination of waste and better workmanship. We receive from our people a full day's work for a full day's pay. They are giving us the best that is in them. The union educates its members as to what may be expected of them, helps them along so that they can win promotion.

We feel that the relationship between our employees and ourselves is strictly a business one. We cannot be secretive in our dealings with our employees. Subterfuge, patronage, and even charity accomplishes nothing. We assume that every employee in our plant is a potential business man, and a leader, and that it is no more than good business to develop every man for leadership. This is impossible, however, unless employees be taken into utmost confidence, and be treated as fellow business men. Such action on the part of the employer is appreciated by the worker, as well as everything else that is done for him. In our plant we do a great number of things for our employes, which are not stipulated in our contract with the union. We provide each employee with a life-insurance policy, on which we pay the premiums. We give every employee a daily hot meal, free of charge. We provide rest rooms, with individual steel lockers, shower baths, and a library. Recess periods in the middle of each shift give our workers some respite from their toil. All of these things have been profitable.

We are seeking not only to relieve the economic handicaps of our people, but regard every one of these things which we do for them as an investment upon which there is returned to us many fold, benefits through increased production, elimination of waste, better workmanship and a marked spirit of helpfulness and cooperation.

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Our belief in the principles of the American Federation of Labor and the Tobacco Workers' International Union has, in our opinion, been one of the largest contributing factors to the success of our company, and we, therefore, without hestitation, commend such a plan to other employers.

Senator WAGNER. I wish every employer could hear that statement.

Senator MURPHY. Are your competitors organized?

Mr. HELCK. Some of them; yes.

Senator MURPHY. About what percentage of the industry would you say is organized?

Mr. HELCK. I cannot give you the percentage, Mr. Senator. The larger companies are not organized, but there is a group of about eight or nine small companies, the largest of which are my company, the Axton-Fisher Tobacco Co., and the Brown-Williamson Tobacco Corporation, that are organized.

The CHAIRMAN. How many of your employees are organized?

Mr. HELCK. Every one of them.

The CHAIRMAN. Have you a closed shop?

Mr. HELCK. Yes, sir.

The CHAIRMAN. By agreement with the employees?

Mr. HELCK. Yes, sir.

Senator MURPHY. The conditions in this industry are very highly competitive.

Mr. HELCK. They are.

Senator MURPHY. Have you ever made any investigation as to the comparison of the profit in your company with the profit of the large unorganized companies on the basis of practical investment?

Mr. HELCK. Yes; on the basis of capital investment we have, and on the face of it, the earnings of our company may appear large, if you considered capitalization only. We are capitalized at four and a half million dollars, that is the stock outstanding, and if you take into consideration the surplus of 4 million dollars and bank loans of 2 million dollars, our earnings are considerably less than those of our larger unorganized competitors.

Senator WAGNER. But you are satisfied with that condition, and you are satisfied to have the workers have a part of the profits of the industry?

Mr. HELCK. Exactly.

Senator WAGNER. In other words, it is not only socially desirable, what you are doing, but it is economically beneficial.

Mr. HELCK. We feel that to be true. If we take the business on the basis of earnings and volume of business, then our earnings are smaller probably than any other company in the business.

Senator MURPHY. But you regard them as adequate return on the investment?

Mr. HELCK. Yes, we certainly do. Mr. Chairman, if I may be permitted, I have the statement of Mr. Axton, the president of the company which I would like to have submitted for the record, and will not take up time to have it read.

The CHAIRMAN. That may be made a part of the record.

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STATEMENT OF WOOD F. AXTON, PRESIDENT AXTON-FISHER TOBACCO CO.

I firmly believe that the organization of workers under the American Federation of Labor plan leads to better wages, fewer hours, and improved working conditions; that vast benefits can accrue to the employer, that it develops character, fosters justice and tolerance, and makes for better economic conditions in the Nation.

My experience has convinced me that organized labor is a great constructive force in the betterment of economic growth, as applied to industrial relations. There is no question but what the application of this philosophy has made consistently for the betterment of conditions of employment and progress of my company.

Shortly before I started in the tobacco business I traveled in southern Illinois. At that time serious strikes paralyzed the entire section. Trainloads of men were brought from Tennessee convict mines into Illinois to take the places of mine workers, who not only lived there, but owned their own property. Barracks were built around mines; heavily armed guards were employed by the mine owners to guard property. All this resulted in a great deal of killing, loss of valuable time, and destruction of property. Terrible disorders continued until the United Mine Workers and the operators finally reached an agreement, and a contract was signed, which was faithfully adhered to for over 20 years. During that time there were no strikes, no riots, no destruction of property, and both operator and worker were in very much better position because of the correction of unsatisfactory conditions through agreement.

Having witnessed at first hand the benefits that accrued to all through collective bargaining, I became thoroughly imbued with belief in the principle of collective bargaining and therefore in opening my factory on April 1, 1889, I requested the secretary of the Tobacco Workers International Union to come to Owensboro and organize the employees in my plant. From that day until this we have operated a strictly union shop, and never once have we had occasion to regret our contracts with the Tobacco Workers Union. We have found that not only the workers in our plant have been willing to live up to their agreements but the officials of the international union as well have always been more than anxious that agreements were not violated and that the rank and file live up to their contracts.

We feel that this has been a very splendid arrangement for us as well as for the men. It has prevented agitation from the outside and radical agitation from the inside. It has prevented the management being harrassed by workers on trivial matters. Contacts with the workers have always been through their shop committees. On some occasions it is true that some small groups in our plant would feel that they were not receiving in exact proportion what others were, but in every instance it was the union who brought to their attention the fact that they had a signed agreement with our company, and all disputes were quickly settled, causing us no inconvenience whatever.

During all these years I have taken the position that it is far better to have signed agreements with labor than to have constant

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controversy with them. In fact, so great is my belief that I have constantly championed the cause of labor. This has led to many discussions with other employers, and these discussions have convinced me that more misinformation has been spread upon this subject than upon any other. I refer to misinformation regarding the iniquities of the producer in industry. I have known many business men, who, while they appeared to be reasonably fair in most matters, when discussing the subject of organized labor seemed to lose all sense of proportion and made exaggerated statements about organized labor which were without any foundation of truth. They have been quick to damn and condemn officials of organized labor, assuming, and in most cases without first-hand knowledge, that these leaders were grafters, that they were men who mulct the members of their unions.

I have always known the care with which the rank and file of organized labor select their officials. Most certainly they, at times, have made mistakes, but there is no gainsaying the fact that they fully realize their welfare and their maintenance depends upon selecting leaders of the very highest caliber.

There is no doubt but what at times human nature will assert itself, and many men, whether employers or workers, will sometimes commit overt acts. This has been my observations, however, based on experience, that where I have found one or several labor bodies violating the terms of their contracts there have been, on the other hand, far more individual employers and organizations trying to foment disorder and discord. I have found far more men representing antilabor forces going much further in their attempts to spread misinformation to the general public. I have heard antilabor employers speaking in public make the statement that labor must be brought to its knees. In my opinion the bringing of labor to its knees and the destruction of its purchasing power has very nearly brought this country to its knees. If our country is to effectuate recovery and again reach a place where labor can buy back the products it produces we, in this country, must see to it that labor shall have some voice in the determination of conditions under which they work and wages which they are to receive.

I am fully convinced that the labor of an individual is not a commodity or an article of commerce to be bartered and bargained for. The worker should be given the right to organize. Organized labor symbolized by the American Federation of Labor stands squarely behind the worker and the fair employer. We believe in and heartily endorse their principles.

The CHAIRMAN. Is Mr. Robertson here? You will please come forward.

Your full name is H. M. Robertson?

Mr. ROBERTSON. Yes, sir.

The CHAIRMAN. You are counsel for the Brown-Williamson Tobacco Corporation, of Louisville, Ky.?

Mr. ROBERTSON. Yes, sir.

The CHAIRMAN. Would you like to file a statement to be inserted in the record?

Mr. ROBERTSON. Yes; I would.

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The CHAIRMAN. Is that testimony a good deal along the line of the previous two witnesses?

Mr. ROBERTSON. It is.

The CHAIRMAN. Are you a competitor of the previous two witnesses?

Mr. ROBERTSON. Yes; we are.

The CHAIRMAN. Your employees are organized?

Mr. ROBERTSON. They are organized.

The CHAIRMAN. In the same kind of organization?

Mr. ROBERTSON. In the same international union as his.

The CHAIRMAN. Your relationships with the employees are the same as the previous witness has described?

Mr. ROBERTSON. Yes.

The CHAIRMAN. We wish you would prepare a statement and submit it for the record.

Mr. ROBERTSON. I will do so.

(The statement referred to is as follows:)

STATEMENT OF H. M. ROBERTSON, GENERAL COUNSEL BROWN & WILLIAMSON TOBACCO CORPORATION, LOUISVILLE, KY.

I am appearing on behalf of the Brown & Williamson Tobacco Corporation of Louisville, Ky., in support of the Wagner labor disputes bill.

My company is a manufacturer of cigarettes, smoking, chewing tobacco, and snuff, and employs about 5,500 wage earners, operating plants at Louisville, Ky., Winston-Salem, N. C., and Petersburg, Va.

We operate a closed shop, having a contract with the Tobacco Workers International Union, an affiliate of the American Federation of Labor. We have tangible assets of a cash value purchased within the last 5 years to the amount of over $30,000,000 in our business, and yearly process more than 60,000,000 pounds of American-grown tobacco.

We signed a contract with the unions in November 1933, and since that time have operated a closed shop. I would like to state a little history and the facts as to how we came to be unionized, and as to what has been the result of taking this step, and to give the reasons as to why we support and why we believe the enactment of the Wagner labor disputes bill is of great importance to industry as well as to labor.

In 1933, and prior to that time, we, along I suppose with all other business men, were greatly disturbed as to conditions in this country. As affecting our particular industry I would like to quote from an official statement of the Department of Agriculture made in September 1933 on this subject:

"Analysis of the returns obtained by tobacco growers and others in the tobacco industry indicate that there is an inequitable distribution of consumer expenditures for tobacco products.

"One of the reasons for this is that although tobacco is grown by approximately 400,000 farmers, practically all of the product is purchased and manufactured by a small number of manufacturers. In 1923 the combined total of the amount paid to tobacco growers for all tobacco retained for use in the United States and the net profit of manufacturers was approximately $250,000,000. Of this amount $174,000,000, or 70 percent, was received by tobacco growers, and $76,000,000, or 30 percent, was manufacturers' profits. Since that time the manufacturers' profits have increased steadily and the amount paid to farmers has declined. This decline has been particularly great during the past 4 years. So that we have in 1931 $213,000,000 as the combined amount of manufacturers' profits and amount received by farmers as the gross amount for tobacco used in this country. Of this $213,000,000 the tobacco growers received $66,000,000 or 31 percent and the manufacturers' profits were $147,000,000 or 69 percent.

"In considering the figures just cited, it should be pointed out that manufacturers' profits for the most part represent only returns for the capital invested, whereas the amount received by farmers represents the returns for

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capital, labor, and management. Preliminary studies indicate that the original investment in tobacco manufacturing plants is somewhat less than the original investment in the land, buildings, and equipment used in growing the tobacco."

In addition to the statement concerning the inequitable distribution of income as particularly affecting the farmers, we were also aware of the conditions as respecting labor in the industry. Statistics from the Census Bureau show that in cigarette making, which is by all odds the important branch of the tobacco manufacturing, a cigarette worker received annual average wages for the 3 years, 1929, 1931, and 1933, as follows: Per year, 1929, $870; 1931, $727; 1933, $613.

Per year, 1929, $870; 1931, $727; 1933, $613.

The entire cigarette wage bill for the country, in round numbers, was, 1929, $18,529,000; 1931, $14,664,00; 1933, $13,818,000; and this was notwithstanding the fact that the production of cigarettes did not vary in any appreciable amount during this whole period.

With this situation it became obvious to the management of our company that no mass production could long be carried on unless there was increased purchasing power by the great masses of the people. To us this meant that there must be increase in wages and shortening of hours. This became the very fixed conviction of our management. The more difficult question was as to how this should be accomplished, and we arrived at the conclusion that collective bargaining by employer and employee, with both of these elements dealing at large length and yet fairly with each other, was the only means by which, under our system, any adjustment in the inequitable distribution of income could be accomplished. We realized the difficulties of this method, but we felt that if this method did not accomplish the desired end, then the present capitalistic system would collapse.

Prior to this time we had been approached by Mr. E. Lewis Evans, president of the Tobacco Workers International Union, who stated that he was undertaking to organize our plant, and that he desired our cooperation. I must say that our answers to him were evasive at that time. Having arrived at the above conclusion, however, we asked Mr. Evans in and stated to him that if he could organize our plant we would gladly cooperate and offer no objection to such organization. The complete unionization of the employees of our company was effected within a short time thereafter.

The contract with the Tobacco Workers International Union was made in November 1933 and since that time there has been no labor employed by my company which has not been a member of unions, affiliated with the American Federation of Labor.

There is a further and more selfish reason as to why we took the step which we did in cooperating with the organization of our plants. We felt that if the present economic system was to continue, it was inevitable that in the future there should be the organization of labor, and that real collective bargaining would eventually be made effective. We were familiar with the experiences in England and we know that trade unions had been successful there. We also knew that industry had not become socialistic or destroyed by that movement. It seemed to us, therefore, that with the more complete organization of labor an inevitable fact, it would be to the benefit of our company to be one of the first companies to take the step and join in this movement. In this way we hoped to gain good will from the labor people and to be of some assistance to them in bringing about the organization of labor generally.

Now, what has been the result of our operations under labor conditions? We have found that the labor organizations have been at all times reasonable and helpful; that they have made every attempt to understand our point of view; and in dozens of instances when there have been demands of various kinds, we have either been able to meet these demands by a reasonable explanation as to why certain things could not be done, or we have met the demands and have found, that it has bettered the conditions not only of labor but of our company. Our experience convinces us that there is no reason why any employer could not operate under union conditions.

With these facts, it is our sincere belief that a provision in the law such as that contained in the proposed bill will facilitate the organization of labor, to the ultimate benefit not only of the workers but also of industry itself.

The CHAIRMAN. The next witness is Mr. Edward E. S. Kephart. Mr. Kephart, whom do you represent?

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Mr. KEPHART. I am president of Allied Amalgamated Association of Iron, Steel, and Tin Workers.

The CHAIRMAN. You are appearing in favor of the proposed Wagner bill?

Mr. KEPHART. Yes, sir; I am.

The CHAIRMAN. Have you a statement to submit now?

Mr. KEPHART. I have a statement, but it is not prepared.

The CHAIRMAN. Could you prepare it and submit it to us?

Mr. KEPHART. Yes.

The CHAIRMAN. If you will do so, it may be inserted in the record.

(The statement referred to is as follows:)

STATEMENT OF EDW. E. S. KEPHART

Gentlemen, as president of the Buckeye Lodge, No. 174, of the Amalgamated Association of Iron, Steel, and Tin Workers, a self-organization of the employees of the McDonald Mills of the Carnegie Steel Co. (a subsidiary of the United States Steel Corporation), I am vitally interested in the enactment of the bill under consideration for the following reasons.

(1) The necessity for real collective bargaining in the steel industry. This needs no elaboration as it is conceded by the industry itself. I may refer to the testimony of Hon. Nathan Miller, general counsel of the United States Steel Corporation before the Senate committee considering a previous version of this bill last year, where he admitted to the soundness of the principle of collective bargaining and the necessity, particularly in large corporations, of some means to fulfill this principle.

(2) The denial of this principle by certain companies has been very injurious to the general welfare of the people of the United States. It has directly fostered the principles of Facism, particularly through the employee representative plans, or as it is commonly known, the "company union." It has indirectly been responsible for the strengthening of Communism through the despair of workmen that real and honest collective bargaining can be achieved through the machinery provided in our present form of government. Substance for their argument has been supplied by the defiant and rebellious front that many companies have put to the various agencies designated to effectuate the principle of collective bargaining. This is a very serious matter today and will be a hundred times more so if no relief is provided by the Seventy-fourth Congress.

(3) The gross inadequacy of the so-called "employee representative plan" for real collective bargaining and its demoralizing effect on the workmen. To understand the meaning of the above statement I will present briefly the experiences of the men in the McDonald Mills of the Carnegie Steel Co. under this plan.

Shortly before the date of effectiveness of the N. I. R. A. in 1933, announcement was made of a new and enlightened plan of collective bargaining which would be offered to the men by the company. A group was arbitrarily selected by the management to form a preliminary committee. The group was originally under the impression it was to be consulted as to the provisions of the plan. But this was not the case. On meeting with the management they were met with the completed plan and it was explained to them with the idea of selling it to the men. They were not consulted on the least detail of the plan. This undemocratic action was, of course, viewed with suspicion but the workmen concluded they would give it a trial and see if it was workable. The sole function of the workmen was to elect representatives to carry out the plan. This they did.

After a few months experience, the futility of the plan was painfully evident as far as collective bargaining was concerned. It did provide, after a fashion, a sort of a grievance committee, however, with no real power and no means of acquiring that power. The discontent of the workmen climaxed in the formation of Buckeye Lodge of the Amalgamated Association of Iron, Steel and Tin Workers, an American Federation of Labor affiliate.

On February 17, 1934, a form letter was distributed to the employees announcing that certain changes were to be made in the plan, and that the representatives had recommended that the new plan be voted on by all employees. This was done and the employees of the McDonald plant voted adversely to the new plan. It was the thought of the Buckeye Lodge that if we participated

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in the vote and showed the company that a majority of the workmen in our plant were opposed to the employee representative plan that the plan would cease to exist and the organization preferred by the majority of the workmen, viz. Buckeye Lodge of the Amalgamated Association would be recognized by the company as the collective bargaining agency of the McDonald mills. This view was substantiated by the statements of several of the employee representatives that if an adverse vote was rendered, the plan would be eliminated.

This, however, was not the case. Through the company's arbitrary decision, the plan was administered through districts and not by any logical collective bargaining grouping such as plants. The plan received enough majority in the other two plants of the Youngstown district to impose it on the McDonald plant. A significant fact is that the plants wherein the plan was approved are without any type of true labor organization. Much confusion was made in the minds of the men because of the type of ballot used. It read, "Are you in favor of the employee representative plan as amended", with spaces in which to make an X under "Yes" or "No." The company in announcing the vote gave the impression that the men had affirmed the employee representative plan as preferred to an independent organization when nothing could be further from the truth. The employees have never had the slightest voice in independently making provisions in the plan. An interesting and peculiar feature of the voting was the erection of two large signs in the voting place, saying, "Vote Yes" "Employee Representatives." Also, the employee representatives, avowed advocates of the amended plan, were the only ones to assist illiterate voters in marking their ballots. A natural reluctance to participate in the next election of employee representatives was shown by the men and when this became apparent varying degrees of coercion was used to get them to vote. Among these were, appeals to friendship by various bosses who said they might be criticized if their men did not vote, repeated urging by foremen, one man being approached seven times by officials before his resistance broke and he voted, the use of veiled insinuations was also prevalent.

We do not believe it advisable at this time to go into detail as to the ineffectiveness of the employee representative plan as it is so generally conceded that company unions are merely fostered by the company to defeat true collective bargaining as to make this unnecessary. However, if any doubt exists in the minds of the committee, they merely have to examine the details of the plan or refer to the National Labor Board's decisions regarding company unions.

(4) The repeated and discouraging refusals of the companies to deal collectively with bona fide labor organizations has fostered an air of desperation in the minds of many workmen, and this "shoot the works" attitude can very possibly result in an industrial chaos, the like of which this country has never before seen.

(5) We, Buckeye Lodge, can testify that since our inception and attempt to deal with the Carnegie Steel Co. there never has been made the slightest effort by the company to cooperate with us in real collective bargaining. The only results have been repeated discussions and mostly rebuffs on things of importance. This is an impossible situation that cannot long exist in a free country. We took literally the language of section 7 (a) of N. I. R. A. and have cooperated with our Government to facilitate recovery in every possible way; now we feel that we have the full right to demand that our faithful performance of duty be recognized by the Congress of the United States by the enactment of the Wagner-Connery labor relations bill.

The CHAIRMAN. The next witness is Rabbi Sidney Goldstein, of New York. What is the name of your congregation?

Dr. GOLDSTEIN. I am rabbi of the Free Synagogue, but I appear as chairman of the Social Justice Commission of the Central Conference of American Rabbis, and I also represent the other ministers who are unable to be here this morning.

The CHAIRMAN. Have they signed the statement with you?

Dr. GOLDSTEIN. They have.

The CHAIRMAN. The clerk tells me you have been good enough to suggest the statement be inserted in the record without taking up the time of the committee to read it.

Dr. GOLDSTEIN. If you please, I would be glad to have you do that.

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The CHAIRMAN. The statement will be inserted in the record at this time.

STATEMENT BY DR. SIDNEY E. GOLDSTEIN, CHAIRMAN, SOCIAL JUSTICE COMMISSION OF CENTRAL CONFERENCE OF AMERICAN RABBIS

Presented at hearing on Senate bill 1958 known as "A bill to promote equality of bargaining powers between employers and employees, to diminish the causes of labor disputes, to create a National Labor Relations Board, and for other purposes"

We endorse and support this bill presented by Senator Wagner chiefly for two reasons: In the first place, it will legalize and make part of the law of the land the right of labor to organize and to bargain collectively through representatives of its own choosing; in the second place, it will outlaw unfair practices on the part of employers, practices that are designed by weaken and destroy the labor movement in America.

The history of the labor movement in the United States and in other countries proves beyond all question that the welfare of the working classes advances to the degree that the working classes themselves are organized. Wages are increased, hours are shortened, and working conditions are improved only as the power of the workers increases through organization. The right to organize, to bargain collectively with the employer, is a right that must be protected by law through some such agency as this bill creates; namely, the National Labor Relations Board.

In the present economic crisis it is far more important to maintain the rights of labor than at any time in the past. The codes governing the industries in America were formulated by employers and are enforced through the agents of employers' groups. This procedure places the workers at a great disadvantage, and the only way to correct this condition is to strengthen the labor groups through this bill, which will protect their power to bargain collectively. Without this power they are powerless to protect themselves and their families. Unless the labor groups are sustained by the State in maintaining their rights hours will not be shortened and wages will be decreased. This means a decrease in the purchasing power of the workers, which at present is so low as to make it impossible for the workers to live in a state of decency or to purchase the commodities that they themselves produce.

The effect of this low purchasing power in our economic life is now becoming clear to every student of social problems. If the working classes, who constitute the largest part of our population, cannot buy, merchants cannot sell; if merchants cannot sell, the manufacturers will not produce. The Nation will recover from this economic collapse only to the extent that the mass of the people recover their purchasing power, and purchasing power can come only through an increase in wages. The increase in wages in turn will come only as a result of the right of workers to organize and to enforce their demands upon the employers and employers' associations.

The CHAIRMAN (subsequently). I present to the committee a statement by Rt. Rev. Msgr. John A. Ryan, D. D., in behalf of the National Catholic Welfare Conference, and, also, statement by James Myers, industrial secretary, Federal Council of the Churches of Christ in America. I should like to have these printed in the record of the hearings immediately after the statement of Rabbi Sidney Goldstein.

NATIONAL CATHOLIC WELFARE CONFERENCE,
DEPARTMENT OF SOCIAL ACTION,
Washington, D. C., March 20, 1935.

Hon. DAVID I. WALSH,
Chairman Committee on Education and Labor,
United States Senate,
Washington, D. C.

DEAR SENATOR WALSH: On account of the inability of your committee to provide the hearing that had been tentatively arranged for Mr. Myers of the Federal Council of Churches, Rabbi Goldstein of the Central Council of American Rabbis, and myself, I am sending you herewith a statement for inclusion

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in the record of the hearings on S. 1958, commonly known as the "Wagner bill." I am doing this at the suggestion, as I understand it, of Senator Wagner. The first 2 pages of the enclosure present the letter which was written to you almost a year ago by Rev. John J. Burke, C. S. P., general secretary of the National Catholic Welfare Conference, in support of a similar bill, namely, S. 2926 of the Seventy-third Congress. I am sending this with the consent of Father Burke on the assumption that the position described in his letter remains applicable to S. 1958.

I enclose also a short additional statement which occupies pages 3 and 4.

Sincerely yours,

JOHN A. RYAN,
Director Department of Social Action.

JAR: S

Hon. DAVID I. WALSH,
Chairman, Committee on Education and Labor,
United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: In view of the fact that the text of the Quadragesimo Anno or portions thereof have been placed in evidence in the hearing on S. 2926 before the Senate Committee on Education and Labor, the Administrative Committee of Bishops, National Catholic Welfare Conference, judge it in order to send you the following statement and ask that it be filed with your committee in the hearing on this bill:

Congress is considering legislation providing for the protection of the worker's right to self-organization and the establishment of an industrial tribunal for the adjudication of industrial controversies. Both purposes are in complete accord with and are required by the Catholic social program, enunciated by Pope Leo XIII in 1891 and by the present Holy Father, Pope Pius XI, in 1931.

The statement issued in 1933 by the Bishops of the Administrative Committee, National Catholic Welfare Conference, declares:

"His (the workingman's) right to organize must not be interfered with * * * * Labor and trades unions offer one means of obtaining justice in wages and salaries. The normal working of such organizations, whether singly or as a federation of union, should be to promote the general welfare and to insure for all workers, whether skilled or unskilled, maximum employment, adequate remuneration, the protection of their rights as men and as citizens, and security against accident and indigence * * * Capital and labor should work for the common welfare and for their mutual interest should encourage all workers to organize. Unions, embracing all groups of workers, should be governed by good sense. They should endeavor to distribute opportunity to the workers of every class. They should always seek competent and disinterested advisers, that their organizations may ever be characterized by sanity.

"The worker's right to form labor unions and to bargain collectively is as much his right as his right to participate through delegated representatives in the making of laws which regulate his civic conduct. Both are inherent rights. "The worker can exercise his God-given faculty of freedom and properly order his life in preparation for eternity only through a system which permits him freely to choose his representatives in industry. From a practical standpoint, the worker's free choice of representatives must be safeguarded in order to secure for him equality of contractual power in the wage contract. Undue interference with this choice is an unfair labor practice, unjust alike to worker and the general public.

"To determine the rights of both worker and management and to resolve the conflicting claims of both parties, an industrial tribunal, with mediation and arbitration powers, is necessary. This procedure is dictated by the plainest requirements of reason and public order. The opposite is chaos and anarchy."

Thanking you for your favor in filing this for the record of the hearing on the bill in question, we remain

Most respectfully yours,

/s/ JOHN J. BURKE C. S. P.
General Secretary.

Both Pope Leo XIII and Pope Pius XI expressed themselves strongly in favor of labor organization. After a long discussion of the various kinds of labor associations, the former Supreme Pontiff said: "We may lay it down as a general and perpetual law, that workmen's associations should be so

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organized and governed as to furnish the best and most suitable means for attaining what is aimed at; that is to say, for helping each individual member to better his condition to the utmost in body, mind, and property." The present Pope explicitly reaffirmed this statement and added a strong condemnation of those governments that have denied to labor the right to organize.

With practical unanimity, the economic historians and the economists have for many years held that labor organization is necessary for the protection of the workers. The argument is very simple: The individual wage earner does not possess equal bargaining power with the individual employer; in order to obtain a reasonable measure of such equality, individual wage earners must combine and bargain with the employer as one moral person.

To bring about this condition is the main object, in my opinion, of the Wagner bill. Hence sections 7 to 9 seem to me to be the most important of the entire bill. Section 7 describes the right of organization in general terms. Sections 8 and 9 would make this right effective. No reasonable objection can be raised to the provisions of section 8 which forbid the employer to interfere with free organization by his employees and to dominate, interfere with, or contribute financially to any labor organization. Unless these provisions are enforced by law, the bargaining power of the employees is seriously and fatally diminished. The prohibition of discrimination in subsection 3 of section 8 is likewise necessary for genuine collective bargaining.

The provision for majority rule in collective bargaining is likewise essential to effective bargaining and equality of bargaining power. While the device of proportional representation of different groups of workers in an establishment for purposes of collective bargaining has a certain appearance of fairness, it is entirely impracticable at the present time in the United States. Obviously, there cannot be two or more scales of wages and sets of work regulations in the same industrial establishment. Hence the representatives of two or more unions acting together in negotiations about hours and wages would have to agree upon the terms of these and all other working conditions. Conceivably, they might agree to the extent of presenting a program which would be a compromise between the views of the two or more unions involved in the proportional representation scheme. But this is an utterly unreal hypothesis. The representatives of the regular labor unions will not sit down on the same side of the bargaining table with the representatives of a company union or with the representatives of a Communist union. This may be deplorable, but it is a fact that cannot be changed by any amount of preaching or legislation in the near future. Therefore, the only practical solution is to let the representatives who have been elected by the majority of the employees in any plant or industry carry on the bargaining process for the whole group. After all, this exemplifies the principle of majority rule which obtains throughout all the political processes of election and legislation.

Finally, the enactment of S. 1958 is necessary for the successful functioning of the National Recovery Administration. Strong labor unions with representation on the code authorities would be the best guarantee of peaceful and successful operation and application of the provisions of the code in every industry.

FEDERAL COUNCIL OF THE CHURCHES OF CHRIST IN AMERICA,
New York, N. Y., March 21, 1935.

Hon. DAVID I. WALSH,
Chairman, Senate Committee on Education and Labor,
Senate Office Building, Washington, D. C.

DEAR SENATOR WALSH: I beg herewith to submit to you for the consideration of the committee a statement endorsing the basic principles of the Wagner National Labor Relations bill now under consideration by your committee.

While the Federal Council of the Churches of Christ in America has taken no action on the bill as such, I desire to call your attention to recent important declarations of the Council on labor relations which bear upon the basic principles involved.

In January 1935 the executive committee of the Federal Council of the Churches of Christ in America adopted the following resolution:

"WHEREAS, the Federal Council of the Churches of Christ in America has from its beginning contended for the right of labor as well as of employers to organize and deal collectively through representatives of their own choosing

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as the most hopeful method of assuring orderly, just, and cooperative industrial relations; be it

"*RESOLVED*, That the executive committee of the Federal Council of the Churches of Christ in America, while recognizing that all parties involved—labor, employers, and the general public—have rights and liberties which must be conserved, favors the strengthening of the authority and effectiveness of impartial national and regional labor boards."

In June 1934 the executive committee passed the following declaration:

"The increasing tension between labor and management in some of the great industries of the Nation creates a serious menace to civic order and social progress. We have previously expressed our hearty endorsement of the policy of the Federal Government embodied in the National Industrial Recovery Act, affirming the right of employees, as well as employers, to bargain collectively through persons freely chosen by themselves to represent their interests. This principle has long been advocated by leading church and civic bodies and has been amply demonstrated in major industries as practicable and desirable. This is not class legislation, but a guarantee of rights without which labor cannot hope to maintain its standards against strongly organized aggregations of capital when there is conflict of interests. Industry is in a much healthier state when workers and employers are alike organized with prescribed rights and accepted responsibilities. Among the responsibilities thus incurred by labor is the free admission to its membership of competent workers without distinctions of nationality or race. Serious conflict has arisen over the refusal of strong employing groups to recognize trade unions and their determination to limit negotiations with labor to dealings with their own employees. The reasons for labor's insistence upon a broad basis of organization and upon representation of the workers by persons chosen and paid by themselves are too plain for argument. They are precisely the same reasons that impel employers to organize and to secure the ablest representatives of their own interests, chosen and paid by themselves. We appeal for fair play in accord with the plain intent of an act of Congress and with a principle for which the churches have long contended. When labor is denied the right of free choice of representatives and when employers refuse to deal with representatives so chosen, the spirit and purpose of justice and democracy are thwarted.

"We make this appeal, however, not merely in the interest of what is known as collective bargaining but in the interest of democratic social progress, which requires that the many functional groups of various types in modern society shall have scope for the development of standards and methods of action for which they may be properly held responsible. That abuses of power have occurred on the part of labor as on the part of other groups may be freely admitted, but these cannot be pleaded as excusing a denial of justice. We are convinced that full recognition of social rights is the best assurance of responsible and wholesome social action. It is for such recognition that we urgently appeal."

The Federal Council of the Churches of Christ in America, which is a federation of 23 national Protestant denominations, has for the 26 years of its existence stood for the right of labor as well as employers to organize. The official document known as the "Social Ideals of the Churches" enumerates many social ideals for which the churches should stand, including article 8, which reads: "The right of employees and employers alike to organize for collective bargaining and social action; protection of both in the exercise of this right; the obligation of both to work for the public good."

The executive committee of the Federal Council has also declared it to be a moral obligation of organized labor to admit to its membership "competent workers without distinction of nationality or race." I would recommend that the bill be amended so as to safeguard this principle.

Speaking now personally out of many years experience in actual labor relations, including 7 years as personal director of the Dutchess Bleachery at Wappingers Falls, N. Y., a factory which carried on extensive experimentation with employee representation, I desire to emphasize as particularly important and necessary the provision of this bill declaring it to be an unfair labor practice for an employer to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. My many years of investigation of some of the most prominent of employee representation plans in America, as well as my experience in the actual operation of employee representation, have convinced me that a company-inspired and controlled union can never adequately represent the interests of

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the workers. These organizations may and do vary in degree of sincerity, and in the amount of freedom allowed the workers by the management, but by the very nature of employee representation plans which are restricted to single plants or companies, the workers are deprived of equality in bargaining power. They are deprived of the strength or organized association with workers throughout an industry. They must get along without a spokesman engaged and paid by themselves who can speak fearlessly during negotiations with employers. As the executive committee of the Federal Council has declared, "The reasons for labor's insistence upon a broad basis of organization and upon representation of the workers by persons chosen and paid by themselves are too plain for argument. They are precisely the same reasons that impel employers to organize and to secure the ablest representation of their own interests, chosen and paid by themselves."

The "majority rule" provisions of the bill are, in my judgment, in line with our democratic traditions, and comparable for the workers to the provision in codes for employers which constitutes an employers' association with a substantial majority of employers of an industry as the spokesman for the entire industry.

In my opinion, the passage of the National Labor Relations bill is essential to peaceful progress in labor relations in this country. From my wide observation of labor conditions in various parts of the country, it is my solemn judgment that there is real danger of prolonged bitter labor controversy which will greatly disturb the general welfare of the Nation unless this legislation is adopted to safeguard the inherent rights of the parties to industry. This, as I see it, is the duty of the Government.

JAMES MYERS,
Industrial Secretary, Federal Council of the Churches of Christ in America.

STATEMENT OF MORRIS L. COOK, OF PHILADELPHIA, PA.

The CHAIRMAN. In what capacity do you appear before this committee?

Mr. COOK. As a professional consulting engineer on management.

The CHAIRMAN. Whom do you represent, or do you appear independently?

Mr. COOK. Independently.

The CHAIRMAN. Will you give us for the record something now as to your qualifications?

Mr. COOK. I was for a number of years chairman of the board of review of the Cleveland (Ohio) Diamond Industry and served as chairman of a similar board in New York to settle differences between printing-press men and their employers in regard to the number of men required in certain types of processes; I was chairman of the committee of the Tailors Society to approve the industrial employment code and was author of the Carnegie Foundation Study of Academic and Industrial Information; formerly director of Public Works of Philadelphia; and chairman of the Storage Committee during the war; director of the Giant Power Survey of Pennsylvania; and recently chairman of the Mississippi Valley Committee.

The CHAIRMAN. That will qualify you to take any time you desire. You appear in your individual capacity as it relates to employees.

Mr. COOK. Yes; individually as it relates to management.

The CHAIRMAN. Have you a statement to be inserted in the record?

Mr. COOK. I have not.

The CHAIRMAN. Could you prepare a statement and send it to us?

Mr. COOK. I think in place of sending you a statement, I could give you now a copy of a pamphlet entitled "Some Observations on

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Workers' Organization" which was my presidential address as president of the Tailors Society.

The CHAIRMAN. Does it deal with the problems involved in this bill?

Mr. COOK. It deals very directly with them.

The CHAIRMAN. That may be inserted in the record.

Mr. COOK. May I further say I am very strongly of the opinion that it is necessary to set up this agency independent of any of the administrative departments of the Government.

The CHAIRMAN. You may send us any other statements you wish, and it will be placed in the record.

Mr. COOK. Thank you.

The CHAIRMAN. At this point in the record I should like to have inserted letter and statements of Wallace B. Donham, dean, graduate school of business adiministration, Harvard University, in connection with the bill.

Also, I present letter and statement of Prof. Milton Handler of the faculty of law of Columbia University, and former general counsel of the National Labor Board.

Also, statement of the executive committee and officer, workers' council, General Electric Co., Schenectady, N. Y.

Also, statement of Jeremiah T. Mahoney, Esq., 51 Chambers Street, New York, N. Y.

HARVARD UNIVERSITY,
GRADUATE SCHOOL OF BUSINESS ADMINISTRATION,
Boston, Mass, March 19, 1935.

Hon. DAVID I. WALSH,
United States Senate, Washington, D. C.

MY DEAR SENATOR WALSH: On April 3, 1934, I appeared before the Senate Committee on Education and Labor to testify against the labor disputes bill. My testimony was published in the Senate hearing. A typewritten copy is enclosed.

I enclose also a brief statement which I have just drafted. I should appreciate your willingness to have this read into the record of the hearings now going on before your committee.

I need not tell you that I am most seriously disturbed by the condition of the textile industry, the shoe industry, the fish industry, and the machine tool industry in New England. These four cover a large part of our economic life. In my judgment, if this bill is passed in its present form, it will assure the destruction of three at least of these four.

I sincerely hope that your interest in Massachusetts and New England will lead you to give most serious consideration to the effect of this bill and to other attacks on New England industries.

Very truly yours, W. B. DONHAM, *Dean.*

NOTES ON THE WAGNER BILL PRESENTED BEFORE THE SENATE COMMITTEE ON EDUCATION AND LABOR, APRIL 3, 1934, BY WALLACE B. DONHAM, DEAN, HARVARD GRADUATE SCHOOL OF BUSINESS ADMINISTRATION

(1) At the beginning I should like to make my general position on labor problems clear. I am not hostile to collective bargaining or to trade unions. I have thought for years that the weakness of the labor movement in this country was unfortunate. My own labor experience has been entirely with organized labor. Under the conditions I met, if the union had not existed I should have found it necessary to urge some form of organization. In my particular experience the union covered the entire industry so that the operation of the company was not disturbed by constant friction among crafts or by separate disputes with particular craft unions involving small segments of the total labor group. I have regretted the difficulties, partly practical and partly of internal politics, that have prevented the American Federation of Labor from so reorganizing that a complex modern industry could deal with

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one union rather than with a variety of crafts. I know that the problem is complex from the standpoint of each side, but I have steadily urged the American Federation of Labor to recognize that until this is done the complicated industry involving many crafts must oppose unionization because if unionized by crafts it loses its capacity to plan for continuity of production. I am interested in the steps gradually being taken within the labor movement to bring about a closer adaptation of the forms of labor organization to the forms of modern industry.

(2) I approve the removal of legal bans which have prevented or hindered the development of trade unionism. I am clear that such things as the "yellow dog" contract are evils to the manufacturer as well as the union.

(3) Trade unions are, and I think must remain if they are to remain healthy, voluntary organizations, not creatures of the State. If the State now steps in and makes trade unions compulsory I believe there is no stopping point short of State control of the union and State control of industry. This in my opinion means not only a stodgy society with little opportunity for individuals but it means State control of trade-union organizations, jurisdiction, elections; indeed, the death of trade unionism as we now know it. If State control develops, as I believe it must if this bill passes, rebel organizations outside the official organization will lose all opportunity to function or will be considered revolutionary. Trade-union officials will in the long run become part of our political machinery.

(4) Neither industry nor employees can work out healthy cooperative organizations if the critical decisions are to be made in Washington. Under these conditions instead of attempting to find the best solution of problems which will always be in large measure mutual problems, each side will inevitably jockey for position before the Washington tribunal. The kind of cooperation which must, if we are to have a healthy society, rest upon mutual respect and understanding will inevitably be prevented from developing or be broken down.

(5) The trade-union movement has not yet earned the adherence of vast numbers of workers in the United States. Instead of being given such adherence by the fiat of Government, it should be freed from objectionable restraints and left to earn the respect and cooperation of groups of workers not now convinced of its capacity to serve them well. Otherwise, there is grave danger of a later reaction against forced domination. The American people do not like to be told what they must do or not do. Prohibition should teach us this.

(6) Radical alterations in industrial relations, however desirable they may be as long-run social objectives, are inherently undesirable if put through rapidly by fiat. The task of building up leadership to the point where the labor movement is ready for the kind of responsibilities imposed by this bill is far from completed. The labor union organizations have been organized as fighting organizations and many of the best elements in labor have not been members in the unions. Rapid organization on the scale contemplated by this bill will create administration problems of almost prohibitive magnitude. Recovery will be seriously delayed. The leadership of the labor movement will inevitably be bad and will be paralleled by equally bad leadership on the part of the employers. This will invite rapid and violent swings of the pendulum; almost revolutionary and counterrevolutionary. Rackets and bootlegging of discretion will increase. European experience gives every reason to believe that too much power placed in the hands of the labor group without slow educational processes which fit it to exercise these responsibilities, subjects the country to the dangers of tyranny, of drastic conflicts between leaders and followers and with other social groups. It is a step in the direction of making revolution easy. Racketeering is already a serious danger to the labor movement, and the development of demagogs with little emphasis on the constructive side of this greatest of industrial problems would be inevitable. Corruption would thrive.

(7) Back of this bill is the feeling that the depression, with its consequent righteous discontent of the people of the United States, gives a kind of last-chance opportunity to get all kinds of reforms put on the statute books. To me this seems unsound. I do not believe people of the United States will soon forget the tremendous maladjustments brought about by the war, the Pollyanna atmosphere of the rapid recovery in the decade from 1920–29, and the painful awakening of the last 4 years. It is evident that great changes in our economy are desirable. If we push such changes through with almost no public discussion, and indeed it sometimes appears with conscious effort to divert attention from the real subject under consideration, we may bring on fresh calamities.

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We are now suffering severely from the aftermath of a wild boom in real estate, business, and the stock market. The political activities of the last 12 months have many of these same hectic characteristics. There is grave danger that the unforeseen consequences of ill-considered, undebated political reforms may create just as severe maladjustments as the speculative economic excesses of the period from 1926–29. The slow processes of education which are an essential part of the continuance of a great democracy are overlooked. What we need now is moderation and the stimulus to the orderly growth of a responsible labor movement. What we would get in this bill is not moderation but tremendous excess of power in groups organized as fighting groups untrained for such great responsibility as is proposed and therefore inevitably extremist in attitude. The bill if passed would be a danger to all moderate movements in this country. This feeling that reform must be accomplished now or never imposes intolerable burdens on Congress, its committees, and on the Executive. The habit of rubber-stamping measures of the first importance is wholly inconsistent with the type of constitutional government under which we live in this country.

I have been much interested in problems of foresight. Every study I have made indicates the absolute impossibility of blueprinting the future with any assurance. The type of reorganization of society which follows on hasty pieces of major legislation will be something entirely different from what the proponents of these measures anticipate. It is sure that the consequences of such legislation will be far reaching. In some respects one can prophesy with assurance based on experience. If this bill is passed, the growth of racketeering, corruption, and bootlegging of discretion back to industry can be prophesied with assurance on the basis of much experience. But no one can prophesy with any assurance what the specific results of such legislation will be.

(8) I have frequently been accused by business friends in the last few years of being a dangerous radical. The point of view which I have just stated is a conservative view but it is not a stand-pat view. We in this country have something very precious to preserve—a great heritage to protect, improve, and pass on. We have made tremendous progress and I firmly believe can make tremendous progress in the future. Provided we can keep ourselves from violent swings of action and reaction, revolution, and counter-revolution, I believe the progress already made is but a beginning. But a certain measure of stability is essential to progress. Any attempts to re-create the world in 7 days will result in chaos, social disorder, and general ruin. Utopias never work out as planned.

Too much speed presents dangers especially in this great problem of the relation between employer and employee. I am entirely convinced that up to the present we have not succeeded in this country in making conditions for the healthy growth of organized labor sufficiently favorable. I am clear that a Federal labor law should be enacted which includes a minimum wage, methods of controlling hours of labor, modification of various restrictive devices, and the abolition where possible of the graveyard shift. In other words, I believe the Federal Government must have power to establish a social framework within which the employer who wishes to give his labor a fair deal may do so without the destructive competition of socially unsound labor practices from other employer groups. I am convinced that the Supreme Court on a reexamination of the constitutional questions involved in such a law could and probably would find reasons in the new conditions for changing its earlier decisions. Our continuance as a nation may depend on this sort of exercise of Federal power. What the National Recovery Administration has accomplished constructively is in my judgment almost wholly within this field. The bill now before the committee goes far beyond this. It will in the last analysis set up a great autocratic dictatorship in Washington which pays no attention to customs or traditions, threatens the basis of business calculations, and puts another deterring force against investment in capital goods and capital goods industries. A period when unemployment is close to the maximum and the stage where it is most difficult to help is no time to discourage private initiative and introduce great factors of stress and strain into an already disorganized economic structure.

I stated that this is a conservative viewpoint but it is not a stand-pat viewpoint. It is also a liberal view, if liberalism has anything to do with liberty. The so-called "Liberal" who thinks he can blueprint the future, the so-called "Liberal" who would regret a quick recovery from this depression because it might prevent a reconstruction of society in accordance with his

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particular blueprint, will find of course nothing to commend itself in my statement, but I do not believe that the American people are ready to give up their heritage. I do not believe they are ready for a series of measures leading directly to some form of Fascism or Communism. I do not believe they are ready for the creation of class walls in society so that it becomes more and more difficult for the individual to make progress. This country has gained infinitely more than it has lost from the existence of a situation where it was possible to go from shirt sleeves to shirt sleeves in three generations. The existence of conditions which made this possible have also made it possible for a man to rise from a laborer's job to a position of business leadership.

(9) One word about the company union. Company unions are not all bad. To such extent as organized labor refuses to allow the organization of great modern industries in ways which foster the steady cooperation of many crafts in bringing about steady production, company unions furnish the only form of collective bargaining which will give the people of the United States the advantages of continuity of production and efficient factory management. The high standards of living which have been attained by this Nation have been attained by the constantly increasing capacity of American industry to produce more and more of the things the people of this country desire. The company union developed many years ago as a method of working out collective bargaining in ways which minimize the halts to production. Like every other institution, it has been abused.

The present rapid growth of the movement is obviously unsound like the proposal to force the American Federation of Labor on all industries. But the American people wish to have high standards. It wishes to regain the real income possessed in the last decade. It will not accomplish these things by forcing changes in labor relations which halt production all along the line. In the last analysis, the cut up for both labor and capital is dependent on what is produced. This bill, if passed, would, in my judgment, seriously limit this cut up. I believe the company union is a better choice for labor than forced rapid organization under this bill. The bill is hostile to the employer group but fundamentally I believe it to be more hostile to the labor group. Increased productive capacity through new inventions and better organization is passed on very rapidly, although not always rapidly enough, to the labor group. The lag in wages is never great. Labor needs principally full employment and a fair bargaining position free from legal disqualifications. If everything which goes to the employer could be redistributed, the increase in standards of living in the labor group resulting from this would be very slight. Our most critical problems do not lie in wage scales. Continued employment is far more important than wage levels. The simultaneous raising of real wages throughout our American society is impossible of attainment on any significant scale except through the steady improvement of technology, invention, factory efficiency, and of the social forms which enable the machinery to continue functioning. If we can find how to keep our economic machinery going, the standards of living, real wages, and leisure time available for workmen, can raise far above where they are now. The threat to the standards of the labor group involved in this bill is, I believe, one of the most significant aspects of the bill. It is far more serious than the company union.

(10) The compulsory organization of labor under the organized labor movement and the abolition of company unions has never been debated before the American people. I submit that Congress has little justification for such revolutionary action as is here proposed until a thorough debate has been held, and we are far better prepared for the proposed step. Many of us who have for years regretted the slow development of trade unionism and the weakness of the movement as it exists in this country believe that growth should come as an organic evolutionary growth and should not be imposed by a Congress which has no mandate to pass on the question.

(11) I have heard it suggested that the regimentation of industry under the National Recovery Act plan requires a similar regimentation of labor and Federal control of labor questions to restore balance. That there is something to be said for this thesis is obvious, but I believe this country is far from acceptance of regimentation under trade associations as a permanent solution of our problems of industrial management. Evidence of failure is already conspicuous. Price controls in the codes seem to me both ill advised and on the way to a break-down. Some exception to this statement may be necessary

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where the principle of conservation comes in, but I believe outside of the group of industries like oil, coal, and mining, where natural resources are involved, efforts at general price controls through industry will in the not distant future be given up. But even on the assumption that they are not to be given up, there is no proposal to compel the consumers to recognize and deal exclusively with monopolistic business organizations. The consumer is not obliged to buy. Indeed, I believe price-fixing elements in the codes are already showing signs of disintegration because consumers will not buy at the new prices. Unsound measures of price control that have been adopted can in most cases be left safely to the consumer.

It will be a calamity if a tottering and unsound structure of price control brought about by temporary codes is used as the basis for destruction of voluntary trade unionism. What the labor movement needs is a chance to grow slowly, to eliminate dishonest and irresponsible leaders, and to develop discipline in the rank and file. It should have the chance to show moderation and a constructive social attitude without political controls. In the long run the industrial progress in this country depends on the development of these things. There is grave danger that we may destroy the whole movement by putting too much political force behind it.

(12) Some parts of the administration's recovery program depend on incidental reforms. Some reforms are wise, independent of questions of recovery, but when so much disorganization exists, the presumption should be against any complex reform measure which can be delayed. This bill is a project for "reform" pure and simple, and I conceive bad from this angle. It is certainly not a recovery measure. Indeed, if passed, it will surely delay and may prevent recovery.

STATEMENT OF WALLACE B. DONHAM, DEAN GRADUATE SCHOOL OF BUSINESS ADMINISTRATION HARVARD UNIVERSITY

The arguments I presented last year against the labor-disputes bill are all applicable to the present proposal. The subsequent developments have only served to reinforce them.

Our efforts must be directed toward an industrial recovery in which all parties may share. The encouragement of industrial strife, however attractively labelled and disguised, can only carry us downhill, where the quarrels become more and more bitter as we have less and less to divide.

Such complex human relations as those between employers and employees cannot be changed overnight by legislative fiat. Attempts to do so can only lead to administrative breakdown through nonenforcement and hostile or indifferent public opinion. They weaken the respect for law, legislatures, and courts and pave the way for reaction.

It is a psychological fact that the proposed bill could not be impartially administered. The purpose of the bill is to encourage trade unionism, and its administrators, if loyal to it, could not and would not be accepted as impartial. The bill carries far-reaching inquisitorial powers, which would either remain unused or lead to bitter resentment.

Retail trade unionism can flourish only if it is independent and free from political domination. This bill would carry with it, through its control of voting and its power to determine the proper bargaining unit, the surrender of trade union policy and organization to the administrative board. It is the death warrant of trade unionism as we have known it and supported it.

In my considered judgment, any proposal deliberately designed to hurt the American workman would be unlikely to do as much harm as this bill.

COLUMBIA UNIVERSITY, *New York, March 18, 1935.*

Hon. DAVID I. WALSH,
Senate Office Building, Washington, D. C.

DEAR SENATOR WALSH: I am enclosing a copy of a statement on the National Labor Relations Act which I have prepared and which I would appreciate having inserted in the record of the hearings before the Committee on Education and Labor. This statement embodies my views on the pending bill. You will recall that I served last year as general counsel to the National Labor Board and that I testified before your committee at the hearings on the Wagner Labor Disputes Act.

With all best wishes,

Yours sincerely,

MILTON HANDLER.

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STATEMENT OF MILTON HANDLER, MEMBER OF THE FACULTY OF LAW OF COLUMBIA UNIVERSITY AND FORMER GENERAL COUNSEL OF THE NATIONAL LABOR BOARD

The National Labor Relations Act, now being considered by this honorable committee, is the logical culmination of previous legislation enacted by Congress. The wisdom and social desirability of the policy underlying section 7 (a) of the National Industrial Recovery Act are no longer open to question. Scarcely a witness appearing at the hearings conducted by this committee during the last session of Congress expressed any disagreement with the purposes and objectives of 7 (a). In truth, no such disagreement could reasonably be entertained by any one at all sympathetic with the basic precepts of the American constitutional system. Section 7 (a) was no radical innovation in American labor policy. On the contrary, it was merely a codification of principles deeply rooted in our American traditions. As was said by Chief Justice Hughes in *Texas & New Orleans Railway Company* v. *Brotherhood of Railway Clerks* (281 U. S. 548):

"It has long been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work."

The rights of workers to form and join labor unions for the purpose of collective bargaining had thus been firmly established under our law long before 7 (a) was placed upon the statute books. Even the wording of 7 (a) was derived from prior legislation or Executive order. The statement of President Wilson creating the National War Labor Board, section 2 of the Railway Labor Act of 1926, the declaration of policy in the Norris-LaGuardia Act of 1932, and subdivisions (p) and (q) of section 77 of the 1933 amendments to the National Bankruptcy Act, are the progenitors of 7 (a). It is thus apparent that 7 (a) enunciated no new principles of labor relations; it merely restated rights long enjoyed and clothed them with the sanction of the Federal Government.

The primary object of including 7 (a) in the Recovery Act was to place these long recognized rights of labor upon a firm legal foundation and to provide the legal remedies by which they could be given vitality and practical significance. This object has not been attained. The reasons why the purposes of 7 (a) have not been accomplished are to be found in (1) the ambiguity of the section, (2) the inadequacy of the remedies provided for its enforcement, and (3) the faulty administrative structure established for its administration.

The ambiguities of the section can best be indicated by some of the problems of construction which the National Labor and National Labor Relations Board considered. Does the right of workers to bargain collectively imply a correlative duty on employers to bargain with their employees? May workers designate a labor organization as their representative? Does the section forbid a closed shop? Must an employer reinstate an employee discharged for union activity? Is a striking employee an employee within the meaning of the section? Is an employee who has been wrongfully discharged entitled to wages during the period of his inactivity? Do the representatives of the majority represent all the employees or merely those by whom they were designated? What are the rights of the minority? Is it "interference" for an employer to initiate a company union? To participate in its affairs? To exercise veto power over its decisions? To restrict changes in its constitution? To contribute financial assistance to the company union or its representatives?

It was not to be expected that all these questions could have been anticipated and explicitly covered by the original provisions of the law, but more precise language could have obviated many of these construction problems and avoided many of the contentious disputes and strikes that occurred during the past 2 years.

The present bill faces these problems directly and courageously. It codifies the administrative experience of the National Labor and National Labor Relations Boards and succinctly summarizes their many rulings and decisions. In so doing, it makes no departure from the underlying policy of 7 (a). Thus section 7 of the bill is almost identical in phraseology with 7 (a) and the prior legislation of Congress from which 7 (a) is derived. Section 8 (1) is also identical in terms with 7 (a). Section 8 (2) deals with the company-union problem with more clarity and precision than did 7 (a). It forbids the domination of and interference with workers' organizations by employers. This but codifies the interpretations of the National Labor and National Labor Relations Boards. It would be a bold critic who would question the right of a workers'

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organization to be free of domination and interference or who would deny that such freedom is part and parcel of the liberty of action which is guaranteed by the Constitution. This subsection also forbids financial contributions by employers. Nothing is so destructive of independence than the control of the purse string. Plant unions can never be independent so long as they obtain their funds from the employer. The union is the agent of the workers; it represents them in all bargaining transactions. An agent who receives compensation not only from its principal but from the other party to a transaction is serving two masters and violates a principle of ethics as ancient as our present civilization.

It is only when unions are free and independent that they can properly function. A union that is not permitted to obtain outside counsel and whose officials can only be recruited from the ranks of the employees is a sham organization, a mere complaisant dummy. Such organizations make a travesty of collective bargaining. Their infirmity is best epitomized by the apt epigram of Alexander Hamilton: "In the general course of human nature, a power over a man's subsistence amounts to a power over his will. (Federalist, No. 79, quoted by Sutherland, J., in *O'Donoghue* v. *United States* (289 U. S. 516, 531).)

Subdivision 3 of section 8 of the bill amplifies 7 (a) by explicity forbidding discrimination and by expressly proclaiming the legality of closed-shop contracts. Subdivision 4 provides a necessary safeguard for employees who file charges or give testimony under the act.

There is one omission in section 8 which I believe to be fraught with danger. There is no explicit imposition of a duty upon employers, as in the Railway Labor Act, to bargain collectively with the chosen representatives of their employees and to exert every reasonable effort to reach agreement. I believe such a duty is implicit in the statute, but it would be wise policy to avoid controversy by making the obligation explicit. Without such an obligation, the rights conferred by the bill can be emptied of all significance.

The second reason for the failure of 7 (a) is to be found in the inadequate remedies provided for its enforcement. These remedies are criminal prosecution and the injunction. Despite the innumerable violations of 7 (a) which occurred not a single criminal prosecution was instituted under the Recovery Act. Labor relations are too delicate and complex to be involved in criminal prosecutions. The statute deals with human behavior that, except in the case of flagrant violations, lacks the taint of criminality. Juries are loathe to convict in new crimes dealing with behavior which is not repugnant to their moral sense. The criminal remedy has thus been completely useless.

The injunction remedy has also been ineffective. Preliminary relief upon affidavits has been denied on the fallacious theory that it is barred by the Norris-LaGuardia Act. A final injunction requires a full trial which is apt to be of long duration, as in the *Weirton case*. Such trials are held before judges who are more familiar with the intricacies of the common law and the law of patents, copyrights, trade-marks, and admiralty than with the complex problems of labor relations. In such injunction suits, the administrative hearings and determinations of the National Labor Relations Board are not even admissable in evidence. Moreover, under the venue requirements of the Federal courts, such trials must be conducted in the place of incorporation of the defendant, which frequently is at a point far distant from the scene of controversy. Judicial proceedings are slow and tedious.

The alleged violation in the *Wierton case* occurred in December 1933 but final decision by the trial court was not rendered until February 1935. It is a commonplace that delayed enforcement in the labor field is as bad as no enforcement. Judicial enforcement has thus been an ignoble and disappointing failure.

The faulty structure of the administrative machinery handling 7 (a) is also responsible for the frustration of its purposes. The National Industrial Recovery Act made no express provision for the administration of 7 (a). Originally, it was applied by the National Recovery Administration. Then the National Labor Board was created. Subsequently a proliferation of boards and committees was established under the codes with power to pass upon labor disputes. A cascade of official interpretations of the statute poured from all these agencies to the hopeless confusion of the public. The multiplicity of boards has raised perplexing problems of jurisdiction. This condition was not remedied by the joint resolution under which the National Labor Relations Board was established. That Board has only limited powers of review over

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the various industrial boards. The other branches of the Government have not abided by its interpretation of the statute. Its orders cannot be directly enforced in the courts. It has no power of subpena. It is but a feeble imitation of a court. It hears controversies and writes opinions, but it possesses none of the powers of a quasi-judicial body.

The statute seeks to remedy these administrative weaknesses. It centralizes all power of enforcement in one body and it gives this body the power to render binding and enforceable decisions. Until this power is conferred, 7 (a) will remain but a vain hope. The administrative provisions are modeled after previous legislation of Congress and confer no powers which are not fully enjoyed by other quasi-judicial administrative bodies.

The chief effect of the pending bill is to place some teeth in 7 (a). It is an attempt to profit from the experience of the past 2 years and to remove the causes of past failures. It would be much better for Congress to repeal 7 (a) than to deny the executive branch of the Government the necessary power to enforce it. A law which is not enforced produces discontent, causes unrest, and undermines the faith of the citizen in his Government.

The pending bill properly confines the National Labor Relations Board to the discharge of quasi-judicial powers. The new board will have no power of mediation. This restriction and separation of function is highly desirable.

The enforcement of 7 (a) is a task which merits the undivided attention and energies of the enforcing agency. Inasmuch as the proposed board will have no executive functions, such as mediation, and will be essentially a quasi-judicial body, there is no reason why it should be connected with any executive department. Indeed, there is every reason in logic and experience why it should, like all judicial agencies, be completely independent. There is ample precedent for such independence in the Federal Trade, the Interstate Commerce, the Communications, and the Securities and Exchange Commissions.

CONSTITUTIONALITY OF PROPOSED LEGISLATION

The pending measure is clearly within the legislative powers conferred upon Congress by the Constitution. On the due-process side, the decision of the Supreme Court in the *Texas and New Orleans Railroad Co.* v. *Brotherhood of Railway Clerks* (281 U. S. 548) has set at rest doubts engendered by the decisions in *Adair* v. *U. S.* (208 U. S. 161) and *Coppage* v. *Kansas* (236 U. S. 1). The right of workers to form and join unions and to select their own representatives is as indisputable as the right of business men to form and join trade associations. The restraints of the bill are directed against various forms of interference by employers with the exercise of these rights by workers.

The Supreme Court in the *Texas case* stated that employers have no constitutional right to interfere with the freedom of their workers in organizing and in selecting representatives. The economic conditions prevailing today are totally different from those in the days of the *Adair and Coppage cases.* Disparities of bargaining power are much more marked and the restrictions of the antitrust laws, which tended, at last, to prevent or limit concentration of power on the part of industry, have been relaxed. In order for the workers to enjoy any real freedom of contract they must be fully protected in their collective bargaining activities. Individual bargaining was possible during the handicraft era and during the period of small industrial enterprise in which a direct personal relationship existed between employer and worker. The advent of the large corporation makes unionism and collective bargaining imperative. Without strong labor organizations there can be no economic balance.

Are conditions of employment sufficiently related to interstate commerce to warrant Federal regulation? The courts held under the antitrust laws that a strike which affected interstate commerce was subject to the Sherman Act provided that the workers intended to restrain the interstate movement of goods.

The proposed bill is designed to prevent industrial strife and the consequent obstruction to the free flow of commerce. The situation is analagous to that involved in *Stafford* v. *Wallace* (258 U. S. 495). There the Supreme Court, after reviewing prior decisions holding that local activities may be brought within the Federal power by the intent of those involved to affect commerce, ruled that a declaration by Congress reasonably grounded in fact can take the place of the requirement of intent. Chief Justice Taft said:

"The language of the law shows that what Congress had in mind primarily was to prevent such conspiracies by supervision of the agencies which would be

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likely to be employed in it. If Congress could provide for punishment or restraint of such conspiracies after their formation through the antitrust law as in the *Swift case*, certainly it may provide regulation to prevent their formation. The reasonable fear by Congress that such acts, usually lawful and affecting only intrastate commerce when considered alone, will probably and more or less constantly be used in conspiracies against interstate commerce or constitute a direct and undue burden on it, expressed in this remedial legislation, serves as the intent charge in the Swift indictment to bring acts of a similar character into the current of interstate commerce for Federal restraint. Whatever amounts to more or less constant practice and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it. This court will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly nonexistent."

In other words, the pending measure can be applied to any company engaged in interstate commerce wherever a strike involving its employees would have been subject to the antitrust laws. Moreover the concept of commerce has been expanded in recent years as the economic unity of the Nation has become more apparent. The present tendency of the Supreme Court is to sustain Federal control of those economic problems and activities which concern more States than one.

Enactment of this bill is essential to the preservation of our democratic institutions. This measure is designed to accord the same rights and the same protection to the worker as are now enjoyed by the employer. Unless Congress is to embark upon a program of atomization of industry, dismembering large corporations into many small segments, the full and free organization of workers must be permitted and protected. Only a strong labor movement can preserve the liberties that are now jeopardized by the blind reaction that is engulfing a large part of the civilized world.

STATEMENT OF EXECUTIVE COMMITTEE AND OFFICERS, WORKERS' COUNCIL, GENERAL ELECTRIC CO., WM. COOKE, SECRETARY

This brief is presented by the officers and executive committee of the Workers' Council of the Schenectady works of the General Electric Co., speaking in behalf of said council, which is an employees' representative organization representing approximately 10,000 workers in the Schenectady General Electric works, over 90 percent of whom participated in the choosing of representatives to this council. We are truly a labor organization under the definition given in the so-called "Wagner bill" S. 1958, inasmuch as the employees not only participate in but control the action of the council, and its function is to deal with employers concerning grievances, labor disputes, wages, rates of pay, or hours of employment, as specified in bill.

With the expressed purpose of the bill; viz, to assure the right of collective bargaining for employees by representatives of their own choosing, we are in entire and enthusiastic accord. We feel that any bill which does not insure to employees the right not only to choose their own representatives but, also, to select the type of labor organization through which such representatives shall operate denies to labor a right to which it is justly entitled.

In studying the provisions of Wagner bill S. 1958, it seems to us that this right of choosing the particular type of labor organization which they prefer under a constitution drawn up by the employees themselves is denied in the case of an organization such as ours, inasmuch as it prohibits as among "Unfair labor practices" the defraying of the necessary expenses of our council from the proceeds of industry. We contend that it is the duty of industry to pay for the time and expense necessary to correct grievances, and insure to labor its rights in industry.

Industry is not capital alone. It is not mechanical equipment or management alone. Rather, one definition of industry is: "The union of capital and labor cooperating to produce those things which are necessary for or conducive to the welfare, progress, or comfort of the public in general." Capital

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by and through itself cannot produce anything. Equipment, building, etc., purchased by capital are just so many intimate nonproductive objects without the skill and intelligence furnished by labor for their operation. If then, capital and labor are of equal importance and equally necessary for the carrying on of industry, it must follow that each is entitled to certain inalienable rights within industry. It is the right of capital to demand a fair and just return for the money invested, and it is equally the right of labor to demand proper working conditions and just recompense for its toil and skill. At present, and under the Wagner bill, S. 1958, the interests of capital are protected and furthered by men chosen for this purpose by capital; viz, boards of directors, management, and supervision in general, and the individuals (directors, managers, etc.) are paid from the proceeds and profits of industry. We contend that labor has an equal right to demand that those who protect and guard their interests shall also be paid for the time and expense necessary for such protection. By the provisions of the bill, this right is denied to those employees of the General Electric Co. in Schenectady who have chosen the workers' council as the most effective organization for the protection of their rights and the promotion of their interests. We protest the idea that such an organization as ours is dominated or controlled by the employer.

Our constitution has been drawn up by our own members, and the final decision in all matters rests with the mass of employees who can by their own choice select the right type of men to carry out their ideals and can, through the right of recall of their representatives, insure the compliance of the council in those policies which carry out the wishes of the majority. We deny that acceptance of recompense from industry for the time and expense necessary for the representatives of labor in protecting the welfare of the workers is acknowledgment of or leads to domination by employers. In the last analysis, labor must depend on the honesty and sincerity of its leaders, and if they, the leaders, are honest and sincere, seeking only the welfare of their fellow workmen, the source from which they derive pay and expenses for their labor will not influence them. On the other hand, leaders who are constitutionally dishonest, selfish, and insincere will continue to be so regardless of the rights of those who contribute to their support. For these reasons, we protest the provision contained in section 8, paragraph 2, insofar as it prohibits the right of labor to demand that industry shall pay the necessary expense for the protection of the rights and settling of grievances on the part of labor.

We wish also to protest that provision of the bill contained in section 9 (a), which stipulates that representatives elected by a bare majority of the employees "in any unit shall be the exclusive representatives of all employees in such unit for collective bargaining in respect to pay, wages, etc." Under such a provision it would be possible for 50 percent of the employees in any unit, plus even one individual in addition, to impose their will on the other 49.99 percent plus of those employed in said unit. We contend that this is manifestly unfair, and a denial that the minority has any rights which the majority is bound to respect, even though that majority be exceedingly small. Furthermore, we feel that those who may constitute a majority on the date of a referendum may possibly be and quite frequently are the minority a few weeks or even a few days after such referendum is taken, due to the change in personnel consequent upon labor turnover as well as to the change of opinion on the part of individuals as to the merits of the organization in question.

We protest likewise that provision of section 8, paragraph 3, which legalizes and encourages the idea of the "closed shop." In the case of those labor organizations not supported from the proceeds of industry, it is necessary that finances be collected by means of dues or assessment of individual members. These dues must be collected if such an organization is to continue to exist, and very frequently even coercive measures are resorted to in such collection. Under this provision again, a bare majority, no matter how small or how unstable, may impose its will on a nearly numerically equal minority even to the extent of levying an assessment on the income of members of such minority for the support of an organization which may be not only undesirable to them but even abhorrent and opposed to the conscientious principles of some individuals. We protest that such a condition is unfair, un-American, if not actually a denial of certain rights guaranteed to all citizens by the Constitution of the United States.

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PHILLIPS, MAHONEY, LEIBELL & FIELDING,
New York, March 18, 1935.

Hon. DAVID WALSH,
Chairman Committee on Education and Labor,
Washington, D. C.

MY DEAR SENATOR WALSH: At the request of my old pal, Senator Robert F. Wagner, I had intended speaking before your committee on behalf of the so-called "Wagner bill." Senator Wagner was my law partner for many years and likewise we served together on the Supreme Court of the State of New York in a very happy relationship.

One of my present contributions to the so-called "new deal" has been to volunteer my services as the chairman of the New York Regional Labor Board. Busy as I am with my numerous professional and business obligations I am devoting as much time as I can spare to help in the proper administration of 7a in the district assigned to the New York Regional Labor Board. I can assure you, from my experience with the present section 7a, that it is absolutely ineffective and will continue to be so unless the Wagner bill is passed.

In the New York area, we have had close to 1,600 labor disputes and approximately 90 percent of these have been settled and adjusted, and the disputes coming before the New York board comprise approximately 25 percent of all the labor troubles arising in the entire country.

Our present jurisdiction under 7a is most questionable, and as a former judge of the supreme court, it has been a very unhappy experience for me to attempt to administer under a law or regulation whose partial legality I have very much questioned. Furthermore, the lack of power given to the board to subpena and to swear witnesses, and the lack of power to enforce decrees and mandates, have often made us feel most ridiculous.

On my board at the present time, there are about 50 persons, many of them very active and successful business men and industrialists. The volunteering of their time to the cause of governmental administration has been rather a serious thing with many of them. They have, however, become deeply interested and feel that a present collapse of the machinery intended to compose labor disputes, would have a most serious effect on the business of America.

In my opinion, unless the Wagner bill is enacted into law, the New York Regional Labor Board and all the other labor boards might as well close up shop. I know that I myself could no longer continue to serve as a chairman of a board attempting to exercise powers always more and more questioned. Just as strongly as I urge the passing of the Wagner bill, so I would like to urge that if the bill is passed that its operations be confined to an independent board, that is, to a board absolutely independent of the Department of Labor. The large percentage of the labor disputes arising in my district have been composed by reason of the speed with which the board has acted. We are in the habit of cutting all red tape, giving immediate notice to all persons to be present, and we try to get them around the table with the board, long before animosities and acrimonies have developed. Speedy action has been necessary and speedy action has brought about most excellent results. Our present method of handling labor disputes must be done away with if we are to operate as a part or a bureau of the Labor Department. The machinery of the district boards is something altogether different from the machinery existing in the Labor Department, and I, for one, must refuse to become entangled in the machinery of the Labor Department if the New York Labor Relations Board becomes merely an adjunct of the Labor Department.

I have not seen you since our little meeting in Florida at the Amateur Athletic Union Convention, at which I was elected president of the A. A. U. We all enjoyed very much your felicitous address on this occasion.

With best wishes, I am
Your very sincerely, JEREMIAH T. MAHONEY.

The CHAIRMAN. This closes the hearings for the proponent, and the opponents are not prepared to go on tomorrow, and the hearing will be adjourned until Thursday morning at 10:30 at which time the opponents will be heard.

(Thereupon, at 12:10 p. m., the hearing adjourned until Thursday, Mar. 21, 1935, at 10:30 a. m.)

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